with the default daily retention limit of one BFT per vessel. During the June–August 2011 period, under a three-fish limit, BFT landings were approximately 140 mt. However, based on the pattern exhibited over the last few years, NMFS anticipates an increase in both landings of BFT (in number) and average fish weight for the June–August period in 2012, such that a three-fish limit may result in higher landings than in previous years.

A lower limit could result in unused quota being added to the later portion of the General category season (*i.e.,* rolling forward to the subsequent subuota time period). Increasing the daily retention limit from the default may mitigate rolling an excessive amount of unused quota from one time-period subquota to the next. Increasing the daily limit from three to four or five fish may risk exceeding the available June–August subquota.

Based on these considerations, NMFS has determined that a three-fish General category retention limit is warranted. It would provide a reasonable opportunity to harvest the U.S. quota of BFT without exceeding it, while maintaining an equitable distribution of fishing opportunities, to help achieve optimum yield in the General category BFT fishery, to collect a broad range of data for stock monitoring purposes, and to be consistent with the objectives of the Consolidated HMS FMP. Therefore, NMFS increases the General category retention limit from the default limit to three large medium or giant BFT per vessel per day/trip, effective June 1, 2012, through August 31, 2012.

Regardless of the duration of a fishing trip, the daily retention limit applies upon landing. For example, whether a vessel fishing under the General category limit takes a two-day trip or makes two trips in one day, the daily limit of three fish may not be exceeded upon landing. This General category retention limit is effective in all areas, except for the Gulf of Mexico, and applies to those vessels permitted in the General category, as well as to those HMS Charter/Headboat permitted vessels fishing commercially for BFT.

Monitoring and Reporting

NMFS will continue to monitor the BFT fishery closely through the mandatory dealer landing reports, which NMFS requires to be submitted within 24 hours of a dealer receiving BFT. Depending on the level of fishing effort and catch rates of BFT, NMFS may determine that additional retention limit adjustments are necessary to ensure available quota is not exceeded or to enhance scientific data collection from, and fishing opportunities in, all geographic areas.

Closures or subsequent adjustments to the daily retention limits, if any, will be published in the **Federal Register** In addition, fishermen may call the Atlantic Tunas Information Line at (888) 872–8862 or (978) 281–9260, or access *www.hmspermits.gov,* for updates on quota monitoring and retention limit adjustments.

Classification

The Assistant Administrator for NMFS (AA) finds that it is impracticable and contrary to the public interest to provide prior notice of, and an opportunity for public comment on, this action for the following reasons:

The regulations implementing the Consolidated HMS FMP provide for inseason retention limit adjustments to respond to the unpredictable nature of BFT availability on the fishing grounds, the migratory nature of this species, and the regional variations in the BFT fishery. Affording prior notice and opportunity for public comment to implement these retention limits is impracticable as NMFS needs to wait until it has necessary data and information about the fishery before it can select the appropriate retention limit for a time period prescribed by regulation. By the time NMFS has the needed data, implementing the retention limit following a public comment period would preclude fishermen from harvesting BFT that are legally available consistent with all of the regulatory criteria. Analysis of available data shows that the General category BFT retention limits may be increased with minimal risks of exceeding the ICCAT-allocated quota.

Delays in increasing these retention limits would adversely affect those General and Charter/Headboat category vessels that would otherwise have an opportunity to harvest more than the default retention limit of one BFT per day/trip and may exacerbate the problem of low catch rates and quota rollovers. Limited opportunities to harvest the respective quotas may have negative social and economic impacts for U.S. fishermen that depend upon catching the available quota within the time periods designated in the Consolidated HMS FMP. Adjustment of the retention limit needs to be effective June 1, 2012, or as soon as possible thereafter, to minimize any unnecessary disruption in fishing patterns, to allow the impacted sectors to benefit from the adjustment, and to not preclude fishing opportunities for fishermen who have access to the fishery only during this time period. Therefore, the AA finds good cause under 5 U.S.C. 553(b)(B) to waive prior notice and the opportunity for public comment. For these reasons, there is good cause under 5 U.S.C. 553(d) to waive the 30-day delay in effectiveness.

This action is being taken under 50 CFR 635.23(a)(4) and is exempt from review under Executive Order 12866.

Authority: 16 U.S.C. 971 *et seq.* and 1801 *et seq.*

Dated: May 9, 2012.

Emily H. Menashes,

Acting Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

[FR Doc. 2012–11744 Filed 5–14–12; 8:45 am]

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DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 660

[Docket No. 120207106–2428–02]

RIN 0648–BB85 and 0648–BB27

Magnuson-Stevens Act Provisions; Fisheries Off West Coast States; Pacific Coast Groundfish Fishery; Biennial Specifications and Management Measures

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

ACTION: Final rule.

SUMMARY: NMFS issues this final rule for the 2012 Pacific whiting fishery under the authority of the Pacific Whiting Act of 2006, the Pacific Coast Groundfish Fishery Management Plan (PCGFMP), and the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act). This final rule establishes: The tribal allocation of 48,556 metric tons of Pacific whiting for 2012; provisions associated with the reapportionment of unused tribal whiting to the non-tribal fishery in 2012; and final allocations of Pacific whiting to the non-tribal sector for 2012.

DATES: Effective May 11, 2012.

FOR FURTHER INFORMATION CONTACT: Kevin C. Duffy (Northwest Region, NMFS), phone: 206–526–4743, fax: 206–526–6736 and email: *kevin.duffy@noaa.gov.*

SUPPLEMENTARY INFORMATION:

Electronic Access

This final rule is accessible via the Internet at the Office of the Federal Register's Web site at

http://www.gpoaccess.gov/fr/index.html. Background information and documents are available at the Pacific Fishery Management Council's Web site at *http://www.pcouncil.org/.*

Copies of the final environmental impact statement (FEIS) for the 2011–2012 Groundfish Specifications and Management Measures are available from Donald McIsaac, Executive Director, Pacific Fishery Management Council (Council), 7700 NE. Ambassador Place, Portland, OR 97220, phone: 503–820–2280.

Copies of additional reports referred to in this document may also be obtained from the Council. Copies of the Record of Decision (ROD), final regulatory flexibility analysis (FRFA), and the Small Entity Compliance Guide are available from William W. Stelle, Jr., Regional Administrator, Northwest Region, NMFS, 7600 Sand Point Way, NE., Seattle, WA 98115–0070.

Background

This rule announces the Total Allowable Catch (TAC) for whiting. This is the first year that the TAC for Pacific whiting is being determined under the terms of the Pacific Hake/Whiting Agreement with Canada (the Agreement) and the Pacific Whiting Act of 2006 (the Whiting Act), 16 U.S.C. 7001–7010. The Agreement and the Act establish bilateral bodies to implement the terms of the Agreement, each with various responsibilities, including: The Joint Management Committee (JMC), which is the decision-making body; the Joint Technical Committee (JTC), which conducts the stock assessment; the Scientific Review Group (SRG), which reviews the stock assessment; and the Advisory Panel (AP), which provides stakeholder input to the JMC (The Agreement, Art. II–IV; 16 U.S.C. 7001–7005). The Agreement establishes a default harvest policy (F–40 percent with a 40/10 adjustment) and allocates 73.88 percent of the TAC to the United States and 26.12 percent of the TAC to Canada. The bilateral JMC is primarily responsible for developing a TAC recommendation to the Parties (United States and Canada). The Secretary of Commerce, in consultation with the Secretary of State, has the authority to accept or reject this recommendation.

The JTC met three times over the last six months to prepare the stock assessment for 2012. Although the stock assessment and review was carried out with very little controversy, the 2011 acoustic survey was the topic of considerable discussion, particularly by the advisory panel members. The acoustic survey includes an index of abundance and age-compositions from 1995, 1998, 2001, 2003, 2005, 2007, 2009, and 2011. The 2011 index was the lowest of the time series, and had the second highest coefficient of variation. The stock assessment was updated in several ways this year (e.g. new version of the Stock Synthesis model, updating the historical data, updating of the 2010 and 2011 age compositions) but these did not result in a noticeable change from the prior assessment. However, adding the 2011 acoustic survey data resulted in a significant decrease in estimated current abundance from the prior assessment.

The SRG met in Seattle, Washington, from February 21–24, 2012, to review the draft stock assessment document prepared by the JTC. The SRG concluded that the current modeling approach, which implements a relatively simple base case in the Stock Synthesis model and sensitivity runs in another model, was pragmatic and conservative and resulted in a base-case assessment model whose sensitivities were thoroughly examined. The SRG concurred with the JTC perspective that the 2011 survey estimate of stock biomass is considerably lower than the 2009 survey estimate, which results in a lower estimate of terminal stock abundance from the 2012 assessment, along with correspondingly higher estimates of recent exploitation rates. The estimate of spawning stock abundance at the start of 2012 is at 33 percent of the unfished equilibrium level, which is near the long-term average expected when fishing at the default harvest rate but below the management target of 40 percent of the unfished equilibrium level. The SRG suggested precaution in setting the 2012 TAC for Pacific whiting.

The assessment from the JTC indicated that the default harvest rate could result in a stable or increasing biomass in the short term. Specifically, the assessment revealed that application of the default harvest rate for this year's fishery would result in a 50 percent probability that the median estimate of spawning stock abundance at the start of 2013 would be 34 percent of the unfished equilibrium level, a slight increase from 2012.

At its March 14–15, 2012 meeting, the JMC reviewed the advice of the JTC, SRG, and AP and agreed on a TAC recommendation for transmittal to the Parties. The JMC recommended reducing the TAC but allowing carryover such that the projected total mortality would be equal to the default harvest rate, which is inherently precautionary because of the 40–10 adjustment. This recommendation for an adjusted United States TAC of 186,037 metric tons (mt) for 2012 is consistent with the best available science, provisions of the Agreement, and the Whiting Act. The recommendation was transmitted via letter to the Parties on March 23, 2012. NMFS, under delegation of authority from the Secretary of Commerce, approved the TAC recommendation of 186,037 mt for U.S. fisheries on April 18, 2012.

Tribal Fishery Allocation

This final rule establishes the tribal allocation of Pacific whiting for 2012. NMFS issued a proposed rule for the allocation and management of the 2012 tribal Pacific whiting fishery and reapportionment provisions on February 22, 2012 (77 FR 10466). This action finalizes the allocation and management measures.

Since 1996, NMFS has been allocating a portion of the U.S. OY (now TAC) of Pacific whiting to the tribal fishery using the process established in 50 CFR 660.50(d)(1). The tribal allocation is subtracted from the total U.S. Pacific whiting TAC and the remainder, less a deduction of 2,000 mt for research and bycatch in non-groundfish fisheries, is allocated to the non-tribal sectors. The tribal Pacific whiting fishery is managed separately from the non-tribal whiting fishery, and is not governed by the limited entry or open access regulations or allocations.

The proposed rule stated that at the time it was published, only the Makah Tribe had expressed an intent to participate in the 2012 fishery and requested 17.5% of the U.S. TAC. Thus, the proposed rule described the tribal allocation as 17.5% of the range within which the TAC would likely fall (16,970 to 50,908 mt, based on a range for the TAC of 96,969 mt to 290,903 mt). During the comment period on the proposed rule, the Quileute Tribe informed NMFS of its intent to participate in the 2012 fishery, and requested 16,000 mt to facilitate the participation of two Quileute boats in the fishery.

The tribal allocation in this final rule is 48,556 mt (17.5 percent of the U.S. TAC or 32,556 mt, plus 16,000 mt), which accounts for both tribal requests. While this amount constitutes a larger proportion of the U.S. TAC than was anticipated in the proposed rule (26% rather than 17.5%), it falls within the range of potential tribal allocations described in that rule. Accounting for both tribal requests in the tribal allocation is necessary to allow for the exercise of the treaty right. While the amount of the treaty right has not yet been determined, and new scientific

information or discussions with the relevant parties may change this outcome, the best available scientific information to date suggests that 26% of the U.S. TAC is within the likely range of potential treaty right amounts.

The Quileute Tribe submitted its letter to NMFS regarding the 2012 whiting fishery to the Council, which included the letter in the briefing book for its April 2012 meeting. This information was therefore available to the public, and there was some discussion of the letter during Council deliberations at the April meeting.

In order to ensure that this rule is published before the start of the whiting fishery, and to allow for full exercise of the treaty fishing right, NMFS is publishing the tribal allocation as a final rule.

As with prior tribal whiting allocations, this final rule is not intended to establish any precedent for future Pacific whiting seasons, or for the long-term tribal allocation of whiting. Rather, this rule adopts an interim allocation, pending the determination of the long-term treaty amount. That amount will be based on further development of scientific information and additional coordination and discussion with and among the coastal tribes and States of Washington and Oregon. This process, begun in 2008, is continuing.

