

duty beyond that required by state law, it does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Public Law 104-4). This proposed rule also does not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes, as specified by Executive Order 13175 (65 FR 67249, November 9, 2000), nor will it have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132 (64 FR 43255, August 10, 1999), because it merely proposes to approve a state rule implementing a Federal requirement, and does not alter the relationship or the distribution of power and responsibilities established in the Clean Air Act. This proposed rule also is not subject to Executive Order 13045 (62 FR 19885, April 23, 1997), because it approves a State rule implementing a Federal standard. In reviewing SIP submissions, EPA's role is to approve State choices, provided that they meet the criteria of the Clean Air Act. In this context, in the absence of a prior existing requirement for the State to use voluntary consensus standards (VCS), EPA has no authority to disapprove a SIP submission for failure to use VCS. It would thus be inconsistent with applicable law for EPA, when it reviews a SIP submission, to use VCS in place of a SIP submission that otherwise satisfies the provisions of the Clean Air Act. Redesignation is an action that affects the status of a geographical area and does not impose any new requirements on sources. Thus, the requirements of section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) do not apply. As required by section 3 of Executive Order 12988 (61 FR 4729, February 7, 1996), in issuing this proposed rule, EPA has taken the necessary steps to eliminate drafting errors and ambiguity, minimize potential litigation, and provide a clear legal standard for affected conduct. EPA has complied with Executive Order 12630 (53 FR 8859, March 15, 1988) by examining the takings implications of the rule in accordance with the "Attorney General's Supplemental Guidelines for the Evaluation of Risk and Avoidance of Unanticipated

Takings" issued under the executive order.

This rule, proposing to approve the redesignation of the Lancaster Area to attainment for the 8-hour ozone NAAQS, the associated maintenance plan, the 2002 base-year inventory, and the MVEB identified in the maintenance plan, does not impose an information collection burden under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

#### List of Subjects

##### 40 CFR Part 52

Environmental protection, Air pollution control, Nitrogen dioxide, Ozone, Reporting and recordkeeping requirements, Volatile organic compounds.

##### 40 CFR Part 81

Air pollution control, National parks, Wilderness areas.

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

Dated: May 4, 2007.

**James W. Newsom,**

*Acting Regional Administrator, Region III.*

[FR Doc. E7-9296 Filed 5-14-07; 8:45 am]

**BILLING CODE 6560-50-P**

## DEPARTMENT OF COMMERCE

### National Oceanic and Atmospheric Administration

#### 50 CFR Part 660

[Docket No. 061219338-6338-01; I.D. 120806A]

RIN 0648-AU69

### Fisheries off West Coast States and in the Western Pacific; Amendment 15

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

**ACTION:** Proposed rule; request for comments.

**SUMMARY:** The Secretary of Commerce (Secretary) requests public comments on a proposed rule to implement Amendment 15 to the Pacific Coast Salmon Fisheries Management Plan (Plan) in accordance with the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act). This Amendment was approved by NMFS on March 22, 2007, and in accordance with the notification procedures of the Magnuson-Stevens Act the Pacific Fishery Management Council (PFMC) was notified of this approval. This

action is intended to provide management flexibility in times of low Klamath River fall-run Chinook (KRFC) abundance, while preserving the long-term productive capacity of the stock and thereby ensuring it continues to contribute meaningfully to ocean and river fisheries in the future.

**DATES:** A notice of availability (NOA) of Amendment 15 was published on December 20, 2006 under the RIN 0648-AV07. Written comments on the amendment's NOA were due February 20, 2007. Written comments on this proposed rule must be received by June 28, 2007.

**ADDRESSES:** You may submit comments, identified by "I.D. 120806A" by any of the following methods:

- Email:

[salmon2006amend15@noaa.gov](mailto:salmon2006amend15@noaa.gov)

- Federal eRulemaking Portal: <http://www.regulations.gov>. Follow the instructions for submitting comments, and include "I.D. 120806A" in the subject line of the message.

- Mail: D. Robert Lohn, Administrator, Northwest Region, NMFS, Sand Point Way NE, BIN C15700, Seattle, WA 98115-0070; or to Rodney R. McInnis, Administrator, Southwest Region, NMFS, 501 West Ocean Boulevard, Suite 4200, Long Beach, CA 90802-4213.

