shareholders, and S–1's assumption of T's liabilities. In addition, pursuant to the plan, S–1 sells all of the T assets to S–5 for cash equal to the fair market value of those assets.

(ii) *Analysis*. Under this paragraph (k), the transaction, which otherwise qualifies as a reorganization under section 368(a)(1)(C), is not disqualified by the sale of all of the T assets from S–1 to S–5 because the transfer is not a distribution to shareholders, the transfer consists of part or all of the assets of the acquiring corporation, the acquiring corporation does not terminate its corporate existence for Federal income tax purposes in connection with the transfer, and the transaction satisfies the requirements of § 1.368–1(d).

(3) *Effective/applicability dates*. This paragraph (k) applies to transactions occurring on or after *May 9, 2008*, except that it does not apply to any transaction occurring pursuant to a written agreement which is binding before *May 9, 2008*, and at all times after that.

* * * * *

Linda E. Stiff,

Deputy Commissioner for Services and Enforcement.

Approved: May 2, 2008.

Eric Solomon,

Assistant Secretary of the Treasury (Tax Policy).

[FR Doc. E8–10451 Filed 5–8–08; 8:45 am]

BILLING CODE 4830–01–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 80

[EPA–HQ–2005–0036; FRL–8564–3]

RIN 2060–AO89

Control of Hazardous Air Pollutants From Mobile Sources: Early Credit Technology Requirement Revision

AGENCY: Environmental Protection Agency (EPA).

ACTION: Withdrawal of Direct Final Rule.

SUMMARY: Because EPA received significant adverse comment, we are withdrawing the direct final rule for revising the February 26, 2007 mobile source air toxics rule's requirements that specify the benzene control technologies that qualify a refiner to generate early benzene credits, published on March 12, 2008.

DATES: Effective May 9, 2008, EPA withdraws the direct final rule published at 73 FR 13132 on March 12, 2008.

FOR FURTHER INFORMATION CONTACT: Christine Brunner, Office of Transportation and Air Quality, Assessment and Standards Division, Environmental Protection Agency, 2000 Traverwood, Ann Arbor, MI 48105; telephone number: (734) 214–4287; fax number: (734) 214–4816; e-mail address: *brunner.christine@epa.gov*. Alternative contact: Assessment and Standards Division Hotline, telephone number: (734) 214–4636; e-mail address: *asdinfo@epa.gov*.

SUPPLEMENTARY INFORMATION: Because EPA received significant adverse comment, we are withdrawing the direct final rule for revising the February 26, 2007 mobile source air toxics rule's requirements that specify the benzene control technologies that qualify a refiner to generate early benzene credits, published on March 12, 2008 (73 FR 13132). We stated in that direct final rule that if we received adverse comment by April 11, 2008, the direct final rule would not take effect and we would publish a timely withdrawal in the **Federal Register**. We subsequently received significant adverse comment on that direct final rule. We will address those comments in any subsequent final action, which will be based on the parallel proposed rule also published on March 12, 2008 (73 FR 13163). As stated in the direct final rule and the parallel proposed rule, we will not institute a second comment period on this action.

Dated: May 1, 2008.

Stephen L. Johnson,

Administrator.

■ Accordingly, the amendments to the rule published on March 12, 2008 (73 FR 13132) are withdrawn as of May 9, 2008.

[FR Doc. E8–10404 Filed 5–8–08; 8:45 am]

BILLING CODE 6560–50–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 660

[Docket No. 080408542–8615–01]

RIN 0648–AW63

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: This final rule establishes the 2008 fishery specifications for Pacific whiting in the U.S. exclusive economic zone (EEZ) and state waters off the coasts of Washington, Oregon, and California, as authorized by the Pacific Coast Groundfish Fishery Management Plan (FMP). These specifications include the level of the acceptable biological catch (ABC), optimum yield (OY), tribal allocation, and allocations for the non-tribal commercial sectors. This document also corrects Table 2a, which inadvertently omitted a listing in the December 29, 2006 document.

DATES: Effective May 9, 2008.

ADDRESSES: Although there is no formal comment period, comments and suggestions on this rulemaking are welcome and should be sent to D. Robert Lohn, Administrator, Northwest Region, NMFS, 7600 Sand Point Way N.E., BIN C15700, Bldg. 1, Seattle, WA 98115–0070. Comments also may be sent via facsimile (fax) to 206–526–6736.

FOR FURTHER INFORMATION CONTACT: Becky Renko (Northwest Region, NMFS) 206–526–6110.

SUPPLEMENTARY INFORMATION:

Electronic Access

This final rule is accessible via the Internet at the Office of the Federal Register's Website at *http://www.gpoaccess.gov/fr/index.html*.

Background information and documents are available at the NMFS Northwest Region Web site at *http://www.nwr.noaa.gov/Groundfish-Halibut/Groundfish-Fishery-Management/index.cfm*.

Background

A proposed rulemaking to implement the 2007–2008 specifications and management measures for the Pacific Coast groundfish fishery was published on September 29, 2006 (71 FR 57764) and was followed by a final rule on December 29, 2006 (71 FR 78638). These specifications and management measures were codified in the CFR (50 CFR part 660, subpart G). The regulations were subsequently amended by correcting amendments published on March 20, 2007 (72 FR 13043) and September 18, 2007 (72 FR 53165). A final rule, published on April 9, 2007 (72 FR 19390), established the 2007 Pacific whiting harvest specifications Inseason measures to revise management measures were published on July 5, 2007 (72 FR 36617), August 3, 2007 (72 FR 43193), October 4, 2007 (72 FR 56664), December 4, 2007 (72 FR 68097) and December 18, 2007 (72 FR 71583).

In November 2003, the U.S. and Canada signed an agreement regarding the conservation, research, and catch sharing of Pacific whiting. In that agreement, the U.S. and Canadian governments agreed upon a Pacific whiting catch sharing arrangement that provided 73.88 percent of the total catch OY to U.S. fisheries and 26.12 percent to Canadian fisheries. At this time, both countries are taking steps to fully implement the agreement. Until this occurs, the negotiators recommended that each country apply the agreed upon provisions to their respective fisheries. The Agreement is expected to become effective in 2008.

Consistent with the U.S.-Canada agreement, NMFS, at the recommendation of the Council, adopted a range for OYs and ABCs for Pacific whiting in the 2007–2008 specifications, published on December 29, 2006. For 2008, the Council recommended and NMFS adopts in this final rule ABC and OY values that are based on a new stock assessment. The impacts are consistent with the scope of impacts considered in the FEIS for the 2007 and 2008 management measures.

Pacific Whiting Stock Status

In general, Pacific whiting is a very productive species with highly variable recruitment (the biomass of fish that mature and enter the fishery each year) and a relatively short life span when compared to most other groundfish species. In 1987, the Pacific whiting biomass was at a historically high level due to an exceptionally large number of fish spawned in 1980 and 1984 (fish spawned during a particular year are referred to as a year class). As these large year classes of fish passed through the population and were replaced by moderate sized year classes, the stock declined. The Pacific whiting stock stabilized between 1995 and 1997, but then declined to its lowest level in 2001. After 2001, the Pacific whiting biomass increased substantially as a strong 1999 year class matured and entered the spawning population. The spawning biomass is expected to increase in the near future because of a moderately strong 2005 year class. However, the strength of the 2005 recruitment is still very uncertain.