Reapportionment

This final rule establishes regulatory provisions allowing NMFS to reapportion whiting from the tribal allocation to the non-tribal sectors if it appears that the tribal fishery will not use its full allocation. These basic provisions are not changed from the proposed rule, and are discussed in more detail in the preamble to that rule; as discussed below, this rule modifies the reapportionment procedures in consideration of comments received.

Non-Tribal Allocations

The 2012 fishery harvest guideline (HG) for Pacific whiting is 135,481 mt. This amount was determined by deducting from the total U.S. TAC of 186,037 mt, the 48,556 mt tribal allocation, along with 2,000 mt for research catch and bycatch in non-groundfish fisheries. Regulations at 50 CFR 660.55(i)(2) allocate the fishery HG among the non-tribal catcher/processor, mothership, and shorebased sectors of the Pacific whiting fishery. The catcher/processor sector is allocated 34 percent (46,064 mt for 2012), the mothership sector is allocated 24 percent (32,515 mt for 2012), and the shorebased sector is allocated 42 percent (56,902 mt for 2012). The fishery south of 42° N. lat. may not take more than 2,845 mt (5 percent of the shorebased allocation) prior to the start of the primary Pacific whiting season north of 42° N. lat.

The 2012 allocations of Pacific Ocean perch, canary rockfish, darkblotched rockfish, and widow rockfish to the whiting fishery were published in a final rule on December 13, 2011 (76 FR 77415). The allocations to the Pacific whiting fishery for these species are described in § 660.55(c)(1)(i) and in Table 1b, subpart C.

Comments and Responses

On February 22, 2012, NMFS issued a proposed rule for the allocation and management of the 2012 tribal Pacific whiting fishery and reapportionment of unused Pacific whiting from the tribal to the non-tribal fishery. The comment period on the proposed rule closed on March 23, 2012. During the comment period, NMFS received ten letters of comment. The U.S. Department of the Interior submitted a letter of ''no comment'' associated with their review of the proposed rule. Letters were received from the Quileute Tribe, three commercial fishing organizations, one association that represents Native Americans, and two individuals. Comments received on the proposed rule for the 2012 tribal Pacific whiting fishery are addressed below.

The Quileute Tribe

Comment 1: The tribal allocation of 17.5 percent of the TAC is inappropriate, because it is based upon the erroneous assumption that only the Makah Tribe will participate in the 2012 fishery.

Response: The final rule increases the tribal allocation to 26% of the final TAC, or 48,556 mt, to include an allocation to both the Makah and the Quileute Tribes. In the proposed rule on the issue of tribal allocation, NMFS noted that prior to publication of the regulations for the 2011–2012 harvest specification biennial cycle [in the fall of 2010], both the Quileute and Makah Tribes indicated they intended to fish in 2012. Leading up to publication of the proposed rule, NMFS also sought input from the Makah and Quileute Tribes about their intent for 2012, but only the Makah Tribe responded. Thus, NMFS proposed an allocation for the Makah Tribe of 17.5% of the TAC, or between 16,970 mt and 50,908 mt, depending on the final TAC. In response to the proposed rule, the Quileute Tribe commented that they planned to participate in the fishery in 2012, seeking an allocation of 16,000 mt. NMFS has taken this input into account in the final determination of an allocation of tribal whiting for 2012 based on a final TAC of 186,037 mt and the requests from the Makah Tribe of 17.5 percent of the TAC (32,556 mt) and the Quileute Tribe of 16,000 mt (8.5% of the TAC). The combined allocation to the Makah and Quileute Tribes, given the 2012 U.S. TAC, is 48,556 mt, within the range of amounts considered in the proposed rule.

Comment 2: Two groups commented that the proposed reapportionment of whiting from the tribal sector to the non-tribal sectors is an unacceptable abrogation of treaty rights. One states that ''Whiting are not like salmon; they live to swim another year. There is no reason why these fish cannot remain ''undepleted'' to live and spawn another day, to everyone's benefit.''

Response: NMFS does not agree with the conclusion that reapportionment is an abrogation of treaty rights. The tribal allocation under this rule allows full opportunity for the tribes to harvest whiting in the amounts requested, which as described above are likely within the total amount of the treaty right based on the information currently available. The reapportionment provision is structured to ensure that reapportionment would only take place if the tribes will not be catching their full allocation of whiting in 2012, based on discussions with all of the coastal tribes. Should it appear that the tribes might catch their full allocation, reapportionment would not take place. Thus, the reapportionment provisions are not intended to infringe on the tribes' fishing rights.

From the late 1990's through 2010, NMFS' regulatory authority to reapportion Pacific whiting from the tribal to the non-tribal fishery existed under 50 CFR 660.323(c), and NMFS exercised this authority in coordination with the coastal tribes to the extent practicable. During the development of Amendment 20 to the Pacific Coast Groundfish Management Plan for the trawl rationalization program, the Pacific Fishery Management Council (Council) selected an option that precluded any rollover or reapportionment of Pacific whiting between the non-tribal sectors as well as between the tribal and non-tribal fishery, so no mechanism was in place in 2011 for reapportionment of unused whiting. However, through further Council consideration and discussion with NMFS, the Council encouraged NMFS to reinstate regulatory provisions authorizing the reapportionment of whiting from the tribal to the non-tribal sector for 2012 and beyond. Through this rulemaking, NMFS is reinstating the

regulatory authority to reapportion Pacific whiting in order to promote full utilization of the resource.

While whiting clearly have a different life history than salmon, the statement that whiting ''live to swim another day,'' suggesting that fish not caught in a given year are available to the fishery in subsequent years, is not fully supported by the available scientific information regarding whiting. The population of Pacific whiting in any year is made up of multiple year classes. However, by age-5, the loss of animals to natural mortality outweighs the effects of individual fish growth on the overall biomass because as a cohort ages the fish suffer the same natural mortality rate of 20 percent per year, but are growing at a slower rate per year. The harvestable amount of whiting fluctuates significantly from one year to the next, as the difference between the 2011 whiting OY and the 2012 whiting TAC demonstrates. Thus fish not caught in a given year do not necessarily contribute to the fishery in subsequent years.

Comment 3: Two procedural aspects of the reapportionment provisions are inappropriate. First, by only engaging participating tribes in discussions regarding reapportionment, NMFS permits the tribal share to be given to non-tribal entities without consent of all tribes with rights to whiting. Second, to the extent reapportionment is required in the formal rule, it occurs too early in the season. A substantial amount of fishing takes place after September 1, making it difficult if not impossible to project the tribal harvest for the remainder of the season as of that date.

Response: NMFS will coordinate and consult with the coastal tribes, and will attempt to reach consensus before any reapportionment decisions are made in 2012. However, absent consensus, the NMFS Regional Administrator will make reapportionment decisions based on information obtained through discussions with the tribes. Relative to timing of any reapportionment decisions, this rule does not establishing a single date by which decisions to reapportion fish will be made. Rather, the rule contemplates that the Regional Administrator will be contacting the tribes in the September timeframe to assess tribal progress on Pacific whiting fishing activities and to obtain information on fishing plans for the remainder of the year. The rule does not require that the Regional Administrator make a decision to reapportion fish on September 15 or as soon as practical thereafter, but simply allows for such action should the available information indicate that the tribes will not use some portion of the tribal allocation by the end of the year. If the available information as of September 15 does not indicate whether any portion of the allocation will remain unused at the end of the year, reapportionment would not occur at that time.

Comment 4: The representation that the Council recommended reapportionment of unharvested tribal shares to the non-tribal shares is incorrect.

Response: Although the Council did not make a formal recommendation in the form of a motion, NMFS believes that the Council clearly articulated the desire to reinstate reapportionment provisions for Pacific whiting allocated to the tribes. In May 2011, the final rule publishing the Pacific whiting specifications indicated that the Council adopted a motion during the Amendment 20 (trawl rationalization) process that removed provisions that allowed rollover of whiting between sectors. NMFS interpreted the motion to include the tribal fishery. At that time NMFS recommended that revisions to the regulations should be dealt with through the Council process and a notice and comment rulemaking.

In November 2011 the Council further discussed reapportionment of Pacific whiting allocated to the tribes under Agenda E.2. At that time the Council and its advisory bodies identified the importance of reinstating the reapportionment provision. At this same meeting NMFS indicated that the agency's independent authority under the Magnuson-Stevens Act would be used for the development of a rulemaking that would reinstate reapportionment provisions similar to those that were in place prior to the implementation of PCGFMP Amendments 20 and 21. The action by NMFS was in response to comments received on the Pacific whiting harvest specifications in 2011 (76 FR 28897; May 19, 2011) and input from the Council and its advisory body on this issue at the November 2011 meeting and earlier meetings. NMFS believes that the Council record supports this action (See April, 2011 Agenda item I.6.B; June, 2011 Agenda Item E.6.b; September, 2011 Agenda Item G.8.b; and, November, 2011 Agenda item E.2.f).

Without reapportionment provisions there is a high likelihood that whiting harvest will be foregone which is inconsistent with National Standard 1 of the Magnuson-Stevens Act. Having the ability to reapportion the Pacific whiting allocated to the tribes allows for attainment of the Pacific whiting OY.

Comment 5: Reinstating reapportionment is in furtherance of the monetary concerns of non-tribal fishers, particularly as the rule does not provide for reapportionment from the non-tribal fishery to the tribal allocation.

Response: Given the recent history of full utilization by the non-tribal sectors and the tribal sector not using its full allocation, NMFS believes that a one-way reapportionment provision for 2012 is appropriate. NMFS does recognize that there may be years in which the non-tribal sectors do not use their full allocation, and will continue to explore, through discussion with the tribes, states, and non-tribal sectors, the possibility of a two-way reapportionment mechanism for 2013.

NMFS manages groundfish fisheries under the guidance of the PCGMP and the Magnuson-Stevens Fishery Conservation and Management Act National Standards. Obtaining the optimum yield from the fishery is an important consideration in the development of fishing regulations as described in the Magnuson Stevens Act, National Standard Guidelines, and PCGFMP. National Standard 1 states that ''Conservation and management measures shall prevent overfishing while achieving, on a continuing basis, the optimum yield from each fishery for the United States fishing industry. The PCGFMP Goals and objectives include Management Goal 2—Economics, which is to maximize the value of the groundfish resource as a whole; and, Goal 3—Utilization, which is to achieve the maximum biological yield of the overall groundfish fishery, promote year-round availability of quality seafood to the consumer, and promote recreational fishing opportunities. NMFS also recognizes that fishing regulations must be consistent with the tribes' treaty fishing rights. NMFS believes that this action allows for the full exercise of the treaty fishing right while also being consistent with the National Standards expressed in the Magnuson Act.

Comment 6: It is not appropriate to regulate tribal fisheries in section 660.131, because tribal fisheries are regulated by a different process, as detailed in 660.50. This rule mixes governance of the state share of whiting with the tribal share, which is contrary to 50 CFR 660.50, where tribal fisheries are regulated under a different process from the non-tribal fisheries. An exchange of state/tribal shares must contemplate a two-way process.

Response: NMFS agrees that the management of tribal fisheries, regulated under 50 CFR 660.50, is separate and distinct from management of the non-tribal fisheries. Thus, the regulations pertaining to the tribal

fisheries are different from those pertaining to the non-tribal fisheries. However, the location of the reapportionment provisions in the regulations does not affect this outcome. The concept of a two-way reapportionment process is addressed in response to Comment 5.

Comment 7: NMFS did not consult with the Quileute Tribe regarding its proposal to reinstate reapportionment provisions.

Response: NMFS acknowledges that formal consultation, as envisioned by the Quileute Tribal Council, did not take place regarding the issue of reapportionment for the 2012 fishery. NMFS has met with Quileute Tribe representatives on a number of occasions to discuss the whiting fishery, including reapportionment provisions. NMFS staff specifically discussed the proposed rule with Quileute representatives prior to issuing this final rule. NMFS plans to offer formal consultation, as envisioned by the Quileute Tribal Council, over the course of the next year, and prior to the Pacific whiting fishery in 2013, in order to make progress on these issues, consistent with the provisions of 50 CFR 660.50.

Comment 8: The Tribe submitted comments on the Regulatory Impact Review (RIR) and Initial Regulatory Flexibility Analysis (IRFA) prepared for this proposed rule. They state that there are a number of issues with statements, analysis and conclusions of the document which require a more complete dialogue, and they requested to extend the comment period associated with this document for an additional 30 days. Specific issues included references for Executive Order 12866, especially in relationship to the phrases ''significant regulatory action'' and ''test for no significance'', how ex-vessel value is calculated, the extent of description of Treaty Fisheries, and a request for an extension of the comment period.