- Fax: 206-526-6426

#### FOR FURTHER INFORMATION CONTACT:

Sarah McAvinchey by phone at 206-526-6140, fax 206-526-6736 and email at [sarah.mcavinchey@noaa.gov](mailto:sarah.mcavinchey@noaa.gov), or Eric Chavez by phone at 508-980-4064, email at [eric.chavez@noaa.gov](mailto:eric.chavez@noaa.gov), fax 508-908-4047 or contact Pacific Fishery Management Council by phone at 503-820-2290 or by fax at 503-820-2299.

#### SUPPLEMENTARY INFORMATION:

##### Background

The Pacific Coast Salmon Fishery Management Plan (FMP) was developed by the Pacific Fishery Management Council (PFMC or Council) under the Magnuson-Stevens Act, 16 U.S.C. 1801 *et seq.*, and approved by the Secretary in 1978. Since then, the FMP has been amended 14 times, with implementing regulations codified at 50 CFR part 660, subpart H. From 1979 to 1983, the FMP was amended annually. In 1984, a framework amendment was implemented that provided the mechanism for making preseason and inseason adjustments in the regulations without annual amendments.

Amendment 9 to the FMP was approved in 1988 and implemented in ocean fishing regulations effective May 1, 1989. This Salmon FMP amendment codified the harvest rate management

approach developed by the Klamath River Salmon Management Group (KRSMG) and approved by the Klamath Fishery Management Council and the Council. It called for the regulation of ocean fisheries to meet a spawner reduction rate of up to 65 percent (later increased to 67 percent) of each brood of KRFC except that 35,000 naturally spawning adults would be protected in all years, creating a conservation floor. In the Klamath Basin, "natural" spawners refers to spawning location, not to parental origin; i.e., hatchery origin fish spawning in a natural stream are counted as natural spawners. Various allowable ocean and river harvest rate combinations were specified in the Salmon FMP. The tribal and non-tribal harvest sharing agreement in effect at the time allowed for ocean and river harvest rates of up to 35 percent and 50 percent, respectively, based on age-4 fish. The harvest rate approach was adopted because of uncertainty in the capacity of the Basin for fall-run Chinook salmon. The harvest rate plan recommended by the Klamath River Technical Team was subsequently adopted as part of Salmon Plan Amendment 9. The Council concluded that inclusion of the conservation floor protected the stock by reducing the risk of prolonged depressed production, provided greater long term yield, and resulted in a high probability of attaining sufficient escapement for hatchery production. When the escapement floor was adopted into the Salmon FMP through Amendment 9, the Council required that modification of the floor could only occur by Plan amendment.

Under the FMP a conservation alert is triggered when the projected stock abundance is less than 35,000 natural spawners. When a conservation alert is triggered, the FMP requires closure of all salmon fisheries within the Council's jurisdiction that impact the stock.

The Council prepared Amendment 15 to the FMP under the provisions of the Magnuson-Stevens Act and submitted it for review by the Secretary. A NOA for Amendment 15 was filed with the Office of the Federal Register on December 19, 2006, announcing a public comment period.

The impetus for this initiative began in 2005 because management measures adopted to protect Klamath River fall-run Chinook salmon (KRFC) reduced access to a projected high ocean abundance of Sacramento River fall-run Chinook salmon. The need was elevated in 2006 when projected low abundance of KRFC led the Council and NMFS to conclude that even more restrictive management measures were needed.

NMFS' implementing rules do not allow for any level of minimal or limited catch of KRFC when the projected stock abundance is less than 35,000 natural spawners (Conservation Alert Standard); the only option to allow for such fishing is to amend the FMP following the Magnuson-Stevens Act procedures or to implement an emergency rule.

In 2006, the status of KRFC included a failure to meet the 35,000 natural spawner escapement floor for the stock for the past two years, and a projected natural spawner escapement of less than 35,000 natural spawners. After reviewing the available data on the stock during its March and April meetings, and in collaboration with NMFS, the states, tribes, and ocean fishermen, the Council determined that conditions in 2006 met the criteria to temporarily amend the Salmon FMP KRFC conservation objective to allow a limited fishery that would allow a projected natural escapement of 21,100 natural adult spawners. This increase in impacts to KRFC was determined to be acceptable in terms of maintaining the long-term productivity of the stock while minimizing to the extent practicable the economic impacts on the fishing community and states. NMFS concurred with the Council assessment and implemented emergency regulations effective May 1, 2006. Emergency action was taken to allow minimal impact on KRFC in directed ocean salmon fisheries between Cape Falcon, Oregon and Point Sur, California in 2006 (71 FR 26254, May 4, 2006).