The joint U.S.-Canada Stock Assessment Review (STAR) panel met February 11–14, 2008, in Seattle, Washington to review the following three draft stock assessment documents on Pacific whiting: *A Stock Assessment of Pacific Hake (whiting) in U.S. and Canadian Waters in 2008* by Helser *et al.*; *An Assessment and Management Advice for Pacific Hake in U.S. and Canadian Waters in 2008* by Steven Martell; and *A Virtual Population Analysis* by Alan Sinclair and Chris Grandin. The primary differences among the three assessments involved are assumptions regarding survey selectivity and catchability, stock productivity, and the reliability of historical data, as well as the treatment of ageing error and the aggregation and weighting of data used in the models. After consideration of all three stock assessments by the Council's STAR Panel, the ''base model'' presented by Helser *et al.* was chosen as the preferred stock assessment model. The STAR Panel recommended the base model because it provided a more flexible platform for evaluating assumptions about the stock and it made better use of the available data.

The 2008 base model is similar to that used in the 2007 assessment, except that the 2008 base model estimated the natural mortality rate of older fish; used the Bayseian priors to estimate the value of ''h'', or the stock-recruitment steepness (a proportional measure of expected recruitment relative to the number of adult fish)which serve to constrain the range within which the estimate will fall; accounted for the value of ''q'', which is known as the ageing error, or the acoustic survey catchability coefficient which, along with age-specific selectivity, defines the proportion of Pacific whiting biomass that the hydroacoustic survey is able to measure relative to the total amount of Pacific whiting in the surveyed area; and, eliminated the use of the pre-recruit survey data. In the previous assessments, the value of q was identified as a major source of uncertainty. The uncertainty in estimating the value of q is largely driven by conflicting signals from the acoustical survey biomass time series and age compositions. Each year from 2003 to 2007, two stock assessment models were presented with different values for q with each being assumed to have been equally likely. For 2008, the base model integrated uncertainty regarding all estimated parameters. The base model forecasts a positive trajectory for Pacific whiting indicating that the 1999 year-class is still available to the fishery and a reasonably strong 2005 year-class has shown up both in the fishery and the NMFS survey.

The Pacific whiting stock biomass is estimated to be approximately 42.6 percent (based on the 50th percentile of estimated probability distribution for depletion level) of its unfished biomass in 2008. The 2008 assessment estimated the stock biomass to be lower and the depletion level to be higher than in the 2007 assessment because the current assessment freely estimated the value for q, and because an age-reading error matrix was used that resulted in a lower estimate of the unfished biomass and increased estimate of the size of the 1999 year class. The results of the new 2008 base model indicate that spawning stock biomass for the most recent years was generally lower than had been estimated in the 2007 assessment, but is greater relative to the estimate of unfished biomass.

At the Council's March 2008 meeting the Scientific and Statistical Committee (SSC) reviewed the assessments and endorsed the use of the 2008 base model and the associated decision table for management purposes. Although the SSC endorsed the base model for management purposes, concerns were expressed about estimating natural mortality and selectivity for the oldest ages and whether the data used to estimate the value of q were informative enough to rely only on the point estimate from the base model for management decisions. In addition, the SSC noted that there was considerable uncertainty associated with stock size estimates given that the 2005 recruitment has not been sampled adequately to confirm its strength, and that the three assessments presented to the STAR Panel differ in their predictions. The SSC also noted that the population dynamics of Pacific whiting may not match the default harvest policy of F40% specified in the provisions of the U.S.-Canada agreement. A rate of F40% can be explained as that which reduces spawning potential per female to 40 percent of what it would have been under long-term unfished conditions. The selection of the F40% value was based on an analysis of stock and recruitment data for other whiting (hake) species. However, because long-term application of the current harvest rate of F40% would be expected to drive the Pacific whiting stock well below the biomass target, the SSC recommended that further work be done on the development of a more suitable control rule. Despite the identified concerns, the SSC concluded that none of the concerns warranted changing the recommendations of the STAR Panel.

ABC/OY Recommendations

The range of U.S. ABCs and OYs analyzed in the FEIS for the 2007 and 2008 specifications and management measures included: A low ABC of 244,425 mt and a high ABC of 733,275 mt (50 percent and 150 percent, respectively, of the 2006 U.S. ABC of 488,850); and a low OY of 134,534 mt

and a high OY of 403,604 mt (50 percent and 150 percent, respectively, of the 2005/2006 U.S. OY of 269,069). These broad ranges in Pacific whiting harvest levels were analyzed in order to assess the potential range of the effects of the Pacific whiting fishery on incidentally-caught overfished species and the economic effects to coastal communities.

At its March 10–14, 2008, meeting in Sacramento, California the Council reviewed the results of the new Pacific whiting stock assessments and recommended adopting a U.S.-Canada coastwide ABC of 400,000 mt with a corresponding U.S. ABC of 295,520 mt. The coastwide ABC is below the risk averse ABC of 414,000 mt projected from the base model and recommended by the SSC. The range of U.S.-Canada coastwide OY values considered by the Council included: 546,297 mt, which is the highest harvest analyzed within the FEIS for 2007 and 2008 specifications and management measures; 400,000 mt, which is an intermediate value based on a constant catch level; 328,358 mt which is the 2007 status quo value; 300,000 mt, which is an intermediate value based on a constant catch level; 259,775 mt, which is the amount projected to be harvested with a widow bycatch limit of 275 mt; and 250,000 mt, which is the most conservative value in the stock assessment projections. Following discussion and public testimony, the Council recommended adopting a U.S.-Canada coastwide OY of 364,842 mt with a corresponding U.S. OY of 269,545 mt. The U.S. OY is similar to the 2005 and 2006 U.S. OYs.

Risk factors identified by the SSC concerning the fishery were cause for concern such that a more risk averse OY was recommended by the Council. The Council indicated that a precautionary approach was needed to account for both assessment and management uncertainty. The Council's recommendation also took into consideration the very limited amounts of canary, darkblotched and widow rockfish (bycatch limit species) available to be taken incidentally in the Pacific whiting fishery. With a U.S. OY of 269,545 mt, the industry would need to continue to avoid the incidental catch of bycatch limit species to fully utilize the OY. The Council indicated that the expectation of the Pacific whiting OY to be fully utilized was near the upper end of what would be expected given the understanding of the catch of bycatch limit species.

It is unknown exactly how much risk is involved with the use of the current assessments and harvest control rule with a species such as Pacific whiting. When coupled with the observation that the stock biomass has been in decline since 2003 while ABC has increased substantially over the same period, the best available information suggests there may be cause for concern if the full ABC were harvested. The Council's OY recommendation was consistent with the concerns expressed by the SSC.

Allocations

In 1994, the United States formally recognized that the four Washington coastal treaty Indian tribes (Makah, Quileute, Hoh, and Quinault) have treaty rights to fish for groundfish in the Pacific Ocean. In general terms, the quantification of those rights is 50 percent of the harvestable surplus of groundfish that pass through the tribes' usual and accustomed ocean fishing areas (described at 50 CFR 660.324).