Response: Executive Order 12866 can be found at 58 FR 51735 October 4, 1993 or at *http://www.plainlanguage.gov/populartopics/regulations/eo12866.pdf.* Page 51738 contains the standards for a ''significant regulatory action.'' While the Executive Order defines the standards for a significant regulatory action, NMFS Economic Guidelines provide the information, analyses and criteria by which an action is determined significant under the Executive Order or under the Regulatory Flexibility Act (RFA) (5 U.S.C. 601 *et seq.*). The Guidelines can be found at: *http://www.nmfs.noaa.gov/sfa/domes_fish/EconomicGuidelines.pdf.*

Ex-vessel value is generally defined as the payments that fishermen receive for the fish, shellfish, and other aquatic plants and animals when landed at the dock. For the analysis, various levels of whiting harvests were converted into ex-vessel values using the ex-vessel prices developed by Pacific States Marine Fisheries Commission's Pacific Fisheries Information Network (PacFIN) database. (See for example: *http://pacfin.psmfc.org/pacfin_pub/data_rpts_pub/pfmc_rpts_pub/r058Wtwl_p11.txt*). These ex-vessel prices are based on Washington, Oregon, and California state fish tickets or fish receiving tickets as organized and summarized in PacFIN. For example, the Washington State administrative code describes these tickets at WAC 220–69–234 (Description of treaty Indian fish receiving ticket) and WAC 220–69–230 (Nontreaty fish receiving tickets).

In consideration of the extent of description of Treaty Fisheries, Quileute were not consulted regarding the information included in this report. The processes and guidelines that underlie the development of analyses to support Executive Order 12866 and the RFA do not require NMFS to consult directly with each affected party. Information used for the analysis were based on Council documents or on data reported in the Pacific States Marine Fisheries Commission PacFIN database. One of the purposes of the notice and comment processes with federal rulemaking is to provide the public, including affected entities, an opportunity to review regulations and supporting analysis. Reviewers are welcome to submit additional information relevant to the analysis. To the extent the Quileute have provided additional information, this is discussed in these responses to comments.

NMFS is not extending the public comment period. NMFS provided a 30-day comment period and promptly provided a copy of the RIR/IRFA upon request. Extending the comment period would cause a delay in the start of the fishery (May 15, 2012) which would cause hardship on the non-tribal fishery and possibly affect the ability to harvest the allocations. In the future, NMFS will list the preparer and post the economic analyses on its Web sites along with the regulations.

Comment 9: The Tribe commented that the IRFA analysis overestimated the amount of unfished tribal share because it neglected to recognize that a certain portion of the unfished tribal share would be carried over into 2012. ''The economic analysis in the report (page 6) states that the unfished tribal share of 54,000 mt had an ex-vessel value of $6 million. According to our calculations, with a TAC of 290,000 mt, of the 54,000 mt of fish left unharvested, 43,500 mt are subject to the carryover provisions in the US/Canada Hake Treaty. Utilizing numbers provided in the report (approximately $111 per mt), these carryover fish have a value of $4.8 million which could be realized in the 2012 fishery.''

Response: Commenter is referring to the following analysis: ''Unlike 2010, for 2011, NMFS was not authorized to reapportion unharvested tribal whiting to the non-tribal sectors. Tribal harvests as of October 7, 2011 were about 19 percent of the 66,908 mt allocation indicating that about 54,000 tons of the tribal allocation would go unfished. This rulemaking would reinstate the regulatory authority to reapportion whiting from the tribal set-aside to the non-tribal fishery. If NMFS was authorized in 2011 to reapportion half or more of the 54,000 mt unfished tribal allocation, the ex-vessel revenues could have increased by as much as $6.0 million.''

Commenter is also referring to the following provision of the Pacific whiting treaty:

> ''If, in any year, a Party's catch is less than its individual TAC, an amount equal to the shortfall shall be added to its individual TAC in the following year, unless otherwise recommended by the JMC. Adjustments under this sub-paragraph shall in no case exceed 15 percent of a Party's unadjusted individual TAC for the year in which the shortfall occurred.''

Such an adjustment was made for the 2012 fishery under the Treaty:

> ''Consistent with Article II 3.(e) of the Agreement, and after reviewing the advice of the Joint Technical Committee (JTC), the Scientific Review Group (SRG), and the Advisory Panel (AP), the JMC recommends a coastwide TAC of 192,746 metric tons (mt). Based on Article III 2. of the Agreement, the Canadian share of the coastwide TAC is 26.12 percent, or 50,345 mt, and the U.S. share is 73.88 percent, or 142,401 mt. Consistent with Article II 5.(b) of the Agreement, an adjustment (carryover from 2011) of 15,427 mt is added to the Canadian share, for an adjusted Canadian TAC of 65,772. In the same manner, an adjustment of 43,636 mt is added to the United States share, for an adjusted United States TAC of 186,037 mt. This results in a coastwide adjusted TAC of 251,809 mt for 2012, which is consistent with the default harvest rate of F–40 percent with a 40/10 adjustment identified in Article III 1. of the Agreement'' (*http://www.nwr.noaa.gov/Groundfish-Halibut/Groundfish-Fishery-Management/Whiting-Management/upload/2012-TAC-rec.pdf*).

NMFS believes that the estimate of unfished tribal Pacific whiting is valid

for use in describing the value to other fishermen in 2011 had NMFS been allowed to reallocate the unfished allocation to non-tribal fishermen. NMFS notes that under the Pacific whiting Treaty, a certain portion of the allocation could be carried over into the following year. Given the process to honor tribal requests at the beginning of the year and then later in the year reallocate unfished tribal allocations to non-tribal fishermen, then it is likely that the carryover would be harvested by non-tribal fishermen. As indicated by the commenter's estimate, in this instance, non-tribal fishermen would likely gain by $4.8 million in 2012, but there would have been a permanent loss to the fishery of $1.2 million ($6.0 million minus $4.8 million) if reapportionment were not allowed because carryover is limited to 15 percent.

The Fishing Organizations

Comment 10: One organization supports the proposed allocation of 17.5 percent of the U.S. TAC (32,556 mt) to the tribal fishery, because the Makah tribe has a long history of participation in the fishery, and all three organizations strongly support reinstatement of regulatory authority to reallocate whiting that will not be harvested in the tribal sector to the non-tribal sector, consistent with National Standards included in the Magnuson Stevens Fishery Conservation and Management Act. History shows a strong likelihood that the tribes will not harvest their entire allocation, and the non-tribal fisheries should be given the opportunity to harvest the unused portion.

Response: NMFS acknowledges the support for the reapportionment process as identified in the proposed rule.

Comment 11: One organization commented that the final rule should give NMFS authority to allocate the unused tribal share without being locked into the 42 percent shoreside, 34 percent catcher-processor, and 24 percent mothership formula that governs the initial whiting allocation to the three non-tribal sectors in order to maximize the likelihood of harvesting the reallocation.

Response: NMFS believes that the most appropriate way to proceed with reapportionment is the manner described in the proposed rule which reapportions to the non-tribal sectors in a manner consistent with the initial allocations of Pacific whiting to the non-tribal sectors, and proportionally in the circumstance where one or more of the non-tribal sectors is no longer participating in the fishery for the year when a reapportionment decision is made.

Comment 12: One organization did not see the need to postpone any reapportionment to September 15 or later, and if possible, would prefer that reapportionment be done by September 1. In addition, the organization recommended that determinations on subsequent reapportionments be made such that reapportionments occur no later than December 1.

Response: NMFS is committed to checking on the status of the whiting fishery, both tribal and non-tribal, as the season progresses through the summer of 2012, to inform any reapportionment decision with the best information available. However, NMFS does not agree that reapportionment should occur earlier than September 15. NMFS believes that adequate time must be allowed for tribal participants to demonstrate the intent and ability to harvest Pacific whiting allocated to them. Regarding the recommendation that any reapportionment occur no later than December 1, NMFS agrees that this deadline should be incorporated into the regulations. Reapportionment decisions after December 1 would be problematic for NMFS relative to management of the shoreside IFQ fishery as discussed under Comment 17. Any final decisions on reapportionment will be made by the Regional Administrator by December 1 each year.

Comment 13: One organization recommends the language on ''proportions'' in the proposed rule be made explicit to provide clarity as to what standard would apply for allocating any reapportioned tribal whiting. They suggest language changes in the proposed rule regulatory text that would make it more explicit that reapportioned tribal whiting is allocated to the non-tribal sector consistent with the 42 percent to the shorebased sector, 34 percent to the catcher/processor sector, and 24 percent to the mothership sector according to initial allocations.

Response: NMFS regulatory language ''in proportion to their initial allocation'' is sufficiently clear on this point, and therefore NMFS is not modifying the regulatory language. If all three non-tribal sectors are operating at the time that a reapportionment decision is made, then the proportional allocation as described by the organization would be in effect. However, if one or more of the non-tribal sectors has ceased fishing operations for the year at the time of reapportionment, either due to bycatch considerations or because of operational decisions to declare out of the fishery, then NMFS would maintain the responsibility to reapportion unused tribal whiting proportionally to those sectors that have not ceased fishing for the year. If NMFS were required to only reapportion according to initial allocations in all circumstance, this could result in the stranding of reapportioned fish with no ability for operating non-tribal sectors to access parts of the reapportioned Pacific whiting. This result would be inconsistent with full utilization of the resource as stated in the PCGMP, which is one of the reasons why NMFS is reinstating reapportionment provisions.

Comment 14: One organization seeks confirmation that reapportioned tribal whiting would not be allowed to rollover between the three directed fishery sectors, consistent with the rules regarding allocation of Pacific whiting in the trawl rationalization program.

Response: NMFS agrees with this interpretation of the regulations governing the trawl rationalization program.

Comment 15: For the shorebased IFQ program, one organization sought clarification on its understanding that the carryover limits in effect for the shorebased IFQ program would include any quota pounds transferred into vessel accounts as a result of any reapportionment of tribal whiting.

Response: NMFS does not agree that carryover would apply to quota pounds transferred into vessel accounts as a result of reapportionment at this time, therefore NMFS disagrees that carryover limits are relevant to reapportioned quota pounds. The application of carryover to reapportioned quota pounds has policy implications that have not been fully considered to date, potentially including impacts to the exercise of tribal treaty fishing rights. Further discussion and full consideration of these implications is needed by the Council, the JMC for the Pacific whiting Treaty, and between NMFS and the coastal tribes.

Comment 16: One organization seeks clarification on the effect of tribal reapportionments on the vessel limits in the shorebased IFQ program, stating its belief that reapportionments of Pacific whiting should not be subject to vessel limits. However, it recognizes that it may not be practicable to manage annual and tribal reapportionments separately in the database system, and therefore state its understanding that the vessel limit percentage currently in effect for the shorebased IFQ program would apply to the combined initial allocations and any reapportionment of tribal whiting.

Response: The organization is correct in its understanding that vessel limits in the shorebased IFQ program apply to combined initial allocations and any reapportionment of Pacific whiting.

Comment 17: One organization seeks clarification on its understanding regarding quota share accounts in the shorebased IFQ program and transfer functions with 30 day limits which seems to indicate that tribal reapportionments would occur no later than December 1, in order to allow for activation of the transfer function in quota share accounts to be activated at the beginning of the following year.

Response: After reviewing this comment, NMFS is modifying the regulations to specify that the latest date a tribal reapportionment would occur is December 1 in any year. Reapportionments after that date would be impracticable for NMFS, given the preparations needed to be undertaken for the upcoming year, and to the industry, given the limitations on the transfer procedures for the shorebased IFQ vessel accounts. There are two dates in the existing regulations that affect the reapportionment process for the shorebased IFQ program, September 1 and December 15. All QP or IBQ pounds from a QS account to a vessel account must be transferred to one or more vessel accounts by September 1 each year. Transfers of QP or IBQ pounds into and between vessel accounts is not allowed between December 15 and the end of the year. It is beyond the scope of the rulemaking to change the regulation relating to December 15. However, the Council is considering eliminating this requirement through future rulemaking. Once a reapportionment decision is made, it may take NMFS up to 3 business days to populate the quota share accounts with quota pounds. In anticipation of the possibility of more than one reapportionment, NMFS is modifying the current regulation that prevents quota pound transfers from a QS account to a vessel account as of September 1 to allow whiting quota pounds only (both reapportioned whiting and whiting that was initially allocated to the QS account) to be transferred from a QS account to a vessel account from January 1st through December 14 each year only if a reapportionment occurs. If a reapportionment of whiting does not occur, the existing rule with a September 1 deadline will remain in effect. To reiterate, the ability to transfer QPs from a QS account to a vessel account between January 1 and December 14 would apply only to whiting and only in the case of a reapportionment, not to other IFQ or IBQ species.

Current regulations contain a provision that prohibits transfers of quota pounds of any IFQ species into or out of a vessel account beginning on December 15. If reapportioned whiting to the shorebased IFQ sector is credited to QS accounts on December 1, a transfer of whiting quota pounds would need to concluded no later than 11:59 p.m. PST on December 14, which includes any initiation of a whiting transfer by QS account holder and acceptance of such whiting transfer by the vessel account holder.