The purpose of Amendment 15 is two-fold: (1) to give more flexibility to the management process when the escapement floor of 35,000 natural spawners for KRFC is projected not to be met; and (2) to provide for appropriate opportunities to access more robust Chinook salmon stocks that are typically available in the Council managed area. This amendment would, in appropriate circumstances, allow for the Council to develop and recommend fisheries, and NMFS to implement fisheries without the need for an emergency rule in years when the abundance of KRFC are low.

The Council identified a preferred alternative at the November 2006 Council meeting. Under the preferred alternative Amendment 15 would allow the Council to recommend and NMFS to implement in the case of Klamath River fall Chinook, to implement de minimis fisheries, which would: permit an ocean impact rate of no more than 10 percent on age-4 Klamath River fall Chinook, if the projected natural spawning escapement associated with a 10 percent

age-4 ocean impact rate, including river recreational and tribal impacts, is between 22,000 and 35,000. If the projected natural escapement associated with a 10 percent age-4 ocean impact rate is less than 22,000, the allowable age-4 ocean impact rate shall be reduced to reflect the status of the stock. During the pre-season planning process to set an allowable age-4 ocean impact rate the Council shall consider the following:

- a. Critically low natural spawner abundance, including the risk of Klamath Basin substocks dropping below crucial genetic thresholds;
- b. A series of low spawner abundance in recent years;
- c. The status of co-mingled stocks;
- d. El Nino or other adverse environmental conditions;
- e. Endangered Species Act (ESA) considerations; and
- f. Other considerations as appropriate.

When considering these items, the Council shall determine that the final ocean impact rate will not jeopardize the capacity of the fishery to produce the maximum sustainable yield on a continuing basis. Implementation of de minimis fisheries will depend on year specific estimates of ocean abundance and age composition, which will be determined by the STT prior to the March Council meeting. Ocean fishery impacts to the returning brood incurred during the previous fall/winter fisheries will be counted against the allowable age-4 ocean impact rate. Amendment 15 does not require that a de minimis fishery be implemented if the natural spawner floor is not met. The provisions of Amendment 15 allow the Council to consider implementing a de minimis fishery that would be limited to no more than 10 percent age-4 ocean impact rate based on the above described criteria.

Allowing limited opportunity for harvest when fisheries would otherwise be closed should lessen severe economic consequences to local communities and states. Historically, KRFC was a primary contributor to marine fisheries off the coasts of Oregon and California. While this amendment seeks to provide additional management flexibility in times of low KRFC abundance, the overriding purpose of the FMP remains to preserve the long-term productive capacity of the stock and thereby ensure it continues to contribute meaningfully to ocean and river fisheries in the future. This amendment does not change the 35,000 natural spawner conservation floor. Annual estimates of fishery catches, spawner escapements, spawner age composition and coded wire tag contributions are usually available by

early to mid-January each year for use by the Salmon Technical Team (STT) and the KRTAT in updating KRFC fishery resource estimates, models, and forecasts.

#### Amendment 15 Approval

Approval of this amendment by NMFS is conditioned upon its understanding of the particular meaning and intention of the amendment. In its March 22, 2007 letter to the PFMC, NMFS expressed the following understanding, which will be used by NMFS in applying Amendment 15:

As you know, the purpose of Amendment 15 is to provide limited opportunity for harvest when fisheries would otherwise be closed to mitigate, to the degree possible, severe economic consequences to local communities and states. Historically, Klamath River fall Chinook (KRFC) was a primary contributor to marine fisheries off the coasts of Oregon and California. While this amendment seeks to provide additional management flexibility in times of low KRFC abundance, the overriding purpose remains to preserve the long-term productive capacity of the stock and thereby ensure it continues to contribute meaningfully to ocean and river fisheries in the future.