The Pacific Coast Indian treaty fishing rights, described at 50 CFR 660.385, allow for the allocation of fish to the tribes through the specification and management measures process. A tribal allocation is subtracted from the species OY before limited entry and open access allocations are derived. The tribal whiting fishery is a separate fishery, and is not governed by the limited entry or open access regulations or allocations. To date, only the Makah Tribe has participated in the fishery. It regulates, and in cooperation with NMFS, monitors this fishery so as not to exceed the tribal allocation.

Beginning in 1999, NMFS set the tribal allocation according to an abundance-based sliding scale method, proposed by the Makah Tribe in 1998. (See 64 FR 27928, 27929 (May 29, 1999); 65 FR 221, 247 (January 4, 2000); and 66 FR 2338, 2370 (January 11, 2001)). Details on the abundance-based sliding scale allocation method and related litigation are discussed in the preamble to the proposed rule (69 FR 56570; September 21, 2004) and are not repeated here. On December 28, 2004, the Ninth Circuit Court of Appeals upheld the sliding scale approach in Midwater Trawler Cooperative v. Daley, 393 F. 3d 994 (9th Cir. 2004). Under the sliding scale allocation method, the tribal allocation varies with U.S. Pacific whiting OY, ranging from 14 percent (or less) of the U.S. OY when OY levels are above 250,000 mt, to 17.5 percent of the U.S. OY when the OY level is at or below 145,000 mt. For 2008, using the sliding scale allocation method, the tribal allocation will be 35,000 mt. The Makah are the only Washington Coast tribe that requested a Pacific whiting allocation for 2008.

The 2008 commercial OY (non-tribal) for Pacific whiting is 232,545 mt. This is calculated by deducting the 35,000–mt tribal allocation and 2,000–mt for research catch and bycatch in non-groundfish fisheries from the 269,545 mt total catch OY. Regulations at 50 CFR 660.323(a)(4) divide the commercial OY into separate allocations for the non-tribal catcher/processor, mothership, and shore-based sectors of the Pacific whiting fishery.

The catcher/processor sector is comprised of vessels that harvest and process Pacific whiting. The mothership sector is comprised of catcher vessels that harvest Pacific whiting for delivery to motherships. Motherships are vessels that process, but do not harvest, Pacific whiting. The shoreside sector is comprised of vessels that harvest Pacific whiting for delivery to shoreside processors. Each sector receives a portion of the commercial OY in accordance with the regulations at 50 CFR 660.323(a)(4). For 2008, the catcher/processors receive 34 percent (79,065 mt), motherships receive 24 percent (55,811 mt), and the shore-based sector receives 42 percent (97,669 mt) of the total catch OY.

Correction

An omission was identified in Table 2a, which was published in the final rule of the 2007–2008 harvest specifications (December 29, 2006, 71 FR 78638). The ABC value for darkblotched rockfish in Table 2a was inadvertently left out of the table, but identified in the associated footnote to the table. The ABC value of 487 mt has been inserted into the table. The 2007 OY value for darkblotched rockfish in Table 1a inadvertently carried over into Table 2a for 2008. The associated footnote contained the correct OY value of 330 mt. Therefore Table 2a has been revised to include the OY value of 330 mt for darkblotched rockfish. Table 2a in the Proposed Rule also contained these errors, but the preamble to the Proposed Rule that explained and summarized the rebuilding plan for darkblotched rockfish clearly stated the correct ABC and OY for 2008 for darkblotched rockfish (September 29, 2006, 71 FR 57764, 57780).

Classification

The final Pacific whiting specifications and management measures for 2008 are issued under the authority of the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act) and are in accordance with 50 CFR part 660, the regulations implementing the FMP.

For the following reasons, NMFS finds good cause, pursuant to 5 U.S.C. 553(b)(B) to waive prior public notice

and comment on the 2008 Pacific whiting specifications.

The FMP requires that fishery specifications be evaluated periodically using the best scientific information available. NMFS completes a Pacific whiting stock assessment every year in cooperation with Canadian scientists. The 2008 stock assessment for Pacific whiting was prepared in early 2008, which is the optimal time of year to conduct stock assessments for this species due to the unavailability 2007 data until that time. New 2007 data used in this assessment include updated total catch, length and age data from the U.S. and Canadian fisheries, and biomass indices from the Joint US-Canadian acoustic/midwater trawl surveys. Pacific whiting differs from other groundfish species in that it has a shorter life span and the population fluctuates more swiftly. Thus, it is important to use the most recent stock assessment when determining ABC and OY. Because of the timing of the assessment, the results are not available for use in developing the new ABC and OY until just before the Council's annual March meeting. For the actions to be implemented in this final rule, affording the time necessary for prior notice and opportunity for public comment would prevent the agency from managing the Pacific whiting and related fisheries using the best available science to approach without exceeding the OYs. Delaying this action would be impracticable and contrary to the public's interest and NMFS's obligations under the Magnuson-Stevens Act.

Also for these reasons, NMFS finds good cause to waive the 30–day delay in effectiveness pursuant to 5 U.S.C. 553(d)(3), so that this final rule may become effective as soon as possible after the April 1, 2008, fishery start date. As stated previously, Pacific whiting differs from other groundfish species in that it has a shorter life span and the population fluctuates more swiftly. Thus, it is important to use the most recent stock assessment when determining ABC and OY. Because of the timing of the assessment, the results are not available for use in developing the new ABC and OY until just before the Council's annual March meeting. Because of the timing of the assessment, the results are not available for use in developing the new ABC and OY until just before the Council's annual March meeting. Delaying the implementation of the rule to allow for the 30–day delay in effectiveness would prevent the agency from managing the Pacific whiting and related fisheries using the best available science to approach without exceeding the OYs. Thus, the AA waives the 30–day delay in effectivess and makes this rule effective upon publication.

The environmental impacts associated with the Pacific whiting harvest levels being adopted by this action are consistent with the impacts in the final environmental impact statement for the 2007–2008 specification and management measures. Copies of the FEIS and the ROD are available from the Council (see **ADDRESSES**).

An Initial Regulatory Flexibility Analysis (IRFA) and FRFA were prepared for the 2007–2008 harvest specifications and management measures, which included the regulatory impacts of this action on small entities. The IRFA was summarized in the proposed rule published on September 29, 2006 (71 FR 57764). The following summary of the FRFA analysis, which covers the entire groundfish regulatory scheme of which this is a part, was published in the final rule on December 29, 2006 (71 FR 78638). The need for and objectives of this final rule are contained in the **SUMMARY** and in the Background section under **SUPPLEMENTARY INFORMATION**.

The final 2007–2008 specifications and management measures were intended to allow West Coast commercial and recreational fisheries participants to fish the harvestable surplus of more abundant stocks while also ensuring that those fisheries do not exceed the allowable catch levels intended to rebuild and protect overfished and depleted stocks. The specifications (ABCs and OYS) follow the guidance of the Magnuson-Stevens Act, the national standard guidelines, and the FMP for protecting and conserving fish stocks. Fishery management measures include trip and bag limits, size limits, time/area closures, gear restrictions, and other measures intended to allow year-round West Coast groundfish landings without compromising overfished species rebuilding measures.