Comment 18: One organization commented that reapportionment of tribal whiting allocations should not be subject to vessel limits for the mothership coop program.

Response: NMFS does not agree with this perspective, as it is outside the scope of this rulemaking. Modifications to the mothership coop program that were developed through Amendment 20 of the Groundfish Fishery Management Plan creating the trawl rationalization program would require further consideration by the Council and further rulemaking.

Comment 19: One organization recommended that any reapportionments of tribal whiting to the mothership coop program be distributed only to the coop fishery, or each coop if more than one, but not to the non-coop fishery.

Response: NMFS does not agree with this perspective, as it is outside the scope of this rulemaking. Modifications to the mothership coop program that was developed through Amendment 20 of the Groundfish Fishery Management Plan creating the trawl rationalization program would require further consideration by the Council and further rulemaking.

Comment 20: One organization commented that current rules applicable to permitted mothership coop allocations for redistribution and for processor obligations should apply to any tribal whiting reapportionments.

Response: NMFS concurs with this perspective.

Comment 21: One organization recommended modifications to the current regulations for the mothership coop program regarding permit expiration when a whiting allocation is reached, in order to avoid a possible scenario where the coop permit may expire prior to a determination on reapportionment of Pacific whiting.

Response: Rather than modifying the regulations, NMFS believes this possible scenario can be avoided simply through enhanced communications between the agency and the coop manager during the season.

Comment 22: One organization recommended that reapportionments of tribal whiting allocations to the mothership sector should not be subject to 45 percent processing restriction or limit on the annual sector allocation.

Response: NMFS does not agree with this perspective, as it is outside the scope of this rulemaking. Modifications to the mothership coop program that was developed through Amendment 20 of the PCGFMP creating the trawl rationalization program would require further consideration by the Council and further rulemaking.

Comment 23: One organization stated their support for the proposed set aside of 17.5 percent of the U.S. Total Allowable Catch for 2012.

Response: NMFS acknowledges the support for the tribal whiting set aside or allocation as stated in the proposed rule that was the best available information on participation by the tribes in the 2012 Pacific whiting fishery; however, as explained above, the final amount includes the additional request of 16,000 mt by the Quileute tribe.

Comment 24: An individual fisherman who is a member of the Makah Tribe stated his support for the reapportionment provisions, suggesting that the reapportionment decision be made as soon as it becomes evident that members of the Tribal sector will be unable to harvest a portion of their set aside. He believes the rule should accommodate reapportionments earlier than September 15 if a decision is made by the Tribal sector to release some of its set aside.

Response: NMFS acknowledges the support for reapportionment provisions, but does not agree that reapportionment should occur earlier than September 15. NMFS plans to check on the status of all whiting fisheries during the summer months to gather the best information available, leading up to any decisions on reapportionment.

Comment 25: The individual stated it was equally important that subsequent reapportionments should be made any time it is apparent there will be unutilized tribal fish so other sectors still fishing will have enough notice to plan their fishing operations so they can catch the reapportioned fish.

Response: NMFS is aware of the importance of timely decisions on any subsequent reapportionments in order to allow for timely planning of fishing operations, and will take that into account in their decision making.

Comment 26: The individual stated that if reapportionments were done in a

timely manner, it would also benefit the tribes by providing an incentive for their processing partners to process tribal fish early rather than wait for the possible benefit of a late season rollover when they may be the only processor operating.

Response: NMFS acknowledges receipt of this perspective regarding tribal fisheries and their processing partners.

Changes From the Proposed Rule

There are four changes in the final rule that NMFS is implementing, based on comments received during the public comment period on the proposed rule, internal evaluation of procedures associated with reapportionment of Pacific whiting, and regulation housekeeping errors that were identified after publication of the proposed rule.

The first change is the final allocation to the tribal whiting fishery. Although the TAC for whiting for 2012 was not known when the proposed rule was published, NMFS stated that the tribal request was for 17.5 percent of the U.S. TAC. During the public comment period, the Quileute Tribal Council notified NMFS of their plans to participate in the fishery in 2012, with a request of 16,000 mt. The final rule has been modified to reflect this request.

The second change is to establish a final date of December 1 for any reapportionment decision by the Regional Administrator. This change was made in consideration of public comment as well as NMFS' assessment of internal procedures associated with managing the shorebased IFQ program.

The third change is associated with the Quota Share accounts for the shorebased trawl IFQ program, and how they will be managed. Under current regulations, all Quota Pounds and Individual Bycatch Quota must be transferred to one or more vessel accounts by September 1 of each year. In the proposed rule, if a reapportionment decision was made, NMFS was going to open the Quota Share account for a period of 30 days to enable the transfer of Pacific whiting Quota Pounds from a Quota Share account to a vessel account. Given that there may be one or more reapportionments of Pacific whiting under this final rule, NMFS has decided, for purposes of reapportionment of Pacific whiting, to modify the regulations to open the Quota Share account for Pacific whiting only from the time a reapportionment decision is made until December 14 at 11:59 p.m., rather than opening the Quota Share account for 30 days, as stated in the proposed rule. This change should facilitate Pacific whiting transactions in the shorebased IFQ program more efficiently, and this change will facilitate more effective management of the associated database by NMFS.

The fourth and final change occurs in § 660.55 paragraph (i) pertaining to the allocation of Pacific whiting to the commercial sectors. This paragraph incorrectly indicated that the commercial harvest guideline would be allocated among the three sectors. However, beginning in 2011 the term ''fishery harvest guideline'' was added to the regulations and is the value after deductions are made for catch during research, incidental open access fishery catch, Exempted fishing permit catch and tribal catch. For the purposes of housekeeping the term ''commercial harvest guideline'' is revised to fishery harvest guideline.

Classification

The final Pacific whiting specifications and management measures for 2012 are issued under the authority of the Magnuson-Stevens Fishery Conservation and Management Act (MSA), and the Pacific Whiting Act of 2006, and are in accordance with 50 CFR part 660, subparts C through G, the regulations implementing the PCGFMP. NMFS has determined that this rule is consistent with the national standards of the Magnuson-Stevens Act and other applicable laws. NMFS, in making the final determination, took into account the data, views, and comments received during the comment period.

NMFS has determined that the tribal whiting fishery, conducted off the coast of the State of Washington, is consistent, to the maximum extent practicable, with the approved coastal zone management program of the State of Washington. NMFS has also determined that the Pacific whiting fishery, both tribal and non-tribal, is consistent, to the maximum extent practicable, with approved coastal zone management programs for the States of Washington, Oregon, and California.

Administrative Procedure Act

Pursuant to 5 U.S.C. 553(b)(3)(B), the Assistant Administrator, NMFS, finds good cause to waive prior public notice and comment on the 2012 Pacific whiting specifications, as delaying this rule would be contrary to the public interest. The annual harvest specifications for Pacific whiting must be implemented by the start of the primary Pacific whiting season, which begins on May 15, 2012, or the primary whiting season will effectively remain closed. The PCGFMP requires that fishery specifications be evaluated periodically using the best scientific information available; however, Pacific whiting differs from other groundfish species in that it has a shorter life span and the population fluctuates more swiftly. As a result, NMFS must use the most recent stock assessment for Pacific whiting when determining TACs.

Every year, NMFS conducts a Pacific whiting stock assessment in which U.S. and Canadian scientists cooperate. The 2012 stock assessment for Pacific whiting was prepared in early 2012, as the new 2011 data—including updated total catch, length and age data from the U.S. and Canadian fisheries, and biomass indices from the Joint U.S.-Canadian acoustic/midwater trawl surveys—were not available until January, 2012. Because of the delay in obtaining the best available data for the assessment, it would not possible to allow for notice and comment before the start of the Pacific whiting season on May 15.

A delay in implementing the Pacific whiting harvest specifications to allow for notice and comment would be contrary to the public interest because it would shorten the primary whiting season. A shorter season could prevent the tribal and non-tribal fisheries from attaining their 2012 allocations, which would result in unnecessary short-term adverse economic effects for the Pacific whiting fishing vessels and the associated fishing communities. To prevent these adverse economic effects and to allow the Pacific whiting season to start on time, it is in the public interest to waive prior notice and comment.

The Assistant Administrator, NMFS, also finds good cause to waive the 30-day delay in effectiveness for the 2012 Pacific whiting tribal allocations, reapportionment provisions, and non-tribal allocations of Pacific whiting pursuant to 5 U.S.C. 553(d)(3). A 30-day delay in implementing the Pacific whiting harvest specifications would further shorten the primary whiting season and could prevent the tribal and non-tribal fisheries from attaining their 2012 allocations, resulting in unnecessary short-term adverse economic effects for the Pacific whiting fishing vessels and the associated fishing communities. Waiving the 30-day delay in effectiveness will not have a negative impact on any entities, as there are no new compliance requirements or other burdens placed on the fishing community with this rule. Waiving the 30-day delay in effectiveness serves the best interests of the public because it will allow for the longest possible Pacific whiting fishing

season and therefore the best possible economic outcome for those whose livelihoods depend on this fishery. Because the 30-day delay in effectiveness would potentially cause significant financial harm without providing any corresponding benefits, this final rule is made effective May 11, 2012.

The preamble to the proposed rule and this final rule serve as the small entity compliance guide required by Section 212 of the Small Business Regulatory Enforcement Fairness Act of 1996. This action does not require any additional compliance from small entities that is not described in the preamble. Copies of this final rule are available from NMFS at the following Web site: *http://www.nwr.noaa.gov/Groundfish-Halibut/Groundfish-Fishery-Management/Whiting-Management/2012/index.cfm.*

Rulemaking must comply with Executive Order (E.O.) 12866 and the Regulatory Flexibility Act (RFA). The Office of Management and Budget has determined that this rule is not significant for purposes of Executive Order 12866.

The NMFS Economic Guidelines that describe the RFA and E.O. 12866 can be found at: (*http://www.nmfs.noaa.gov/sfa/domes_fish/Economic Guidelines.pdf*).

The RFA can be found at 5 U.S.C. 601 *et seq.* (*http://www.archives.gov/federal-register/laws/regulatory-flexibility/*).

Executive Order 12866 can be found at (*http://www.plainlanguage.gov/populartopics/regulations/eo12866.pdf*).

When an agency proposes regulations, the RFA requires the agency to prepare and make available for public comment an IRFA that describes the impact on small businesses, non-profit enterprises, local governments, and other small entities. The IRFA is to aid the agency in considering all reasonable regulatory alternatives that would minimize the economic impact on affected small entities. After the public comment period, the agency prepares a Final Regulatory Flexibility Analysis (FRFA) that takes into consideration any new information and public comments. This FRFA incorporates the Initial Regulatory Flexibility Analysis (IRFA), a summary of the significant issues raised by the public comments, NMFS' responses to those comments, and a summary of the analyses completed to support the action. NMFS published the proposed rule on February 22, 2012 (77 FR 10648), with a comment period through March 23, 2012. An IRFA was prepared and summarized in the ''Classification'' section of the preamble to the proposed rule. The description of this action, its purpose, and its legal basis are described in the preamble to the proposed rule and are not repeated here. The FRFA describes the impacts on small entities, which are defined in the IRFA for this action and not repeated here. Analytical requirements for the FRFA are described in Regulatory Flexibility Act, section 304(a)(1) through (5), and summarized below. The FRFA must contain: (1) A succinct statement of the need for, and objectives of, the rule; (2) A summary of the significant issues raised by the public comments in response to the initial regulatory flexibility analysis, a summary of the assessment of the agency of such issues, and a statement of any changes made in the proposed rule as a result of such comments; (3) A description and an estimate of the number of small entities to which the rule will apply, or an explanation of why no such estimate is available; (4) A description of the projected reporting, recordkeeping and other compliance requirements of the rule, including an estimate of the classes of small entities which will be subject to the requirement and the type of professional skills necessary for preparation of the report or record; and (5) A description of the steps the agency has taken to minimize the significant economic impact on small entities consistent with the stated objectives of applicable statutes, including a statement of the factual, policy, and legal reasons for selecting the alternative adopted in the final rule and why each one of the other significant alternatives to the rule considered by the agency which affect the impact on small entities was rejected.

This rule establishes the 2012 harvest specifications for Pacific whiting and the allocation of Pacific whiting for the Tribal Whiting Fishery. This rule will establish the interim 2012 tribal allocation of Pacific whiting, reinstate reapportionment provisions for unused tribal whiting, and establish 2012 allocations for the non-tribal sectors: catcher-processor, mothership, and shoreside.