The Council prepared Amendment 15 to the FMP under the provisions of the Magnuson-Stevens Act and submitted it for review by the Secretary on December 13, 2006. A notice of availability for Amendment 15 was published in the **Federal Register** on December 20, 2006 announcing a public comment period, this comment period closed on February 20, 2007. A proposed rule to implement Amendment 15 is currently under review, and we expect to have the final rule effective for the 2008 fishing season. Regulations implementing Amendment 15 will include an amended Federal regulation at 50 CFR 660.410.

It should be clearly understood that we do not interpret Amendment 15 to set a fixed schedule of allowable salmon harvest whenever the forecasted abundance of natural spawners falls within the range of 35,000 to 12,000. Rather, we understand Amendment 15 to allow the Council to entertain, without emergency rulemaking, the possibility of some de minimis harvest of KRFC in order to allow mixed stock ocean fisheries to occur when the preseason forecast of naturally-spawning KRFC falls below 35,000.

Nothing in this Amendment automatically predetermines that a particular level of harvest of Klamath fall Chinook will be acceptable or allowed. The extent of the harvest actually allowed in a particular year will be limited by the general requirements of the Magnuson-Stevens Act to maintain maximum sustainable fisheries on a continuing basis, by the specific factors listed in Amendment 15, and by the requirement to meet our trust responsibilities to affected Indian tribes.

The factors for consideration listed in the Amendment are important and need to be weighed based on the specific circumstances of each applicable future harvest season, and

using the best available scientific information, which will continue to develop in the future. We anticipate that the maximum allowable 10 percent ocean impact rate will be implemented only when the anticipated escapement is near the 35,000 natural spawner floor. As escapement falls below approximately 30,000 the impact rate will need to decline substantially.

There may be some opportunity for harvest when projected escapements are in the range of 12,000 to 22,000, but the opportunity would be limited at best, and justified only to the degree that there are mitigating year specific circumstances. We acknowledge that, in 2006, Klamath fall Chinook harvests were approved down to a projected escapement of 22,000. However, this determination was based on the unique circumstances of that year and should not be understood as a precedent that harvest at that level will be regularly acceptable. In addition, although the Amendment allows for harvest if escapement is projected below 12,000, when we take into account the considerations stated in Amendment 15, we see little or no prospect for harvest when projected escapement is at that level.

We will continue to work with the Council to support the best possible fishery management decisions. While we hope that the Klamath runs will rebuild to the point that it will not be necessary to even consider harvest questions at the levels described in Amendment 15, should it become necessary to do so, we will work closely with you to develop an appropriate evaluation and sound decision based on what we know at that time.

#### Classification

NMFS has determined that this proposed rule is consistent with the FMP amendment and preliminarily determined that the rule is consistent with the Magnuson-Stevens Act and other applicable laws, details of each are as follows.

The Council prepared an environmental assessment for this FMP amendment that discusses the impact on the environment as a result of this rule. A copy of the environmental assessment is available from the Council (see **ADDRESSES**).

This proposed rule has been determined to be significant for purposes of Executive Order 12866.

An initial regulatory flexibility analysis (IRFA) was prepared, as required by section 603 of the Regulatory Flexibility Act (RFA). The IRFA describes the economic impact this proposed rule, if adopted, would have on small entities. A description of the action, why it is being considered, and the legal basis for this action are contained at the beginning of this section in the preamble and in the **SUMMARY** section of the preamble. A summary of the analysis follows.

Commercial salmon harvesting vessels buyers/processors, and charter/party boats are expected to be the only

type of small entities directly impacted by the proposed action. Section 603 (b)(1)-(5) of the RFA identifies the elements that should be included in the IRFA. These elements are bulleted below, followed by information that addresses each element.

- Description of the reasons why action by the agency is being considered:

This action is needed to prevent fishery restrictions that impose severe economic consequences to local communities and states. Historically, KRFC was a primary contributor to marine fisheries off the coasts of Oregon and California. While the FMP amendment seeks to provide management flexibility in times of scarcity, there is an overriding purpose to preserve the long-term productive capacity of the stock to ensure meaningful contributions to ocean and river fisheries in the future.