In recent years the number of participants in the Pacific whiting fishery has ranged from 29 to 37 shoreside trawl vessels; 4 to 6 motherships with a fleet of 11 to 20 catcher vessels, 5 and 9 catcher processors and 14 to 15 shorebased processors. As explained below, we expect that this final rule will result in some positive economic impacts due to increased production and revenue and some negative impacts due to rising fuel prices. Because of the uncertainty of these impacts, it is not possible for NMFS to quantify the net change in economic impact of this final rule as compared to that analyzed in the FEIS for the 2007–2008 specifications and management measures.

The 2007 fishery landed 224,529 mt that generated $37 million in ex-vessel revenues at $165 per ton. Ex-vessel revenues in 2007 were the highest on record. The 2008 OY is approximately 9 percent larger than the 2007 OY. Being able to harvest the entire Pacific whiting OY will depend on how well the industry stays within the bycatch limits established for overfished species taken incidentally in the fishery. Assuming that there are no bycatch issues, it is expected that 2008 landings will continue the growth in annual revenue that has occurred since 2004 when the fishery harvested about 215,000 mt worth $17 million at about $80 per ton ex-vessel. In addition to an increase in the OY, the major factor for increased revenues is the increased demand for whiting products, especially headed and gutted products. Over the 2004–2007 period, wholesale prices for headed and gutted product increased from about $1,200 per ton to $1,600 per ton. While indicating that there are signs that wholesale prices may be leveling off, industry publications are also indicating that markets for the Pacific whiting products will be as strong in 2008 as they were in 2007 as a result of European and Asian exchange rates, growing market demand, and declines in whiting production from South American sources. Therefore, revenues in 2008 may be greater than in 2007 either as a result of a potential price increases or because of the increase in the OY.

Although wholesale and ex-vessel prices may either level off or continue to rise, fuel prices, a major expenditure category for whiting vessels, have been increasing dramatically since last year. For example, April 2008 marine diesel prices in Newport, Oregon, reached $3.70 per gallon compared to April 2007 levels of $2.39 per gallon. Therefore, levels of profitability achieved in 2007 may not be maintained in 2008.

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 Pacific Coast groundfish FMP 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, and Oregon 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, southern California).

NMFS reinitiated a formal section 7 consultation under the ESA in 2005 for both the Pacific whiting midwater trawl fishery and the groundfish bottom trawl fishery. The December 19, 1999 Biological Opinion had defined an 11,000 Chinook incidental take threshold for the Pacific whiting fishery. During the 2005 Pacific whiting season, the 11,000 fish Chinook incidental take threshold was exceeded, triggering reinitiation. Also in 2005, new data from the West Coast Groundfish Observer Program became available, allowing NMFS to do a more complete analysis of salmon take in the bottom trawl fishery.

NMFS completed its reinitiation of consultation and prepared a Supplemental Biological Opinion dated March 11, 2006. In its 2006 Supplemental Biological Opinion, NMFS concluded that catch rates of salmon in the 2005 Pacific whiting fishery were consistent with expectations considered during prior consultations. Chinook bycatch has averaged about 7,300 over the last 15 years and has only occasionally exceeded the reinitiation trigger of 11,000. Since 1999, annual Chinook bycatch has averaged about 8,450. The Chinook ESUs most likely affected by the Pacific whiting fishery have generally improved in status since the 1999 section 7 consultation. Although these species remain at risk, as indicated by their ESA listing, NMFS concluded that the higher observed bycatch in 2005 does not require a reconsideration of its prior ''no jeopardy'' conclusion with respect to the fishery. For the groundfish bottom trawl fishery, NMFS concluded that incidental take in the groundfish fisheries is within the overall limits articulated in the Incidental Take Statement of the 1999 Biological Opinion. The groundfish bottom trawl limit from that opinion was 9,000 fish annually. NMFS will continue to monitor and collect data to analyze take levels. NMFS also reaffirmed its prior determination that implementation of the Groundfish FMP is not likely to jeopardize the continued existence of any of the affected ESUs.

Lower Columbia River coho (70 FR 37160, June 28, 2005) were recently listed 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. The Southern Distinct Population Segment (DPS) of green sturgeon (71 FR 17757, April 7, 2006) were also recently listed as threatened under the ESA. As a consequence, NMFS has reinitiated its Section 7 consultation on the PFMC's Groundfish FMP.

After reviewing the available information, NMFS concluded that, in keeping with Sections 7(a)(2) and 7(d) of the ESA, the proposed action would not result in any irreversible or irretrievable commitment of resources that would have the effect of foreclosing the formulation or implementation of any reasonable and prudent alternative measures.

Pursuant to Executive Order 13175, this action was developed after meaningful consultation and collaboration with tribal officials from the area covered by the FMP. Under the Magnuson-Stevens Act at 16 U.S.C. 1852(b)(5), one of the voting members of the Council must be a representative of an Indian tribe with federally recognized fishing rights from the area of the Council's jurisdiction. In addition, regulations implementing the FMP establish a procedure by which the tribes with treaty fishing rights in the area covered by the FMP request new allocations or regulations specific to the tribes, in writing, before the first of the two meetings at which the Council considers groundfish management measures. Only the Makah Tribe requested a whiting allocation for 2008.

The regulations at 50 CFR 660.324(d) further state ''the Secretary will develop tribal allocations and regulations under this paragraph in consultation with the affected tribe(s) and, insofar as possible, with tribal consensus.'' The tribal whiting allocation finalized by this final rule was recommended by the Council based on the sliding scale allocation formula which was recommended by the Makah tribe and is described above.

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

List of Subjects in 50 CFR Part 660

Fisheries, Fishing, and Indian fisheries.

Dated: May 5, 2008.

John Oliver,

Deputy Assistant Administrator for Operations, 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 continues to read as follows:

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

■ 2. In § 660.385 paragraph (e) is revised to read as follows:

§ 660.385 Washington coastal tribal fisheries management measures.

* * * * *

(e) Pacific whiting. The tribal allocation is 35,000 mt.

* * * * *

■ 3. Tables 2a, 2b, and 2c to part 660 subpart G are revised to read as follows:

BILLING CODE 3510–22–S

Table 2a. To Part 660, Subpart G-2008, and Beyond, Specifications of ABCs, OYs, and HGs, by Management Area (weights in metric tons).