There were several comments on the IRFA. Comments 8 and 9 are described and addressed above. Under the RFA, the term ''small entities'' includes small businesses, small organizations, and small governmental jurisdictions. The Small Business Administration (SBA) has established size criteria for all major industry sectors in the United States, including fish harvesting and fish processing businesses. A business involved in fish harvesting is a small business if it is independently owned and operated and not dominant in its field of operation (including its affiliates) and if it has combined annual receipts not in excess of $4.0 million for all its affiliated operations worldwide. A seafood processor is a small business if it is independently owned and operated, not dominant in its field of operation, and employs 500 or fewer persons on a full-time, part-time, temporary, or other basis, at all its affiliated operations worldwide. A business involved in both the harvesting and processing of seafood products is a small business if it meets the $4.0 million criterion for fish harvesting operations. A wholesale business servicing the fishing industry is a small business if it employs 100 or fewer persons on a full-time, part-time, temporary, or other basis, at all its affiliated operations worldwide. For marinas and charter/party boats, a small business is one with annual receipts not in excess of $7.0 million. The RFA defines small organizations as any nonprofit enterprise that is independently owned and operated and is not dominant in its field. The RFA defines small governmental jurisdictions as governments of cities, counties, towns, townships, villages, school districts, or special districts with populations of less than 50,000.

NMFS has reviewed analyses of fish ticket data and limited entry permit data, available employment data provided by processors, information on tribal fleets, and industry responses to a 2010 survey on ownership and has developed the following estimates for the whiting fishery. There are four affected components of this fishery: Shorebased whiting, mothership whiting, catcher-processor, and tribal. In the shorebased whiting fishery, quota shares of whiting were allocated to 138 entities, including ten shoreside processing companies. These entities can fish the quota pounds associated with their quota shares, transfer their quota pounds to others to fish, or choose not to fish their quota pounds. Whiting is landed as bycatch in other fisheries or as a target catch in the whiting fishery. To analyze the number of participants primarily affected by this rulemaking, targeted whiting trips are defined as landings that contained 5,000 pounds or more of whiting. During 2011, 62 vessels landed a total of about 200 million pounds of whiting. Of these vessels, only 26 vessels had landings greater than 5,000 pounds. Thirteen of these 26 vessels are ''small'' entities. These 26 vessels delivered their catch to 10 processing companies. These 10 processing companies, either through ownership or affiliation, can be organized into 6 entities. Four of these

6 entities are ''small'' entities. There are 37 limited entry permits that have mothership whiting catch history assignments. During 2011, these 37 permits pooled their whiting catch history assignments into a single mothership fishery co-op. Approximately half of these vessels are ''small'' entities. Vessels in the mothership co-op deliver their catch to mothership processors. There are 6 mothership processing companies; three of which are ''small'' entities. The catcher-processor fleet has ten limited entry permits and 10 vessels, owned by three companies. These three companies are considered ''large'' companies mainly because of their operations off Alaska. The tribal fleet is comprised of about 7 vessels based on expectation that 2 new tribal vessels will enter the fishery in 2012. These are considered to be ''small'' entities, while the 3 tribal governments, based on population sizes, are considered ''small'' entities.

There are no recordkeeping requirements associated with this final rule.

There are two key features of this rulemaking: Establishing the 2012 interim tribal allocation, and reinstatement of regulatory authority to reapportion whiting from the tribal to the non-tribal fishery. The basic alternatives are ''No-Action'' vs. the ''Proposed Action''. The proposed allocation, based on discussions with the tribes at the time, was for NMFS to allocate 17.5 percent of the U.S. total allowable catch for 2012. NMFS did not consider a broad range of alternatives to the proposed allocation. The tribal allocation is based primarily on the requests of the tribes. These requests reflect the level of participation in the fishery that will allow them to exercise their treaty right to fish for whiting. Consideration of amounts lower than the tribal requests is not appropriate because it could prevent exercise of the treaty fishing right. Based on the information available to NMFS, the tribal request is within their tribal treaty rights. A higher allocation would be, arguably, within the scope of the treaty right. However, a higher allocation may unnecessarily limit the non-tribal fishery. A no action alternative was considered, but the regulatory framework provides for a tribal allocation on an annual basis only. Therefore, no action would result in no allocation of Pacific whiting to the tribal sector in 2012, which would be inconsistent with NMFS' responsibility to manage the fishery consistent with the tribal treaty rights. Given that there is a tribal request for allocation in 2012, this alternative received no further consideration.

In response to a request from the Quileute Tribe submitted as a public comment on the proposed rule, (See comment 1 above), the tribal allocation was revised by 16,000 metric tons. Based on a U.S. TAC of 186,037 mt, the total tribal allocation is 48,556 mt, the set-aside for research catch and whiting bycatch in the non-groundfish fisheries is 2000 mt, and the non-tribal allocation is 135,481 mt. Based on the percentage shares established in the PCGFMP, the non-tribal allocation to the shoreside sector is 56,902 mt (42.0 percent), to the catcher-processor sector 46,064 mt (34.0 percent), and to the mothership sector 32,515 mt (24 percent). The average annual ex-vessel price for whiting is $229 per ton, yielding a total ex-vessel value of the TAC at $42.6 million. *http://pacfin.psmfc.org/pacfin_pub/data_rpts_pub/pfmc_rpts_pub/r058Wtwl_p11.txt;* (PacFIN) Note that the 2011 ex-vessel price has been updated from that used in the IRFA ($232 per ton) and that the use of ex-vessel values does not take into account the wholesale or export value of the fishery or the costs of harvesting and processing whiting into a finished product.

The RIR/IRFA also analyzed two alternatives associated with reinstating the authority to reapportion unused Pacific whiting from the tribal fishery to the non-tribal fishery. The ''No-Action'' alternative is the authority not reinstated. The ''Proposed'' Alternative would be to reinstate the authority. The basis for reinstating this authority is found in the NMFS responses to comments 2 and 3 above. NMFS will continue to work with small entities such as the tribes to improve upon the reapportionment process as well with all entities via the Council.

This final rule directly regulates what entities can harvest whiting. This rule allocates fish between tribal harvesters (harvest vessels are small entities, tribes are small jurisdictions) and to non-tribal harvesters (a mixture of small and large businesses). Tribal fisheries are a mixture of activities that are similar to the activities that non-tribal fisheries undertake. Tribal harvests are delivered to both shoreside plants and motherships for processing. These processing facilities also process fish harvested by non-tribal fisheries. After a review of public comments, NMFS believes this rule will not adversely affect small entities and is likely to be beneficial to both small and large entities as it allows unharvested tribal fish to be harvested by non-tribal sectors.

No Federal rules have been identified that duplicate, overlap, or conflict with this action.

NMFS issued Biological Opinions under the ESA 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 PCGFMP fisheries 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 spring, California coastal), coho salmon (Central California coastal, southern Oregon/northern California coastal), chum salmon (Hood Canal summer, 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, southern California). These biological opinions have concluded that implementation of the PCGFMP was 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 issued a Supplemental Biological Opinion on March 11, 2006, concluding that neither the higher observed bycatch of Chinook in the 2005 whiting fishery nor new data regarding salmon bycatch in the groundfish bottom trawl fishery required a reconsideration of its prior ''no jeopardy'' conclusion. NMFS also reaffirmed its prior determination that implementation of the Groundfish PCGFMP is not likely to jeopardize the continued existence of any of the affected ESUs. Lower Columbia River coho (70 FR 37160, June 28, 2005) and Oregon Coastal coho (73 FR 7816, February 11, 2008) were recently relisted as threatened under the ESA. The 1999 biological opinion concluded that the bycatch of salmonids in the Pacific whiting fishery were almost entirely Chinook salmon, with little or no bycatch of coho, chum, sockeye, and steelhead.

NMFS has reinitiated consultation on the fishery to address newly listed species including Pacific eulachon and green sturgeon, and other non-salmonid listed species (marine mammals, sea birds, and turtles). On February 9, 2012, NMFS Protected Resources Division issued a Biological Opinion (BO) pursuant to section 7(a)(2) of the Endangered Species Act (ESA) on the effects of the operation of the Pacific

coast groundfish fishery in 2012. In this Opinion, NMFS concluded that the proposed action is not likely to jeopardize the continued existence of green sturgeon (Acipenser medirostris), eulachon (Thaleichthys pacificus), humpback whales (Megaptera novaeangliae), Steller sea lions (Eumetopias jubatus), and leatherback sea turtles (Dennochelys coriacea). NMFS also concluded that the proposed action is not likely to destroy or adversely modify designated critical habitat of green sturgeon or leatherback sea turtles. Furthermore, NMFS concluded that the proposed action may affect, but is not likely to adversely affect the following species and designated critical habitat: Sei whales (Balaenoptera borealis); North Pacific Right whales (Eubalaena japonica); Blue whales (Balaenoptera musculus); Fin whales (Balaenoptera physalus); Sperm whales (Physter macrocephalus); Southern Resident killer whales (Orcinus orca); Guadalupe fur seals (Arctocephalus townsendi); Green sea turtles (Chelonia mydas); Olive ridley sea turtles (Lepidochelys olivacea); Loggerhead sea turtles (Carretta carretta); critical habitat of Southern Resident killer whales; and critical habitat of Steller sea lions.

On August 25, 2011, NMFS Sustainable Fisheries Division initiated consultation with U.S. Fish and Wildlife Service (USFWS) pursuant to section 7(a)(2) of the Endangered Species Act (ESA) on the effects of the operation of the Pacific coast groundfish fishery. The Biological Assessment (BA) was revised and re-submitted to USFWS on January 17, 2012. The BA concludes that the continued operation of the Pacific Coast Groundfish Fishery is likely to adversely affect short-tailed albatross; however, the level of take is not expected to reduce appreciably the likelihood of survival or significantly affect recovery of the species. The BA preliminarily concludes that continued operation of the Pacific Coast Groundfish Fishery is not likely to adversely affect California least terns, marbled murrelets, bull trout, and Northern or Southern sea otters. USFWS formally responded with a letter dated March 29, 2012 and advised NMFS that formal consultation has been initiated.

Marine Mammal Protection Act (MMPA)

Impacts resulting from fishing activities proposed in this final rule are discussed in the FEIS for the 2011–12 groundfish fishery specifications and management measures. As discussed above, NMFS issued a biological opinion addressing impacts to ESA listed marine mammals. NMFS is currently working on the process leading to any necessary authorization of incidental taking under MMPA section 101(a)(5)(E).

Pursuant to Executive Order 13175, this final rule was developed after meaningful discussion and collaboration with tribal officials from the area covered by the PCGFMP. Consistent with the Magnuson-Stevens Act at 16 U.S.C. 1852(b)(5), one of the voting members of the Pacific Council is a representative of an Indian tribe with federally recognized fishing rights from the area of the Council's jurisdiction. In addition, NMFS has coordinated specifically with the tribes interested in the whiting fishery regarding the issues addressed by this rule.

List of Subjects in 50 CFR Part 660

Fisheries, Fishing, Indian fisheries.

Dated: May 9, 2012.

Samuel D. Rauch III,

Acting Assistant Administrator for Fisheries, National Marine Fisheries Service.

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

PART 660—FISHERIES OFF WEST COAST STATES

■ 1. The authority citation for part 660 is revised to read as follows:

Authority: 16 U.S.C. 1801 *et seq.* and 16 U.S.C. 773 *et seq.*

■ 2. In § 660.50, paragraph (f)(4) is revised to read as follows:

§ 660.50 Pacific Coast treaty Indian fisheries.

* * * * *

(f) * * *

(4) *Pacific whiting.* The tribal allocation for 2012 is 48,556 mt.

* * * * *

■ 3. In § 660.55 paragraph (i)(2) is revised to read as follows:

§ 660.55 Allocations.

* * * * *

(i) * * *

(2) The fishery harvest guideline for Pacific whiting is allocated among three sectors, as follows: 34 percent for the C/P Coop Program; 24 percent for the MS Coop Program; and 42 percent for the Shore based IFQ Program. No more than 5 percent of the Shore based IFQ Program allocation may be taken and retained south of 42° N. lat. before the start of the primary Pacific whiting season north of 42° N. lat. Specific sector allocations for a given calendar year are found in Tables 1a through c and 2a through c of this subpart. Set-asides for other species for the at-sea whiting fishery for a given calendar year are found in Tables 1D and 2D of this subpart.

* * * * *

■ 4. In § 660.60 paragraphs (d)(1)(i) through (v) are revised, and paragraphs (d)(1)(vi) and (d)(2) are added to read as follows:

§ 660.60 Specifications and management measures.

* * * * *

(d) * * *

(1) * * *

(i) Close an at-sea sector of the fishery when that sector's Pacific whiting allocation is reached, or is projected to be reached.

(ii) Close all at-sea sectors or a single sector of the fishery when a non-whiting groundfish species with allocations is reached or projected to be reached.

(iii) Reapportion unused allocations of non-whiting groundfish species from one at-sea sector of the Pacific whiting fishery to another.