- Statement of the objectives of, and legal basis for, the proposed rule:

The Salmon FMP directs ocean salmon fishery management actions relative to the exclusive economic zone (EEZ) off the coasts of Washington, Oregon, and California. Under the existing Salmon FMP, a preseason projection that the conservation floor for KRFC will not be met triggers a Conservation Alert, which provides the Council and NMFS only one option: to close all salmon fisheries within its jurisdiction that impact the stock. These fisheries include ocean salmon fisheries between Cape Falcon, Oregon and Point Sur, California. Currently, any other option can only be addressed through the emergency regulation process as provided in the Magnuson-Stevens Act and implemented by NMFS.

The purpose of Amendment 15 is two-fold: (1) to give more flexibility to the management process when the escapement floor of 35,000 natural spawners for KRFC is projected not to be met; and (2) to provide for appropriate opportunities to access more robust Chinook salmon stocks that are typically available in the Council managed area. This amendment would, in appropriate circumstances, allow for the Council to develop and recommend fisheries, and NMFS to implement fisheries without the need for an emergency rule in years when the abundance of KRFC are low.

- Description of and an estimate of the number of small entities to which the proposed rule would apply:

The small entities that would be affected by the proposed action are the vessels that compose the California and Oregon commercial salmon troll fleet and buyers/processors, the charter/party

boat fleet between Cape Falcon, Oregon, and Point Sur, California, and other fishery dependent businesses. In years with sufficient surplus, the Yurok and Hoopa Valley tribes sell salmon in excess of their subsistence needs. The generally acknowledged minimum tribal subsistence need is about 12,000 KRFC. In years that a Conservation Alert is triggered, it is unlikely the tribal share would exceed 12,000 KRFC; therefore there would be no difference in economic impact to tribal businesses between the Status Quo and Preferred alternative. Therefore, no analysis of the tribal fishery is included in the IRFA.

#### *Salmon Troll Fleet*

The financial impacts analysis focuses on the ex-vessel revenue effects of each alternative on salmon troll vessels. Financial impacts were evaluated based only on changes in salmon ex-vessel revenues relative to the Status Quo Alternative. Vessel counts are based on unique vessel identifiers. However, it is known that in many cases a single firm may own more than one vessel; therefore, the counts should be considered upper bound estimates. Additionally, businesses owning vessels may have revenue from fisheries in other geographic areas, such as Alaska, or from non-salmon fishing activities. Therefore, it is likely that when all operations of a firm are aggregated, some of the small entities identified here are actually larger than indicated. Approximately 2,718 vessels were permitted to operate in the commercial salmon troll fisheries in Oregon and/or California in 2005, although the active fleet was considerably smaller, with an average of approximately 1,068 vessels participating in 2003–2005. In addition, only about 13–19 percent of the active fleet landed 50 percent of the catch, and 52–55 percent of the fleet landed 90 percent of the catch in those years (STT 2006a). Of the 1,068 vessels, 40 percent participated only in salmon fisheries, while the other 60 percent participated in multiple fisheries. All of these vessels would be considered small businesses under the SBA standards. The active fleet participation is dynamic with respect to annual opportunity in the salmon fishery. In years with less opportunity, some salmon vessels choose not to participate, and either engage in other fisheries or sell out. In years with more opportunity, previously inactive vessels may choose to participate, or may be sold to more active fishermen. Under the Status Quo Alternative, there would be no participation in the commercial salmon fishery between Cape Falcon, Oregon and Point Sur, California during years

that a Conservation Alert was triggered. Under the fixed cap alternatives, the active fleet was projected to be approximately 268 to 354. The 2003–2005 average salmon related revenue per troll vessel was estimated at \$20,900. For salmon only troll vessels the average was \$14,300 and for multiple species troll vessels the average was \$25,200. Under the fixed cap alternatives, the average salmon-related revenue was projected at \$1.6 million to 3.1 million in a Conservation Alert Year and applying a medium troller success rate scenario.