Species	ABC Specifications						OY b/	HG b/	
	ABC Contributions by Area					ABC			
	Vancouver a/	Columbia	Eureka	Monterey	Conception			Commercial	Recreational
ROUNDFISH									
Lingcod c/ N of 42° N. lat.							5,558		
S of 42° N. lat.	5,428		852			6,280	612		
Pacific Cod e/	3,200		d/			3,200	1,600	1,200	
Pacific Whiting f/	295,520					295,520	269,545	232,545	
Sablefish g/	6,058					6,058	5,934	5,362	
Cabezon h/ S of 42°N. lat.	d/		71		23	94	69	27	
FLATFISH:									
Dover sole i/	28,442					28,442	16,500		
English sole j/	6,237					6,237	6,237	–	
Petrale sole k/	1,475		1,444			2,919	2,499	–	
Arrowtooth	5,800					5,800	5,800	–	
Starry Flounder m/	1,221					1,221	890		
Other flatfish n/	6,731					6,731	4,884	–	
ROCKFISH:									
Pacific Ocean Perch o/	911					911	150	111.3	
Shortbelly p/	13,900					13,900	13,900		
Widow q/	5,144					5,144	368	251.4	9.4
Canary r/	179					179	44	23.8	17.2
Chilipepper s/	d/			2,700		2,700	2,000		
Bocaccio t/	d/			618		618	218	80.2	66.3
Splitnose u/	d/			615		615	461		
Yellowtail v/	4,548			d/		4,548	4,548		

Species	ABC Specifications						OY b/	HG b/	
	ABC Contributions by Area					ABC			
	Vancouver a/	Columbia	Eureka	Monterey	Conception			Commercial	Recreational
ROCKFISH:									
Shortspine thornyhead w/ N of 34°27' N.lat.	2,476					2,476	1,634		
S of 34°27' N. lat							421		
Longspine thornyhead x/ N of 34°27' N. lat.	3,907					3,907	2,220		
S of 34°27' N. lat.							476		
Cowcod y/ 36° to 40° 30 N. lat.	d/			19	--	19	4	3.1	0.3
south of 36° N. lat.	d/			--	17	17			
Darkblotched z/	487					487	330	-	
Yelloweye aa/						26	20	7.8	8.9
California Scorpionfish bb/					219	219	175	34	
Black cc/ N of 46°16' N. lat.	540					540	540		
S of 46°16' N. lat.			722			722	722		
Minor Rockfish dd/ N of 40° 10' N. lat.	3,680			--		3,680	2,270	2,181	89
Minor Rockfish ee/ S of 40° 10' N. lat.	--			3,403		3,403	1,904	1,418	486
Remaining	1,612			1,105					
bank	d/			350					
blackgill	d/			292					
bocaccio north	318			--					
chilipepper north	32			--					
redstripe	576			d/					
sharpchin	307			45					

silvergrey	38			d/					
splitnose north	242			--					
Species	ABC Specifications						OY b/	HG b/	
	ABC Contributions by Area					ABC		Commercial	Recreational
	Vancouver a/	Columbia	Eureka	Monterey	Conception				
yellowmouth	99			d/					
yellowtail	--			116					
gopher	d/			302					
Other rockfish	2,068			2,298					
SHARKS/SKATES/RATFISH/MORIDS/GRENADIERS/KELP GREENLING:									
Other fish ii/	2,500	7,000	1,200	3,900		14,600	7,300		

Table 2b. To Part 660, Subpart G-2008, and Beyond, Harvest Guidelines for Minor Rockfish by Depth Sub-groups (weights in metric tons).

Species	Total Catch ABC	Total Catch OY	Recreational HG	Commercial HG	Limited Entry HG		Open Access HG	
					Mt	%	Mt	%
Minor Rockfish dd/ N of 40° 10' N. lat	3,680	2,270	89	2,181	2,000	91.7	181	8.3
Nearshore		142	79	63				
Shelf		968	10	958				
Slope		1,160	0	1,160				
Minor Rockfish ee/ S of 40° 10' N. lat	3,403	1,904	486	1,418	790	55.7	628	44.3
Nearshore		564	426	138				
Shelf		714	60	654				
Slope		626	0	626				

Table 2c. To Part 660, Subpart G-2008, and Beyond, Open Access and Limited Entry Allocations by Species or Species Group. (Weights in Metric Tons)

Species	Commercial Total Catch HGs	Commercial Total Catch HGs			
		Limited Entry		Open Access	
		Mt	%	Mt	%
Lingcod N of 42° N. lat.	--				
S of 42° N. lat.		--	81.0	--	19.0
Sablefish jj/	5,151	4,667	90.6	484	9.4

N of 36° N. lat.					
Widow kk/	251.4	--	97.0	--	3.0
Canary kk/	23	--	87.7	--	12.3
Chilipepper	2,000	1,114	55.7	886	44.3
Bocaccio kk/	80.2	--	55.7	--	44.3
Yellowtail	--	--	91.7	--	8.3
Shortspine thornyhead N of 34°27' N. lat.	1,634	1,193	99.7	441	0.27
Minor Rockfish N of 40°10' N.	2,181	2,000	91.7	181	8.3
S of 40°10' N. lat.	1,418	790	55.7	628	44.3

a/ ABCs apply to the U.S. portion of the Vancouver area.

b/ Optimum Yields (OYs) and Harvest Guidelines (HGs) are specified as total catch values. Though presented as harvest guidelines, the recreational values for widow rockfish, bocaccio, and cowcod are catch estimates. A harvest guideline is a specified harvest target and not a quota. The use of this ter may differ from the use of similar terms in state regulation.

c/ Lingcod - A coastwide lingcod stock assessment was prepared in 2005. The lingcod biomass was estimated to be at 64 percent of its unfished biomass in 2005. The ABC was calculated using an F_{MSY} proxy of $F_{45\%}$. The ABC of 6,280 mt is a two year average ABC for 2007 and 2008. Because the stock is above $B_{40\%}$ coastwide, the OY could be set equal to the ABC. Separate OYs are being adopted for the area north of 42° N. lat. and the area south of 42° N. lat. For that portion of the stock north of 42° N. lat. the OY of 5,558 mt is set equal to the ABC contribution for the area. The biomass in the area south of 42° N. lat. is estimated to be at 24 percent of the unfished biomass. As a precautionary measure, the OY for the southern portion of the stock is being set at 612 mt, which is lower than the ABC contribution for the area. An OY of 612 mt (equivalent to the 2006 OY) is expected to result in a biomass increase for the southern portion of the stock. The tribes do not have a specific allocation at this time, but are expected to take 30 mt of the commercial HG.

d/ "Other species", these species are neither common nor important to the commercial and recreational fisheries in the areas footnoted. Accordingly, these species are included in the harvest guidelines of "other fish", "other rockfish" or "remaining rockfish".

e/ Pacific Cod - The 3,200 mt ABC for the Vancouver-Columbia area is based on historical landings data. The 1,600 mt OY is the ABC reduced by 50 percent as a precautionary adjustment. A tribal harvest guideline of 400 mt is deducted from the OY resulting in a commercial OY of 1,200 mt.

f/ Pacific whiting - The most recent stock assessment was prepared in February 2008, and the whiting biomass was estimated to be 42.6 percent (50th percentile estimate of depletion) of its unfished biomass in 2008 using the base model. The U.S. Canada coastwide ABC is 400,000 mt. Per the U.S.-Canada agreement, the U.S. ABC is 295,520 mt, 73.88 percent of the coastwide value. The U.S.-Canada coastwide OY is 364,842 mt. The U.S. OY is 269,545 mt (73.88 percent of the coastwide value). The tribal allocation is 35,000 mt. The 2008

commercial OY (non-tribal) for Pacific whiting is 232,545 mt, which is calculated by deducting the 35,000 mt tribal allocation and 2,000 mt for research catch and bycatch in non-groundfish fisheries from the 269,545 mt total catch OY. Each sector receives a portion of the commercial OY, with the catcher/processors getting 34 percent (79,065 mt), motherships getting 24 percent (55,811 mt), and the shore-based sector getting 42 percent (97,669 mt).