(iv) Reapportionment of the unused portion of the tribal allocation of Pacific whiting to the IFQ, mothership and catcher processor Pacific whiting fisheries.

(v) Implement the Ocean Salmon Conservation Zone, described at § 660.131(c)(3), when NMFS projects the Pacific whiting fishery may take in excess of 11,000 Chinook within a calendar year.

(vi) Implement Pacific Whiting Bycatch Reduction Areas, described at § 660.131(c)(4), when NMFS projects a sector-specific bycatch limit will be reached before the sector's whiting allocation.

(2) Automatic actions are effective when actual notice is sent by NMFS. Actual notice to fishers and processors will be by email, Internet (*www.nwr.noaa.gov/Groundfish-Halibut/Groundfish-Fishery-Management/Whiting-Management/index.cfm*), phone, fax, letter, or press release. Allocation reapportionments will be followed by publication in the **Federal Register**, in which public comment will be sought for a reasonable period of time thereafter.

* * * * *

■ 5. Table 2a, to Part 660, Subpart C is revised to read as follows:

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Table 2a. To Part 660, Subpart C - 2012, and beyond, Specifications of OFL, ABC, ACL, ACT and Fishery Harvest guidelines(weights in metric tons).

Species	Area	OFL	ABC	ACL a/	ACT	Fishery HG
ROUNDFISH:						
Lingcod	N of 42° N. lat. b/	2,251	2,151	2,151		1,880
	S of 42° N. lat. c/	2,597	2,164	2,164		2,157
Pacific Cod d/	Coastwide	3,200	2,222	1,600		1,200
Pacific Whiting e/	Coastwide	e/	e/	e/		135,481
Sablefish	N of 36° N. lat. f/	8,623	8,242	5,347	See Table 2c	
	S of 36° N. lat. g/			1,258		1,224
Cabezon	46°16' to 42° N. lat. h/	50	48	48		48
	S of 42° N. lat. i/	176	168	168		168
FLATFISH:						
Dover sole j/	Coastwide	44,826	42,843	25,000		23,410
English sole k/	Coastwide	10,620	10,150	10,150		10,050
Petrale sole l/	Coastwide	1,279	1,222	1,160		1094.6
Arrowtooth flounder m/	Coastwide	14,460	12,049	12,049		9,971
Starry Flounder n/	Coastwide	1,813	1,511	1,360		1,353
Other flatfish o/	Coastwide	10,146	7,044	4,884		4,686
ROCKFISH:						
Pacific Ocean Perch p/	N of 40°10' N. lat.	1,007	962	183	157	144.1
Shortbelly q/	Coastwide	6,950	5,789	50		49
Widow r/	Coastwide	4,923	4,705	600		539.1
Canary s/	Coastwide	622	594	107		87
Chilipepper t/	S of 40°10' N. lat.	1,872	1,789	1,789		1,774
Bocaccio u/	S of 40°10' N. lat.	732	700	274		260.6
Splitnose v/	S of 40°10' N. lat.	1,610	1,538	1,538		1,531
Yellowtail w/	N of 40°10' N. lat.	4,573	4,371	4,371		3,872
Shortspine thornyhead x/	N of 34°27' N. lat.	2,358	2,254	1,556		1,511
	S of 34°27' N. lat.			401		359
Longspine thornyhead y/	N of 34°27' N. lat.	3,483	2,902	2,064		2,020
	S of 34°27' N. lat.			366		363
Cowcod z/	S of 40°10' N. lat.	13	10	3		2.7
Darkblotched aa/	Coastwide	497	475	296		277.3
Yelloweye bb/	Coastwide	48	46	17		11.1
California Scorpionfish cc/	S. of 34°27' N. lat.	132	126	126		124
Black	N of 46°16' N. lat. dd/	435	415	415		401
	S of 46°16' N. lat. ee/	1,169	1,117	1,000		1,000
Minor Rockfish North ff/	Coastwide	3,820	3,414	2,227		2,116
Nearshore	N of 40°10' N. lat.	116	99	99		99
Shelf		2,197	1,948	968		925
Slope		1,507	1,367	1,160		1,092
Minor Rockfish South gg/	Coastwide	4,291	3,712	2,341		2,290
Nearshore	S of 40°10' N. lat.	1,145	990	990		990
Shelf		2,243	1,890	714		701
Slope		903	832	626		599
SHARKS/SKATES/RATFISH/MORID						
Longnose Skate hh/	Coastwide	3,006	2,873	1,349		1,220
Other fish ii/	Coastwide	11,150	7,742	5,575		5,575

a/ ACLs and HGs are specified as total catch values. ishery harvest guideline (HG) means the harvest guideline or quota after subtracting from the ACL of ACT any allocation for the Pacific Coast treaty Indian tribes, projected research catch, deductions for fishing mortality in non-groundfish fisheries, as necessary, and set-asides for EFPs.

b/ Lingcod north (Oregon and Washington). A new lingcod stock assessment was prepared in 2009. The lingcod north biomass was estimated to be at 62 percent of its unfished biomass in 2009. The OFL of 2,251 mt was calculated using an F_{MSY} proxy of $F_{45\%}$. The ABC of 2,151 mt was based on a 4 percent reduction from the OFL (σ=0.36/P*=0.45) as it's a category 1 species. Because the stock is above $B_{40\%}$ coastwide, the ACL is set equal to the ABC. ACL is further reduced for the Tribal

fishery (250 mt), incidental open access fishery (16 mt) and research catch (5 mt), resulting in a fishery HG of 1,880 mt.

c/ Lingcod south (California). A new lingcod stock assessment was prepared in 2009. The lingcod south biomass was estimated to be at 74 percent of its unfished biomass in 2009. The OFL of 2,597 mt was calculated using an F_{MSY} proxy of $F_{45\%}$. The ABC of 2,164 mt was based on a 17 percent reduction from the OFL (σ=0.72/P*=0.40) as it's a category 2 species. Because the stock is above $B_{40\%}$ coastwide, the ACL is set equal to the ABC. An incidental open access set-aside of 7 mt is deducted from the ACL, resulting in a fishery HG of 2,157 mt.

d/ Pacific Cod. The 3,200 mt OFL is based on the maximum level of historic landings. The ABC of 2,222 mt is a 31 percent reduction from the OFL (σ=1.44/P*=0.40) as it's a category 3 species. The 1,600 mt ACL is the OFL reduced by 50 percent as a precautionary adjustment. A set-aside of 400 mt is deducted from the ACL for the Tribal fishery, resulting in a fishery HG of 1,200 mt.

e/ Pacific whiting. The most recent stock assessment was prepared in January 2012. The 2012 Fishery Harvest Guideline (Fishery HG) is calculated as follows. U.S. TAC of 186,037 mt minus 48,556 mt for the Tribal allocation minus 2000 mt for catch in research activities and as non-groundfish bycatch, resulting in a fishery harvest guideline of 135,481 mt. The TAC for Pacific whiting is established under the provisions of the Pacific Hake/Whiting Agreement with Canada and the Pacific Whiting Act of 2006, 16 U.S.C. 7001-7010, and the international exception applies. Therefore, no OFL, ACL, or ACT values are provided for Pacific whiting.

f/ Sablefish north. A coastwide sablefish stock assessment was prepared in 2007. The coastwide sablefish biomass was estimated to be at 38.3 percent of its unfished biomass in 2007. The coastwide OFL of 8,623 mt was based on the 2007 stock assessment with a F_{MSY} proxy of $F_{45\%}$. The ABC of 8,242 mt is a 4 percent reduction from the OFL (σ=0.36/P*=0.45) as it's a category 1 species. The 40-10 harvest policy was applied to the ABC to derive the coastwide ACL and then the ACL was apportioned north and south of 36° N. lat, using the average of annual swept area biomass (2003-2008) from the NMFS NWFSC trawl survey, between the northern and southern areas with 68 percent going to the area north of 36° N. lat. and 32 percent going to the area south of 36° N. lat. The northern portion of the ACL is 5,347 mt and is reduced by 535 mt for the tribal allocation (10 percent of the ACL north of 36° N. lat.) The 535 mt tribal allocation is reduced by 1.5 percent to account for discard mortality. Detailed sablefish allocations are shown in Table 2c.

g/ Sablefish South. That portion of the coastwide ACL (32 percent) apportioned to the area south of 36° N. lat. is 2,516 mt. An additional 50 percent reduction for uncertainty was made, resulting in an ACL of 1,258 mt. A set-aside of 34 mt is deducted from the ACL for EFP catch (26 mt), the incidental open access fishery (6 mt) and research catch (2 mt), resulting in a fishery HG of 1,224 mt.

h/ Cabezon (Oregon). A new cabezon stock assessment was prepared in 2009. The cabezon biomass in Oregon was estimated to be at 51 percent of its unfished biomass in 2009. The OFL of 50 mt was calculated using an F_{MSY} proxy of $F_{45\%}$. The ABC of 48 mt was based on a 4 percent reduction from the OFL (σ=0.36/P*=0.45) as it's a category 1 species. Because the

stock is above $B_{40\%}$ coastwide, the ACL is set equal to the ABC. No set-asides were removed so the fishery HG is also equal to the ACL at 48 mt. Cabezon in waters off Oregon were removed from the "other fish" complex, while cabezon of Washington will continue to be managed within the "other fish" complex.

i/ Cabezon (California) - A new cabezon stock assessment was prepared in 2009. The cabezon south biomass was estimated to be at 48 percent of its unfished biomass in 2009. The OFL of 176 mt was calculated using an F_{MSY} proxy of $F_{45\%}$. The ABC of 168 mt was based on a 4 percent reduction from the OFL (σ=0.36/P*=0.45) as it's a category 1 species. Because the stock is above $B_{40\%}$ coastwide, the ACL is set equal to the ABC. No set-asides were removed so the fishery HG is also equal to the ACL at 168 mt.

j/ Dover sole. A 2005 Dover sole assessment estimated the stock to be at 63 percent of its unfished biomass in 2005. The OFL of 44,826 mt is based on the results of the 2005 stock assessment with an F_{MSY} proxy of $F_{30\%}$. The ABC of 42,843 mt is a 4 percent reduction from the OFL (σ=0.36/P*=0.45)as it's a category 1 species. Because the stock is above $B_{25\%}$ coastwide, the ACL could be set equal to the ABC. However, the ACL of 25,000 mt is set at a level below the ABC and higher than the maximum historical landed catch. A set-aside of 1,590 mt is deducted from the ACL for the Tribal fishery (1,497 mt), the incidental open access fishery (55 mt) and research catch (38 mt), resulting in a fishery HG of 23,410 mt.

k/ English sole. A stock assessment update was prepared in 2007 based on the full assessment in 2005. The stock was estimated to be at 116 percent of its unfished biomass in 2007. The OFL of 10,620 mt is based on the results of the 2007 assessment update with an F_{MSY} proxy of $F_{30\%}$. The ABC of 10,150 mt is a 4 percent reduction from the OFL (σ=0.36/P*=0.45) as it's a category 1 species. Because the stock is above $B_{25\%}$, the ACL was set equal to the ABC. A set-aside of 100 mt is deducted from the ACL for the Tribal fishery (91 mt), the incidental open access fishery (4 mt) and research catch (5 mt), resulting in a fishery HG of 10,050 mt.

l/ Petrale sole. A petrale sole stock assessment was prepared for 2009. In 2009 the petrale sole stock was estimated to be at 12 percent of its unfished biomass coastwide, resulting in the stock being declared as overfished. The OFL of 1,279 mt is based on the 2009 assessment with a $F_{30\%}$ F_{MSY} proxy. The ABC of 1,222 mt is a 4 percent reduction from the OFL (σ=0.36/P*=0.45)as it's a category 1 species. The 1,160 mt ACL is represents an SPR harvest rate of 32.4 percent. A set-aside of 65 mt is deducted from the ACL for the Tribal fishery (45.4 mt), the incidental open access fishery (1 mt), EFP catch (2 mt) and research catch (17 mt), resulting in a fishery HG of 1,094.6 mt.

m/ Arrowtooth flounder. The stock was last assessed in 2007 and was estimated to be at 79 percent of its unfished biomass in 2007. The OFL of 14,460 mt is based on the 2007 assessment with a $F_{30\%}$ F_{MSY} proxy. The ABC of 12,049 mt is a 17 percent reduction from the OFL (σ=0.72/P*=0.40)as it's a category 2 species. Because the stock is above $B_{25\%}$, the ACL is set equal to the ABC. A set-aside of 2,078 mt is deducted from the ACL for the Tribal fishery (2,041 mt), the incidental open access fishery (30 mt), and research catch (7 mt), resulting in a fishery HG of 9,971 mt.