#### *Processors/Buyers*

A relatively small number of large processor/buyer firms handle most of the ocean salmon catch on the West Coast. There were 464 firms with state processor/buyer licenses that sold salmon in Oregon and California in 2004 (PFMC and NMFS 2006). These firms include both operators of processing plants and buyers that may do little more than hold the fish prior to their shipment to a processor or market. In some cases, the buyers may be owners of vessels who also own licenses allowing them to sell fish directly to the public or retail markets. Most larger salmon buying firms acquire fish from sites in more than one port. The largest salmon buyers tend to buy salmon from many vessels landing and buy fish in several ports. The top ocean caught salmon buying firms include some firms that are not among the top fish buyers when all species are counted. Larger processing firms are more likely to handle ocean caught salmon than smaller firms. However, there are many small buyers that specialize in salmon, only handle small amounts of product, and receive product from one or two vessels. It is likely that most of these buyers are vessels that also have licenses allowing them to sell directly to the public or other retail outlets (e.g., restaurants). A thorough analysis of the effects of the Preferred Alternative would include estimates of the numbers of vessels acting as buyers/processors, as well as other buyer/processor sectors, the recent history of revenue generated by the various classes of buyer/processors, and a projection of revenue generated under the Status Quo and Preferred alternatives in Conservation Alert years. However, because many of the small business buyer/processors include vessel ownership, and because most buyer/processors deal in multiple fisheries, it is likely the effects of the Preferred Alternative are proportional to those estimated and projected for the salmon troll fleet above.

#### *Charter/Party Boats*

Approximately 103 charter boats participated in California recreational ocean salmon fisheries in 2003–2005 (STT 2006a). In Oregon, there was an average of 211 licensed charter vessels during these same years. An estimated 6 percent of the Oregon charter effort occurred in the Astoria area during 2003–2005 (STT 2006a). In Oregon there was an average of 211 licensed charter vessels. There was no information available for port of operation for Oregon charter vessels, but an average of 18 percent of Oregon charter based salmon trips originated in the Astoria area. There was also no information available on fishery participation for Oregon vessels, and some may not have engaged in salmon fishing. Conversely, it is likely that most of the Charter fleet in both states participated in fisheries other than salmon, such as California halibut, Pacific Halibut, bottomfish, and albacore.

Separate economic impact estimates were not available for charter and private boat salmon fishing sectors; however during 2003–2005, Oregon and California recreational salmon fishing effort averaged 297,200 angler trips for both boat types, with charter boat fishing averaging 31 percent of the total during. Based on this assumption the projected state level income impact of the de minimis fishery alternatives under the fixed cap alternatives in a Conservation Alert Year ranged from \$6.2 million to \$6.8 million dollars. For the Status Quo Alternative the economic impact was about \$322,000. Based on an assumed fleet of 314 vessels, the average economic impact per vessel was about \$3,200 for the Status Quo Alternative and \$19,700 to \$21,700 annually for the fixed cap alternatives.

#### *Other Small Businesses*

In addition to commercial fishing vessels, other fishery-dependent businesses that may be affected include suppliers, buyers who act as intermediaries between vessels and consumers, processors who purchase raw materials from commercial vessels to produce seafood products, and charter or party vessels that provide recreational fishing experience for paying customers, among others. A thorough accounting of net benefits would include measurement of producer surpluses accruing to these business sectors as well as to fishing vessels.

- A description of the projected reporting, recordkeeping, and other compliance requirements of the proposed rule, including an estimate of

the classes of small entities that will be subject to the requirements of the report or record:

There were no new reporting or recordkeeping requirements that are proposed as part of this action.

- An identification, to the extent practicable, of all relevant Federal rules, which may duplicate, overlap, or conflict with the proposed rule:

No Federal rules have been identified that duplicate, overlap, or conflict with the alternatives. Public comment is hereby solicited, identifying such rules.

- A description of any significant alternatives to the proposed rule that accomplish the stated objectives that would minimize any significant economic impact of the proposed rule on small entities:

The decision to set the de minimis harvest rate cap at 10 percent was determined through the consideration of ecological, fishery, and economic effects of each alternative. It should be noted that modification of the current 35,000 naturally spawning adult floor to some other value would not address the issue of de minimis fishing opportunity in low abundance years, which is a primary reason for the current FMP amendment effort. The Council was presented with modeling results from the Salmon Amendment Committee (SAC) at its September meeting which examined each of the alternatives. These results showed little difference in long term effects on the stock size between each of the proposed alternatives. Differences among the de minimis alternatives (status quo, 5 percent, 10 percent, 13 percent) in terms of aggregate salmon troll revenues and associated income impacts indicated little difference among the alternatives in terms of long-term economic effects. The alternatives, however, indicated more substantial differences when the analysis focused on fishery outcomes in Conservation Alert years. The 13 percent alternative showed a higher probability of the age-4 ocean harvest rate going above 16 percent, which is the ESA Consultation Standard for threatened California Coastal Chinook. The 13 percent alternative also showed a higher probability of reducing the tributary spawning escapement below 720, which is considered to be a crucial genetic threshold. The 5 percent and the status quo alternatives were also examined and while they would both be a lower catch limit than the 10 percent and 13 percent alternatives they would provide little in the way of economic benefit to the fishery. The 10 percent

alternative was chosen because it will not impact the long term productivity of the stock, especially when provisions are set to reduce the cap as needed and it provides some economic relief to the fishery. The model projections showed that the 10 percent alternative would allow for more fishing days, a higher catch of KRFC and a higher revenue than the 5 percent alternative.

This rule provides authority under certain circumstances for de minimis fisheries. The specific impacts of annual measures will be assessed annually during the development of annual measures. Additionally, the specific impacts of any de minimis fisheries pursuant to the authority of Amendment 15 will be assessed at that time.

Since 1989, NMFS has listed 27 ESUs of salmonids on the West Coast. As the listings have occurred, NMFS has conducted formal ESA section 7 consultations and issued biological opinions, and made determinations under section 4(d) of the ESA, that consider the impacts to listed salmonid species resulting from proposed implementation of the Salmon FMP, or in some cases, from proposed implementation of the annual management measures. Associated with the biological opinions are incidental take statements that specify the level of take that is expected. Some of the biological opinions have concluded that implementation of the Salmon FMP is not likely to jeopardize the continued existence of certain listed salmonid ESUs and provide incidental take statements. Other biological opinions have found that implementation of the Salmon FMP is likely to jeopardize certain listed ESUs and have identified reasonable and prudent alternatives (consultation standards) that would avoid the likelihood of jeopardizing the continued existence of the ESU under consideration, and provided an incidental take statement for the reasonable and prudent alternative.

NMFS has determined that fishing activities conducted pursuant to this rule will affect endangered and threatened species and critical habitat under the ESA but will not jeopardize the continued existence of those species. NMFS will continue to assess the impact of the fishery each year during the development of annual measures. All alternatives would meet NMFS ESA consultation standards for listed salmon stocks.

The West Coast ocean salmon fisheries are considered a Category III fishery under the Marine Mammal

Protection Act, indicating a remote likelihood of or no known serious injuries or mortalities to marine mammals, in the annual list of fisheries published in the **Federal Register**. Based on its Category III status, the incidental take of marine mammals in the West Coast salmon fisheries does not significantly impact marine mammal stocks.

Klamath River tribes with federally recognized fishing rights may be impacted by Council-area fisheries. Accordingly the FMP amendment was developed with consideration of tribal fishing rights. The Hoopa Valley Tribe and the Yurok Tribe were both represented on the Council's Ad Hoc Salmon Amendment Committee, which was responsible for development of this FMP amendment. In accordance with the Magnuson-Stevens Act there is a tribal representative on the Council. A copy of the Environmental Assessment is available from the Council.

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

Fisheries, Fishing, Reporting and recordkeeping requirements.

Dated: May 9, 2007.

**William T. Hogarth,**

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

For the reason set out in the preamble, NMFS proposes to amend 50 CFR part 660 as follows:

#### PART 660—FISHERIES OFF WEST COAST STATES

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

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

2. In § 660.410 revise paragraph (b)(1) to read as follows:

#### § 660.410 Conservation objectives.

\* \* \* \* \*

(b) \* \* \*

(1) A comprehensive technical review of the best scientific information available provides conclusive evidence that, in the view of the Council, the Scientific and Statistical Committee, and the Salmon Technical Team, justifies modification of a conservation objective: except that the 35,000 natural spawner floor and the de minimis fishing provisions for Klamath River fall Chinook may be changed only by amendment.

\* \* \* \* \*

[FR Doc. E7-9329 Filed 5-14-07; 8:45 am]

BILLING CODE 3510-22-S