g/ Sablefish - A coastwide sablefish stock assessment was prepared in 2005. The coastwide sablefish biomass was estimated to be at 35.2 percent of its unfished biomass in 2005. Projections indicate that the biomass is increasing and will be near 42 percent of its unfished biomass by 2008. The coastwide ABC of 6,058 mt was based on the base-case assessment model with a F_{MSY} proxy of $F_{45\%}$. The coastwide OY of 5,934 mt is based on the application of the 40-10 harvest policy and is a two year average OY for 2007 and 2008. To apportion fishery allocations for the area north of 36° N. lat., 96.45 percent of the coastwide OY (5,723 mt) is attributed to the northern area. The tribal allocation for the area north of 36° N. lat. is 572 mt (10 percent of the OY north of 36° N. lat), which is further reduced by 1.9 percent (10.9 mt) for discards. The tribal landed catch value is 561.4 mt.

h/ Cabezon south of 42° N. lat. was assessed in 2005. In 2005, the Cabazon stock was estimated to be at 40 percent of its unfished biomass north of 34° 27' N. lat. and 28 percent of its unfished biomass south of 34° 27' N. lat. The stock biomass is projected to be increasing in the northern area and decreasing in the southern area. The ABC of 94 mt (71 mt for the northern portion of the stock and 23 mt for the southern portion of the stock) is based on a harvest rate proxy of $F_{50\%}$. The OY of 69 mt is a constant harvest level that is consistent with the application of a 60-20 harvest rate policy specified in the California Nearshore Management Plan.

i/ Dover sole north of 34° 27' N. lat. was assessed in 2005. The Dover sole biomass was estimated to be at 59.8 percent of its unfished biomass in 2005 and is projected to be increasing. The ABC of 28,442 mt is based on the results of the 2005 assessment with an F_{MSY} proxy of $F_{40\%}$. Because the stock is above $B_{40\%}$ coastwide, the OY could be set equal to the ABC. The OY of 16,500 mt, which is less than the ABC, is the MSY harvest level and is considerably larger than the coastwide catches in any recent years.

j/ A coastwide English sole stock assessment was prepared in 2005 and the stock was estimated to be at 91.5 percent of its unfished biomass in 2005, but the stock biomass is believed to be declining. The ABC of 6,237 is a two year average ABC for 2007 and 2008 based on the results of the 2005 assessment with an F_{MSY} proxy of $F_{40\%}$. Because the stock is above $B_{40\%}$, the OY was set equal to the ABC.

k/ A petrale sole stock assessment was prepared for 2005. In 2005 the petrale sole stock coastwide was estimated to be at 32 percent of its unfished biomass (34 percent in the northern assessment area and 29 percent of in the southern assessment area). The petrale sole biomass is believed to be increasing. The ABC of 2,919 mt is based on the new assessment with a $F_{40\%}$ F_{MSY} proxy. To derive the OY, the 40-10 harvest policy was applied to the ABC for both the northern and southern assessment areas. As a precautionary measure, an additional 25 percent reduction was made in the OY contribution for the southern area due assessment uncertainty. The OY of 2,499 mt is the average coastwide OY value for 2007 and 2008.

l/ Arrowtooth flounder was last assessed in 1993 and was estimated to be above 40 percent of its unfished biomass, therefore the OY will be set equal to the ABC.

m/ Starry Flounder was assessed for the first time in 2005 and was estimated to be above 40 percent of its unfished biomass in 2005 (44 percent for the northern stock off Washington and Oregon, and 62 percent for the southern stock of California). The starry flounder biomass is believed to be declining, and will be below $B_{40\%}$. The starry flounder assessment was considered to be a data-poor assessment relative to other groundfish assessments. For 2007, the coastwide ABC of 1,221 mt is based on the new assessment with a F_{MSY} proxy of $F_{40\%}$ and is an average ABC for 2007 and 2008. Because the stock is believed to be above $B_{40\%}$, the OY could be set equal to the ABC. To derive the OY, the 40-10 harvest policy was applied to the ABC for both the northern and southern assessment areas then an additional 25 percent reduction was made due to assessment uncertainty. Starry flounder was previously managed as part of the "other flatfish" category. The OY of 890 mt is the average coastwide OY value for 2007 and 2008.

n/ "Other flatfish" are those flatfish species that do not have individual ABC/OYs and include butter sole, curlfin sole, flathead sole, Pacific sand dab, rex sole, rock sole, and sand sole. Starry flounder was first assessed in 2005 and has been removed from the other flatfish complex. The other flatfish ABC is based on historical catch levels. The ABC of 6,731 mt is based on the highest landings for sanddabs (1995) and rex sole (1982) for the 1981-2003 period and on the average landings from the 1994-1998 period for the remaining other flatfish species. The OY of 4,884 mt is based on the ABC with a 25 percent precautionary adjustment for sanddabs and rex sole and a 50 percent precautionary adjustment for the remaining species.

o/ A POP stock assessment was prepared in 2005 and the stock was estimated to be at 23.4 percent of its unfished biomass in 2005. The ABC of 911 mt for the Vancouver and Columbia areas is based on an F_{MSY} proxy of $_{F50\%}$. The OY of 150 mt is based on a rebuilding plan with a target year to rebuild of 2017 and an SPR harvest rate of 86.4 percent. The OY is reduced by 3.6 mt for the amount anticipated to be taken during research activity.

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

q/ Widow rockfish was assessed in 2005 and was estimated to be at 31.1 percent of its unfished biomass in 2004. The ABC of 5,144 mt is based on an $F_{50\%}$ F_{MSY} proxy. The OY of 368 is based on a rebuilding plan with a target year to rebuild of 2015 and an SPR harvest rate or 95 percent. The OY is reduced by 3.0 mt for the amount anticipated to be taken during research activity. Tribal vessels are estimated to catch about 46.1 mt of widow rockfish in 2008, but do not have a specific allocation at this time. For the Pacific whiting fishery, 200 mt is being set aside and will be managed with bycatch limits.

r/ Canary rockfish - A coastwide canary rockfish stock assessment was completed in 2005 and the stock was estimated to be at 9.4 percent of its unfished biomass coastwide in 2005. The coastwide ABC of 179 mt is based on a F_{MSY} proxy of F50%. The OY of 44 mt is based on a rebuilding plan with a target year to rebuild of 2063 and a SPR harvest rate of 88.7 percent. The OY is reduced by 3.0 mt for the amount anticipated to be taken during research

activity. Tribal vessels are estimated to catch about 5 mt of canary rockfish under the 2008 commercial HG, but do not have a specific allocation at this time. South of 42° N. lat., the canary rockfish recreational fishery HG is 9.0 mt and north of 42° N. lat., the canary rockfish recreational fishery HG 8.2 mt.