n/ Starry Flounder. The stock was assessed for the first time in 2005 and was estimated to be above 40 percent of its unfished biomass in 2005. For 2012, the coastwide OFL of 1,813 mt is based on the 2005 assessment with a F_{MSY} proxy of $F_{30\%}$. The ABC of 1,511 mt is a 17 percent reduction from the OFL (σ=0.72/P*=0.40)as it's a category 2 species. Because the stock is above $B_{25\%}$, the ACL could have been set equal to the ABC. As a precautionary measure, the ACL of 1,360 mt, is a 25 percent reduction from the OFL, which is a 10 percent reduction from the ABC. A set-aside of 7 mt is deducted from the ACL for the Tribal fishery (2 mt) and the incidental open access fishery (5 mt), resulting in a fishery HG of 1,353 mt.

o/ "Other flatfish" are the unassessed flatfish species that do not have individual OFLs/ABC/ACLs and include butter sole, curlfin sole, flathead sole, Pacific sand dab, rex sole, rock sole, and sand sole. The other flatfish OFL of 10,146 mt is based on the summed contribution of the OFLs determined for the component stocks. The ABC of 7,044 mt is a 31 percent reduction from the OFL (σ=1.44/P*=0.40) as all species in this complex are category 3 species. The ACL of 4,884 mt is equivalent to the 2010 OY, because there have been no significant changes in the status or management of stocks within the complex. A set-aside of 198 mt is deducted from the ACL for the Tribal fishery (60 mt), the incidental open access fishery (125 mt), and research catch (13 mt), resulting in a fishery HG of 4,686 mt.

p/ POP. A POP stock assessment update was prepared in 2009, based on the 2003 full assessment, and the stock was estimated to be at 29 percent of its unfished biomass in 2009. The OFL of 1,007 mt for the Vancouver and Columbia areas is based on the 2009 stock assessment update with an $F_{50\%}$ F_{MSY} proxy. The ABC of 962 mt is a 4 percent reduction from the OFL (σ=0.36/P*=0.45)as it's a category 1 species. The ACL of 183 mt is based on a rebuilding plan with a target year to rebuild of 2020 and an SPR harvest rate of 86.4 percent. An ACT of 157 mt is being established to address management uncertainty and increase the likelihood that total catch remains within the ACL. A set-aside of 12.9 mt is deducted from the ACT for the Tribal fishery (10.9 mt), the incidental open access fishery (0.1 mt), EFP catch (0.1 mt) and research catch (1.8 mt), resulting in a fishery HG of 144.1 mt.

q/ Shortbelly rockfish. A non quantitative assessment was conducted in 2007. The spawning stock biomass of shortbelly rockfish was estimated at 67 percent of its unfished biomass in 2005. The OFL of 6,950 mt was recommended for the stock in 2012 with an ABC of 5,789 mt (σ=0.72 with a P* of 0.40). The 50 mt ACL is slightly higher than recent landings, but much lower than previous OYs in recognition of the stock's importance as a forage species in the California Current ecosystem. A set-aside of 1 mt is deducted from the ACL for research catch, resulting in a fishery HG of 49 mt.

r/ Widow rockfish. The stock was assessed in 2009 and was estimated to be at 39 percent of its unfished biomass in 2009. The OFL of 4,923 mt is based on the 2009 stock assessment with an $F_{50\%}$ F_{MSY} proxy. The ABC of 4,705 mt is a 4 percent reduction from the OFL (σ=0.36/P*=0.45)as it's a category 1 species. A constant catch of 600 mt, which corresponds to an SPR harvest rate of 91.3 percent in 2012, will be used to rebuild consistent with the rebuilding plan and a target year to rebuild of 2010. A set-aside of 60.9 mt is deducted from the ACL for the Tribal fishery (45 mt), the incidental open access fishery (3.3 mt), EFP catch

(11 mt) and research catch (1.6 mt), resulting in a fishery HG of 539.1 mt.

s/ Canary rockfish. A canary rockfish stock assessment update was completed in 2009, based on the full assessment in 2007, and the stock was estimated to be at 23.7 percent of its unfished biomass coastwide in 2009. The coastwide OFL of 622 mt is based on the new assessment with a F_{MSY} proxy of $F_{50\%}$. The ABC of 594 mt is a 4 percent reduction from the OFL (σ=0.36/P*=0.45)as it's a category 1 species. The ACL of 107 mt is based on a rebuilding plan with a target year to rebuild of 2027 and a SPR harvest rate of 88.7 percent. A set-aside of 20 mt is deducted from the ACL for the Tribal fishery (9.5 mt), the incidental open access fishery (2 mt), EFP catch (1.3 mt) and research catch (7.2 mt), resulting in a fishery HG of 87 mt. Recreational HGs are being specified as follows: Washington recreational, 2 mt; Oregon recreational 7 mt; and California recreational 14.5 mt.

t/ Chilipepper rockfish. The coastwide chilipepper stock was assessed in 2007 and estimated to be at 71 percent of its unfished biomass coastwide in 2006. Given that chilipepper rockfish are predominantly a southern species, the stock is managed with stock-specific harvest specifications south of 40°10 N. lat. and within minor shelf rockfish north of 40°10 N. lat. South of 40°10 N. lat., the OFL of 1,872 mt is based on the 2007 assessment with an F_{MSY} proxy of $F_{50\%}$. The ABC of 1,789 mt is a 4 percent reduction from the OFL (σ=0.36/P*=0.45) as it's a category 1 species. Because the biomass is estimated to be above 40 percent of the unfished biomass, the ACL was set equal to the ABC. The ACL is reduced by the incidental open access fishery (5 mt), and research catch (9 mt), resulting in a fishery HG of 1,774 mt.

u/ Bocaccio. A bocaccio stock assessment was prepared in 2009 from Cape Mendocino to Cape Blanco (43° N. lat.). Bocaccio rockfish are managed with stock-specific harvest specifications south of 40°10 N. lat. and within minor shelf rockfish north of 40°10 N. lat. The bocaccio stock was estimated to be at 28 percent of its unfished biomass in 2009. The OFL of 732 mt is based on the new stock assessment with an F_{MSY} proxy of $F_{50\%}$. The ABC of 700 mt is a 4 percent reduction from the OFL (σ=0.36/P*=0.45)as it's a category 1 species. The 274 mt ACL is based on a rebuilding plan with a target year to rebuild of 2022 and a SPR harvest rate of 77.7 percent. A set-aside of 13.4 mt is deducted from the ACL for the incidental open access fishery (0.7 mt), EFP catch (11 mt) and research catch (1.7 mt), resulting in a fishery HG of 260.6 mt.

v/ Splitnose rockfish. A new coastwide assessment was prepared in 2009 that estimated the stock to be at 66 percent of its unfished biomass in 2009. Splitnose in the north is managed under the minor slope rockfish complex and in the south (south of 40°10' N. lat.), with species-specific harvest specifications. The 1,610 mt OFL south of 40°10 N. lat. is based on the 2009 assessment with an F_{MSY} proxy of $F_{50\%}$. The ABC of 1,538 mt is a 4 percent reduction from the OFL (σ=0.36/P*=0.45) as it's a category 1 species. Because the unfished biomass is estimated to be above 40 percent of the unfished biomass, the ACL is set equal to the ABC. A set-aside of 7 mt is deducted from the ACL for research catch, resulting in a fishery HG of 1,531 mt.

w/ Yellowtail rockfish. A yellowtail rockfish stock assessment was last prepared in 2005 for the Vancouver, Columbia, Eureka areas. Yellowtail rockfish was estimated to be at 55 percent of its unfished biomass in

2005. The OFL of 4,573 mt is based on the 2005 stock assessment with the F_{MSY} proxy of $F_{50\%}$. The ABC of 4,371 mt is a 4 percent reduction from the OFL (σ=0.36/P*=0.45) as it's a category 1 species. The ACL was set equal to the ABC, because the stock is above $B_{40\%}$. A set-aside of 499 mt is deducted from the ACL for the Tribal fishery (490 mt), the incidental open access fishery (3 mt), EFP catch (2 mt) and research catch (4 mt), resulting in a fishery HG of 3,872 mt.

x/ Shortspine thornyhead. A coastwide stock assessment was conducted in 2005 and the stock was estimated to be at 63 percent of its unfished biomass in 2005. A coastwide OFL of 2,358 mt is based on the 2005 stock assessment with a $F_{50\%}$ F_{MSY} proxy. The coastwide ABC of 2,254 mt is a 4 percent reduction from the OFL (σ=0.36/P*=0.45) as it's a category 1 species. For the portion of the stock that is north of 34°27′ N. lat., the ACL is 1,556 mt, 66 percent of the coastwide OFL. A set-aside of 45 mt is deducted from the ACL for the Tribal fishery (38 mt), the incidental open access fishery (2 mt), and research catch (5 mt), resulting in a fishery HG of 1,511 mt for the area north of 34°27′ N. lat. For that portion of the stock south of north of 34°27′ N. lat. the ACL is 401 mt which is 34 percent of the coastwide OFL for the portion of the biomass found south of 34°27′ N. lat reduced by 50 percent as a precautionary adjustment. A set-aside of 42 mt is deducted from the ACL for the incidental open access fishery (41 mt), and research catch (1 mt), resulting in a fishery HG of 359 mt for the area south of 34°27′ N. lat. The sum of the northern and southern area ACLs (1,957 mt) is a 13 percent reduction from the coastwide ABC.

y/ Longspine thornyhead. A coastwide stock assessment was conducted in 2005 and the stock was estimated to be at 71 percent of its unfished biomass in 2005. A coastwide OFL of 3,483 mt is based on the 2005 stock assessment with a $F_{50\%}$ F_{MSY} proxy. The ABC of 2,902 mt is a 17 percent reduction from the OFL (σ=0.72/P*=0.40) as it's a category 2 species. For the portion of the stock that is north of 34°27′ N. lat., the ACL is 2,064 mt, and is 79 percent of the coastwide OFL for the biomass in that area. A set-aside of 44 mt is deducted from the ACL for the Tribal fishery (30 mt), the incidental open access fishery (1 mt), and research catch (13 mt), resulting in a fishery HG of 2,020 mt. For that portion of the stock south of 34°27′ N. lat. the ACL is 366 mt and is 21 percent of the coastwide OFL reduced by 50 percent as a precautionary adjustment. A set-aside of 3 mt is deducted from the ACL for the incidental open access fishery (2 mt), and research catch (1 mt), resulting in a fishery HG of 363 mt. The sum of the northern and southern area ACLs (2,430 mt) is a 16 percent reduction from the coastwide ABC.

z/ Cowcod. A stock assessment update was prepared in 2009 and the stock was estimated to be 5 percent bounded between 4 and 21 percent of its unfished biomass in 2009. The OFLs for the Monterey and Conception areas were summed to derive the south of 40°10 N. lat. OFL of 13 mt. The ABC for the area south of 40°10′ N. lat. is 10 mt. The assessed portion of the stock in the Conception Area was considered category 2, with a Conception Area contribution to the ABC of 5 mt, which is a 17 percent reduction from the OFL (σ=0.72/P*=0.35). The unassessed portion of the stock in the Monterrey area was considered a category 3 stock, with a contribution to the ABC of 5 mt, which is a 29 percent reduction from the OFL (σ=1.44/P*=0.40). A single ACL of 3 mt is being set for both areas combined. The ACL of 3 mt is based on a rebuilding plan with

a target year to rebuild of 2068 and an SPR rate of 82.7 percent. The amount anticipated to be taken during research activity is 0.1 mt and the amount expected to be taken during EFP activity is 0.2 mt, which results in a fishery HG of 2.7 mt.

aa/ Darkblotched rockfish. A stock assessment update was prepared in 2009, based on the 2007 full assessment, and the stock was estimated to be at 27.5 percent of its unfished biomass in 2009. The OFL is projected to be 497 mt and is based on the 2009 stock assessment with an F_{MSY} proxy of $F_{50\%}$. The ABC of 475 mt is a 4 percent reduction from the OFL (σ=0.36/P*=0.45)as it's a category 1 species. The ACL of 296 mt is based on a rebuilding plan with a target year to rebuild of 2025 and an SPR harvest rate of 64.9 percent. A set-aside of 18.7 mt is deducted from the ACL for the Tribal fishery (0.1 mt), the incidental open access fishery (15 mt), EFP catch (1.5) and research catch (2.1 mt), resulting in a fishery HG of 277.3 mt.

bb/ Yelloweye rockfish. The stock was assessed in 2009 and was estimated to be at 20.3 percent of its unfished biomass in 2009. The 48 mt coastwide OFL was derived from the base model in the new stock assessment with an F_{MSY} proxy of $F_{50\%}$. The ABC of 46 mt is a 4 percent reduction from the OFL (σ=0.36/P*=0.45) as it's a category 1 species. The 17 mt ACL is based on a rebuilding plan with a target year to rebuild of 2074 and an SPR harvest rate of 76 percent. A set-aside of 5.9 mt is deducted from the ACL for the Tribal fishery (2.3 mt), the incidental open access fishery (0.2 mt), EFP catch (0.1 mt) and research catch (3.3 mt) resulting in a fishery HG of 11.1 mt. Recreational HGs are being established as follows: Washington recreational, 2.6; Oregon recreational 2.4 mt; and California recreational 3.1 mt.