s/ Chilipepper rockfish was last assessed in 1998. The ABC (2,700 mt) for the Monterey-Conception area is based on a three year average projection from 1999-2001 with a $F_{50\%}$ F_{MSY} proxy. Because the unfished biomass is estimated to be above 40 percent the unfished biomass, the default OY could be set equal to the ABC. However, the OY is set at 2,000 mt to discourage fishing on chilipepper, which is taken with bocaccio. Management measures to constrain the harvest of overfished species have reduced the availability of chilipepper rockfish to the fishery during the past several years. Because the harvest assumptions (from the most recent stock assessment) used to forecast future harvest were likely overestimates, carrying the previously used ABCs and OYs forward into 2008 was considered to be conservative and based on the best available data. Open access is allocated 44.3 percent (886 mt) of the commercial HG and limited entry is allocated 55.7 percent (1,114 mt) of the commercial HG.

t/ A bocaccio stock assessment updates and a rebuilding analysis were prepared in 2005. The bocaccio stock was estimated to be at 10.7 percent of its unfished biomass in 2005. The ABC of 618 mt for the Monterey-Conception is based on a $F_{50\%}$ F_{MSY} proxy. The OY of 218 is based on a rebuilding plan with a target year to rebuild of 2026 and a SPR harvest rate of 77.7 percent. The OY is reduced by 3.0 mt for the amount anticipated to be taken during research activity.

u/ Splitnose rockfish - The ABC is 615 mt in the southern area (Monterey-Conception). The 461 mt OY for the southern area reflects a 25 percent precautionary adjustment because of the less rigorous stock assessment for this stock. In the north, splitnose is included in the minor slope rockfish OY. Because the harvest assumptions used to forecast future harvest were likely overestimates, carrying the previously used ABCs and OYs forward into 20085 was considered to be conservative and based on the best available data.

v/ Yellowtail rockfish - A yellowtail rockfish stock assessment was prepared in 2005 for the Vancouver-Columbia-Eureka areas. Yellowtail rockfish was estimated to be above 40 percent of its unfished biomass in 2005. The ABC of 4,548 mt is a 2 year average ABC for 2007 and 2008 and is based on the 2005 stock assessment with the F_{MSY} proxy of $F_{50\%}$. The OY of 4,548 mt was set equal to the ABC, because the stock is above the precautionary threshold of $B_{40\%}$. Tribal vessels are estimated to catch about 539 mt of yellowtail rockfish in 2007, but do not have a specific allocation at this time. Tribal vessels are estimated to catch about 539 mt of yellowtail rockfish in 2008, but do not have a specific allocation at this time.

w/ Shortspine thornyhead was assessed in 2005 and the stock was estimated to be at 63 percent of its unfished biomass in 2005. The ABC of 2,476 mt is based on a F50% F_{MSY} proxy and is the two year average ABC for 2007 and 2008. For that portion of the stock (66 percent of the biomass) north of Point Conception (34° 27' N. lat.), the OY of 1,634 mt was set at equal to the ABC because the stock is estimated to be above the precautionary threshold. For that portion of the stock south of Point Conception (34 percent of the biomass), the OY of 421 mt was the portion of the ABC for the area reduced by 50 percent as a precautionary adjustment due to the short duration and amount

of survey data for that area. Tribal vessels are estimated to catch about 13 mt of shortspine thornyhead in 2008, but do not have a specific allocation at this time.

x/ Longspine thornyhead was assessed coastwide in 2005 and the stock was estimated to be at 71 percent of its unfished biomass in 2005. The coastwide ABC of 3,907 mt is based on a F50% F_{MSY} proxy and is the two year average OY for the 2007 and 2008 period. The OY is set equal to the ABC because the stock is above the precautionary threshold. Separate OYs are being established for the areas north and south of 34° 27' N. lat. (Point Conception). The OY for that portion of the stock in the northern area (79 percent) is set equal to the ABC. For that portion of the stock in the southern area (21 percent), the OY of 476 mt was the portion of the ABC for the area reduced by 25 percent as a precautionary adjustment due to the short duration and amount of survey data for that area.

y/ Cowcod in the Conception area was assessed in 2005 and the stock was estimated to be between 14 and 21 percent of its unfished biomass. The ABC for the area south of 36° N. lat., the Conception area, is 17 mt and is based on the 2005 stock assessment with a $F_{50\%}$ F_{MSY} proxy. The ABC for the Monterey area (19 mt)is based on average landings from 1993-1997. An OY of 4 mt is being set for both areas. The OY is based on a rebuilding plan with a target year to rebuild of 2039 and an SPR rate of 90.0 percent. The OY is reduced by 0.1 mt for the amount anticipated to be taken during research activity.

z/ Darkblotched rockfish was assessed in 2005 and was estimated to be at 16 percent of its unfished biomass in 2005. The ABC is projected to be 487 mt and is based on the 2005 stock assessment with an F_{MSY} proxy of F50%. The OY of 330 mt is based on a rebuilding plan with a target year to rebuild of 2011 and an SPR harvest rate of 60.7 percent in 2008. The OY is reduced by 3.0 mt for the amount anticipated to be taken during research activity.

aa/ Yelloweye rockfish was assessed in 2006 and is estimated to be at 17.7 percent of its unfished biomass coastwide. The 26 mt coastwide ABC is based on the new stock assessment and an F_{MSY} proxy of F50%. The 20 mt OY is based on a rebuilding plan with a target year to rebuild of 2084 and an SPR harvest rate of 60.8 percent in 2008. The OY is reduced by 3.0 mt for the amount anticipated to be taken during research activity. Tribal vessels are estimated to catch 2.3 mt of yelloweye rockfish of the commercial HG in 2008, but do not have a specific allocation at this time. South of 42° N. lat. the yelloweye rockfish recreational fishery HG is 2.1 mt and north of 42° N. lat. the yelloweye rockfish recreational fishery HG 6.8 mt.

bb/ California Scorpionfish south of 34° 27' N. lat. was assessed in 2005 and was estimated to be above 40 percent of its unfished biomass in 2005. The ABC of 219 mt is based on the new assessment with a harvest rate proxy of $F_{50\%}$ and is an average ABC for 2007 and 2008. Because the stock is above $B_{40\%}$ coastwide, the OY could be set equal to the ABC. The OY of 175 mt, which is lower than the ABC, reflects the highest historical catch levels.

cc/ Black rockfish was last assessed in 2003 for the Columbia and Eureka area and in 2000 for the Vancouver area. The ABC for the area north of 46°16' N. lat. is 540 mt and the ABC for the area south of 46°16' N. lat. is 722 mt which is the two year average OY for the 2007 and 2008 period. Because of an overlap in the assessed areas between Cape Falcon and the Columbia River, projections from the 2000 stock assessment were adjusted downward by 12 percent to account for the overlap. The ABCs were derived using an F_{MSY} proxy of F50%. Because the unfished biomass is estimated to be above 40 percent, the OYs were set equal to the ABCs. For the area north of 46°16' N. lat., the OY is 540 mt. The following tribal harvest guidelines are being set: 20,000 lb