cc/ California Scorpionfish south was assessed in 2005 and was estimated to be at 80 percent of its unfished biomass in 2005. The OFL of 132 mt is based on the new assessment with a harvest rate proxy of $F_{50\%}$. The ABC of 126 mt is a 4 percent reduction from the OFL (σ=0.36/P*=0.45) as it's a category 1 species. Because the stock is above $B_{40\%}$, the ACL is set equal to the ABC. A set-aside of 2 mt is deducted from the ACL for the incidental open access fishery, resulting in a fishery HG of 124 mt.

dd/ Black rockfish north (Washington). A stock assessment was prepared in 2007 for black rockfish north of 45°56'N. lat.(Cape Falcon, Oregon). The biomass in this area was estimated to be at 53 percent of its unfished biomass in 2007. The OFL from the assessed area is based on the 2007 assessment with a harvest rate proxy of $F_{50\%}$. The resulting OFL for the area north of 46°16' N. lat. (the Washington/Oregon border) is 435 mt, which is 97 percent of the OFL from the assessed area. The ABC of 415 mt for the area north of 46°16' N. lat. is a 4 percent reduction from the OFL (σ=0.36/P*=0.45) as it's a category 1 species. The ACL was set equal to the ABC, since the stock is above $B_{40\%}$. A set-aside of 14 mt for the Tribal fishery results in a fishery HG of 401 mt.

ee/ Black rockfish south (Oregon and California). A 2007 stock assessment was prepared for black rockfish south of 45°56' N. lat. (Cape Falcon, Oregon) to the southern limit of the stock's distribution in Central California. The biomass in the south was estimated to be at 70 percent of its unfished biomass in 2007. The OFL from the assessed area is based on the 2007 assessment with a harvest rate proxy of $F_{50\%}$. Three

percent of the OFL from the stock assessment prepared for black rockfish north of 45°56′ N. lat. is added to the OFL from the assessed area south of 45°56′. The resulting OFL for the area south of 46°16′ N. lat. is 1,169 mt. The ABC of 1,117 mt for the south is a 4 percent reduction from the OFL (σ=0.36/P*=0.45) as it's a category 1 species. The ACL was set at 1,000 mt, which is a constant catch strategy designed to keep the stock biomass above $B_{40\%}$. The black rockfish ACL in the area south of 46°16' N. lat., is subdivided with separate HGs being set for the area north of 42° N. lat. (580 mt/58 percent) and for the area south of 42° N. lat. (420 mt/42 percent).

ff/ Minor rockfish north is comprised of three minor rockfish sub-complexes: nearshore, shelf, and slope. The OFL of 3,820 mt is the sum of OFLs for nearshore (116 mt), shelf (2,197 mt) and slope (1,507 mt) north sub-complexes. Each sub-complex OFL is the sum of the OFLs of the component species within the complex. The ABCs for the minor rockfish complexes and sub-complexes are based on a sigma value of 0.36 for category 1 stocks (splitnose and chilipepper rockfish), 0.72 for category 2 stocks (greenstriped rockfish and blue rockfish in California) and 1.44 for category 3 stocks (all others) with a P* of 0.45. The resulting minor rockfish north ABC, which is the summed contribution of the ABCs for the contributing species in each sub-complex (nearshore, shelf, and slope) is 3,414 mt. The ACL of 2,227 mt for the complex is the sum of the sub-complex ACLs. The sub-complex ACLs are the sum of the component stock ACLs, which are less than or equal to the ABC contribution of each component stock. There are no set-asides for the nearshore sub-complex, thus the fishery HG is equal to the ACL, which is 99 mt. The set-aside for the shelf sub-complex is 43 mt - Tribal fishery (9 mt), the incidental open access fishery (26 mt), EFP catch (4 mt) and research catch (4 mt), resulting in a shelf fishery HG of 925 mt. The set-aside for the slope sub-complex is 68 mt - Tribal fishery (36 mt), the incidental open access fishery (19 mt), EFP catch (2) and research catch (11 mt), resulting in a slope fishery HG of 1,092 mt.

gg/ Minor rockfish south is comprised of three minor rockfish sub-complexes: nearshore, shelf, and slope. The OFL of 4,291 mt is the sum of OFLs for nearshore (1,145 mt), shelf (2,243 mt) and slope (903 mt) south sub-complexes. Each sub-complex OFL is the sum of the OFLs of the component species within the complex. The ABCs for the minor rockfish complexes and sub-complexes are based on a sigma value of 0.36 for category 1 stocks (gopher rockfish north of Point Conception, blackgill), 0.72 for category 2 stocks (blue rockfish in the assessed area, greenstriped rockfish, and bank rockfish) and 1.44 for category 3 stocks (all others) with a P* of 0.45. The resulting minor rockfish south ABC, which is the summed contribution of the ABCs for the contributing species in each sub-complex, is 3,712 mt. The ACL of 2,341 mt for the complex is the sum of the sub-complex ACLs. The sub-complex ACLs are the sum of the component stock ACLs, which are less than or equal to the ABC contribution of each component stock. There are no set-asides for the nearshore sub-complex, thus the fishery HG is equal to the ACL, which is 990 mt. The set-asides for the shelf sub-complex is 13 mt for the incidental open access fishery (9 mt), EFP catch (2 mt) and research catch (2 mt), resulting in a shelf fishery HG of 701 mt. The set-asides for the slope sub-complex is 27 mt for the incidental open access fishery (17 mt), EFP catch (2 mt) and research catch (8 mt), resulting in a slope fishery HG of 599 mt.

hh/ Longnose skate. A stock assessment update was prepared in 2007 and the stock was estimated to be at 66 percent of its unfished biomass. The OFL of 3,006 mt is based on the 2007 stock assessment with an F_{MSY} proxy of $F_{45\%}$. The ABC of 2,873 mt is a 4 percent reduction from the OFL (σ=0.36/P*=0.45) as it's a category 1 species. The ACL of 1,349 is the 2010 OY and represents a 50 percent increase in the average 2004-2006 catch mortality (landings and discard mortality). The set-asides for longnose skate is 129 mt for the tribal fishery (56 mt), incidental open access fishery (65 mt), and research catch (8 mt), resulting in a fishery HG of 1,220 mt.

ii/ "Other fish" contains all unassessed groundfish FMP species that are neither rockfish (family Scorpaenidae) nor flatfish. These species include big skate, California skate, leopard shark, soupfin shark, spiny dogfish, finescale codling, Pacific rattail, ratfish, cabezon off Washington, and kelp greenling. The OFL of 11,150 mt is the 2010 MSY harvest level minus the 50 mt contribution made for cabezon off Oregon, which is a newly assessed stock to be managed with stock-specific specifications. The ABC of 7,742 mt is a 31 percent reduction from the OFL (σ=1.44/P*=0.40) as all of the stocks in the "other fish" complex are category 3 species. The ACL of 5,575 mt is equal to the 2010 OY, minus half of the OFL contribution for Cabezon off of Oregon (25 mt). The fishery HG is equal to the ACL.

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■ 6. In § 660.131 a new paragraph (h) is added to read as follows:

§ 660.131 Pacific whiting fishery management measures.

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(h) *Reapportionment of pacific whiting.* (1) By September 15 of the fishing year, the Regional Administrator will, based on discussions with representatives of the tribes participating in the Pacific whiting fishery for that fishing year, consider the tribal harvests to date and catch projections for the remainder of the year relative to the tribal allocation as specified at § 660.50 of Pacific whiting. That portion of the tribal allocation that the Regional Administrator determines will not be used by the end of the fishing year may be reapportioned to the other sectors of the trawl fishery in proportion to their initial allocations, on September 15 or as soon as practicable thereafter. Subsequent reapportionments may be made based on subsequent determinations by the Regional Administrator based on the factors described above in order to ensure full utilization of the resource. No reapportionments will occur after December 1 of the fishing year.

(2) The reapportionment of surplus whiting will be made effective immediately by actual notice under the automatic action authority provided at § 660.60(d)(1).

(3) Estimates of the portion of the tribal allocation that will not be used by the end of the fishing year will be based on the best information available to the Regional Administrator.

■ 7. In § 660.140 paragraphs (d)(1)(ii) introductory text, (d)(1)(ii)(D), and (d)(3)(ii)(B)(*3*) are revised to read as follows:

§ 660.140 Shorebased IFQ program.

* * * * *

(d) * * *

(1) * * *

(ii) *Annual QP and IBQ pound allocations.* QP and IBQ pounds will be deposited into QS accounts annually. QS permit owners will be notified of QP deposits via the IFQ Web site and their QS account. QP and IBQ pounds will be issued to the nearest whole pound using standard rounding rules (*i.e.,* decimal amounts less than 0.5 round down and 0.5 and greater round up), except that in the first year of the Shorebased IFQ Program, issuance of QP for overfished species greater than zero but less than one pound will be rounded up to one pound. Rounding rules may affect distribution of the entire shorebased trawl allocation. NMFS will distribute such allocations to the maximum extent practicable, not to exceed the total allocation. QS permit owners must transfer their QP and IBQ pounds from their QS account to a vessel account in order for those QP and IBQ pounds to be fished. QP and IBQ pounds must be transferred in whole pounds (*i.e.,* no fraction of a QP or IBQ pound can be transferred). All QP and IBQ pounds in a QS account must be transferred to a vessel account by September 1 of each year in order to be fished, unless there is a reapportionment of Pacific whiting consistent with §§ 660.131(h) and 660.140(d)(3).

* * * * *

(D) For the 2012 trawl fishery, NMFS will issue QP based on the following shorebased trawl allocations:

IFQ species	Management area	Shorebased trawl allocation (mt)
Lingcod		1,810.65
Pacific cod		1,135.00
Pacific Whiting		56,902
Sablefish	North of 36° N. lat	2,467.00
Sablefish	South of 36° N. lat	514.08
Dover sole		22,234.50
English sole		9,542.50

IFQ species	Management area	Shorebased trawl allocation (mt)
Petrale sole		1,054.60
Arrowtooth flounder		9,462.45
Starry flounder		671.50
Other flatfish		4,197.40
Pacific Ocean perch	North of 40°10′ N. lat	119.50
Widow rockfish		342.62
Canary rockfish		26.20
Chilipepper rockfish	South of 40°10′ N. lat	1,331.25
Bocaccio rockfish	South of 40°10′ N. lat	60.00
Splitnose rockfish	South of 40°10′ N. lat	1,454.45
Yellowtail rockfish	North of 40°10′ N. lat	3,107.36
Shortspine thornyhead	North of 34°27′ N. lat	1,415.45
Shortspine thornyhead	South of 34°27′ N. lat	50.00
Longspine thornyhead	North of 34°27′ N. lat	1,914.00
Cowcod	South of 40°10′ N. lat	1.80
Darkblotched rockfish		248.94
Yelloweye rockfish		0.60
Minor shelf rockfish complex	North of 40°10′ N. lat	522.00
Minor shelf rockfish complex	South of 40°10′ N. lat	86.00
Minor slope rockfish complex	North of 40°10′ N. lat	829.52
Minor slope rockfish complex	South of 40°10′ N. lat	377.37

* * * * *

(3) * * *

(ii) * * *

(B) * * *

(*3*) *Transfer of QP or IBQ pounds from a QS account to a vessel account.* QP or IBQ pounds must be transferred in whole pounds (i.e. no fraction of a QP can be transferred). QP or IBQ pounds must be transferred to a vessel account in order to be used. Transfers of QP or IBQ pounds from a QS account to a vessel account are subject to vessel accumulation limits and NMFS' approval. Once QP or IBQ pounds are transferred from a QS account to a vessel account (accepted by the transferee/vessel owner), they cannot be transferred back to a QS account and may only be transferred to another vessel account. QP or IBQ pounds may not be transferred from one QS account to another QS account. All QP or IBQ pounds from a QS account must be transferred to one or more vessel accounts by September 1 each year. If the Regional Administrator makes a decision to reapportion Pacific whiting from the tribal to the non-tribal fishery after September 1 in any year, the following actions will be taken.

(*i*) NMFS will credit QS accounts with additional Pacific whiting QP proportionally, based on the whiting QS percent for a particular QS permit owner and the amount of the sector reapportionment of whiting.

(*ii*) The QS account transfer function will be reactivated by NMFS from the date that QS accounts are credited with additional Pacific whiting QP to allow permit holders to transfer only Pacific whiting QP to vessel accounts.

(*iii*) After December 15, the transfer function in QS accounts will again be inactivated.

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