(9.1 mt) north of Cape Alava, WA (48°09.50' N. lat.) and 10,000 lb (4.5 mt) between Destruction Island, WA (47°40' N. lat.) and Leadbetter Point, WA (46°38.17' N. lat.). For the area south of 46°16' N. lat., the OY is 722 mt. The black rockfish OY in the area south of 46°16' N. lat., is subdivided with separate HGs being set for the area north of 42° N. lat (419 mt/58 percent) and for the area south of 42° N. lat (303 mt/42 percent). For the southern area north of 42° N. lat., a range is presented for the recreational estimate (289-350 mt) and commercial HG (91 -111 mt). Specific values will be specified in the final rule. Of the 303 mt of black rockfish attributed to the area south of 42° N. lat., 168 mt is estimated to be taken in the recreational fisheries, resulting in a commercial HG of 135 mt.

dd/ Minor rockfish north includes the "remaining rockfish" and "other rockfish" categories in the Vancouver, Columbia, and Eureka areas combined. These species include "remaining rockfish", which generally includes species that have been assessed by less rigorous methods than stock assessments, and "other rockfish", which includes species that do not have quantifiable stock assessments. The ABC of 3,680 mt is the sum of the individual "remaining rockfish" ABCs plus the "other rockfish" ABCs. The remaining rockfish ABCs continue to be reduced by 25 percent (F=0.75M) as a precautionary adjustment. To obtain the total catch OY of 2,270 mt, the remaining rockfish ABCs were further reduced by 25 percent and other rockfish ABCs were reduced by 50 percent. This was a precautionary measure to address limited stock assessment information. Tribal vessels are estimated to catch about 38 mt of minor rockfish in 2008, but do not have a specific allocation at this time.

ee/ Minor rockfish south includes the "remaining rockfish" and "other rockfish" categories in the Monterey and Conception areas combined. These species include "remaining rockfish" which generally includes species that have been assessed by less rigorous methods than stock assessment, and "other rockfish" which includes species that do not have quantifiable stock assessments. The ABC of 3,403 mt is the sum of the individual "remaining rockfish" ABCs plus the "other rockfish" ABCs. The remaining rockfish ABCs continue to be reduced by 25 percent (F=0.75M) as a precautionary adjustment. The remaining rockfish ABCs are further reduced by 25 percent, with the exception of blackgill rockfish (see footnote gg). The other rockfish ABCs were reduced by 50 percent. This was a precautionary measure due to limited stock assessment information. The resulting minor rockfish OY is 1,904 mt.

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

gg/ Blackgill rockfish in the Monterey and Conception areas was assessed in 2005 and is estimated to be at 49.9 percent of its unfished biomass in 2008. The ABC of 292 mt for the Monterey and Conception areas is based on the 2005 stock assessment with an F_{MSY} proxy of F50% and is the two year average ABC for the 2007 and 2008 periods. This stock contributes 292 mt towards minor rockfish south.

hh/ "Other rockfish" includes rockfish species listed in 50 CFR 660.302. California scorpionfish and gopher rockfish were assessed in 2005 and are being removed from this category. The California Scorpionfish contribution of 163 mt and the gopher rockfish contribution of 97 mt were removed from the ABC value. The ABC for the remaining species is based on the 1996 review of commercial Sebastes landings and includes an estimate of recreational landings. These species have never been assessed quantitatively.

ii/ "Other fish" includes sharks, skates, rays, ratfish, morids, grenadiers, kelp greenling, and other groundfish species noted above in footnote d/.

kk/ Sablefish allocation north of 36° N. lat. - The limited entry allocation is further divided with 58 percent allocated to the trawl fishery and 42 percent allocated to the fixed-gear fishery.

jj/ Specific open access/limited entry allocations have been suspended during the rebuilding period as necessary to meet the overall rebuilding target while allowing harvest of healthy stocks.

* * * * *

[FR Doc. E8–10382 Filed 5–8–08; 8:45 am]
BILLING CODE 3510–22–C

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 679

[Docket No. 071106673–8011–02]

RIN 0648–XH78

Fisheries of the Exclusive Economic Zone Off Alaska; Pacific Cod by Catcher Vessels Less Than 60 ft (18.3 m) LOA Using Pot or Hook-and-Line Gear in the Bering Sea and Aleutian Islands Management Area

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

ACTION: Temporary rule; closure.

SUMMARY: NMFS is prohibiting directed fishing for Pacific cod by catcher vessels less than 60 ft (<18.3 meters (m)) length overall (LOA) using pot or hook-and-line gear in the Bering Sea and Aleutian Islands management area (BSAI). This action is necessary to prevent exceeding the 2008 Pacific cod total allowable catch (TAC) allocated to catcher vessels < 60 ft (18.3 m) LOA using pot or hook-and-line gear in the BSAI.

DATES: Effective 1200 hrs, Alaska local time (A.l.t.), May 6, 2008, through 2400 hrs, A.l.t., December 31, 2008.

FOR FURTHER INFORMATION CONTACT: Jennifer Hogan, 908–586–7228.

SUPPLEMENTARY INFORMATION: NMFS manages the groundfish fishery in the BSAI according to the Fishery Management Plan for Groundfish of the Bering Sea and Aleutian Islands Management Area (FMP) prepared by the North Pacific Fishery Management Council under authority of the Magnuson-Stevens Fishery Conservation and Management Act. Regulations governing fishing by U.S. vessels in accordance with the FMP appear at subpart H of 50 CFR part 600 and 50 CFR part 679.

The 2008 and 2009 final harvest specification for groundfish in the BSAI (73 FR 10160, February 26, 2008), the reallocation on February 26, 2008 (73 FR 11562, March 4, 2008), and the reallocation on April 10, 2008 (73 FR 19748, April 11, 2008) allocated a directed fishing allowance for Pacific cod of 4,660 metric tons to catcher vessels <60 ft (18.3 m) LOA using pot or hook-and-line gear in the BSAI.

In accordance with § 679.20(d)(1)(iii), the Regional Administrator finds that the 2008 Pacific cod directed fishing allowance allocated to catcher vessels less than 60 ft (18.3 m) LOA using pot or hook-and-line gear in the BSAI has been reached. Consequently, NMFS is prohibiting directed fishing for Pacific cod by catcher vessels <60 ft (18.3 m) LOA using pot or hook-and-line gear in the BSAI.

After the effective date of this closure the maximum retainable amounts at § 679.20(e) and (f) apply at any time during a trip.

Classification

This action responds to the best available information recently obtained from the fishery. The Assistant Administrator for Fisheries, NOAA (AA), finds good cause to waive the requirement to provide prior notice and opportunity for public comment pursuant to the authority set forth at 5 U.S.C. 553(b)(B) as such requirement is impracticable and contrary to the public interest. This requirement is impracticable and contrary to the public interest as it would prevent NMFS from responding to the most recent fisheries data in a timely fashion and would delay the closure of Pacific cod by catcher vessels <60 ft (18.3 m) LOA using pot or hook-and-line gear in the BSAI. NMFS was unable to publish a notice providing time for public comment because the most recent, relevant data only became available as of May 5, 2008.

The AA also finds good cause to waive the 30–day delay in the effective date of this action under 5 U.S.C. 553(d)(3). This finding is based upon the reasons provided above for waiver of prior notice and opportunity for public comment.

This action is required by § 679.20 and is exempt from review under Executive Order 12866.

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

Dated: May 6, 2008.

James P. Burgess,

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

[FR Doc. 08–1238 Filed 5–6–08; 12:49 pm]
BILLING CODE 3510–22–S