negatively impact anticipated international, state, and tribal salmon fisheries, thereby undermining the purposes of this agency action.

To enhance notification of the fishing industry of these new measures, NMFS is announcing the new measures over the telephone hotline used for inseason management actions and is also posting the regulations on both of its West Coast regional Web sites (*www.nwr.noaa.gov* and *swr.nmfs.noaa.gov*). NMFS is also advising the States of Washington, Oregon, and California on the new management measures. These states announce the seasons for applicable state and Federal fisheries through their own public notification systems.

This action contains collection-of-information requirements subject to the Paperwork Reduction Act (PRA), and which have been approved by the Office of Management and Budget (OMB) under control number 0648–0433. The public reporting burden for providing notifications if landing area restrictions cannot be met is estimated to average 15 minutes per response. This estimate includes the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding this burden estimate, or any other aspect of this data collection, including suggestions for reducing the burden, to NMFS (see **ADDRESSES**) and by e-mail to *David_Rostker@omb.eop.gov*, or fax to 202–395–7285.

Notwithstanding any other provision of the law, no person is required to respond to, nor shall any person be subject to a penalty for failure to comply with, a collection of information subject to the requirements of the PRA, unless that collection of information displays a currently valid OMB control number.

NMFS has current ESA biological opinions that cover fishing under these regulations on all listed salmon species, except LCR Chinook. NMFS reiterated their consultation standards for all ESA listed salmon and steelhead species in their annual Guidance letter to the Council dated March 3, 2009. Some of NMFS past biological opinions have found no jeopardy, and others have found jeopardy, but provided reasonable and prudent alternatives to avoid jeopardy. The management measures for 2009 are consistent with the biological opinions that found no jeopardy, and with the reasonable and prudent alternatives in the jeopardy biological opinions. NMFS consulted this year on the effects of the 2009 annual regulations on LCR Chinook. NMFS concluded that the proposed 2009 fisheries are not likely to jeopardize the continued existence of LCR Chinook. The Council's recommended management measures therefore comply with NMFS' consultation standards and guidance for all listed salmon species which may be affected by Council fisheries. In most cases, the recommended measures result in impacts that are more restrictive than NMFS' ESA requirements.

Southern resident killer whales were listed as endangered effective February 16, 2006. NMFS consulted on the effects of the 2006, 2007, and 2008 fisheries on killer whales and concluded that the fisheries were not likely to jeopardize the continued existence of the species. NMFS is currently consulting regarding the effects of fisheries managed under the Council's Salmon FMP on the food supply for killer whales through a separate ESA consultation and biological opinion. NMFS expects to complete the consultation prior to May 1, 2009 or shortly thereafter. While the consultation may not be completed prior to approval of this action, NMFS has determined that the anticipated fisheries will not make any irreversible or irretrievable commitment of resources with respect to the agency action which has the effect of foreclosing the formulation or implementation of any reasonable and prudent alternative measures. In the event that the review suggests that further constraints in the 2009 fisheries are necessary, appropriate corrections can be made by NMFS through inseason action.

This final rule was developed after meaningful consultation and collaboration with the affected tribes. The tribal representative on the Council made the motion for the regulations that apply to the tribal vessels.

Authority: 16 U.S.C. 773–773k; 1801 *et seq.*

Dated: April 29, 2009.

James W. Balsiger,

Acting Assistant Administrator for Fisheries, National Marine Fisheries Service.

[FR Doc. E9–10308 Filed 4–30–09; 4:15 pm]

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DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 660

[Docket No. 090428799–9802–01]

RIN 0648–AX24

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; inseason adjustments to groundfish management measures; Pacific whiting reapportionment; correction; request for comments.

SUMMARY: This final rule establishes the 2009 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), and allocations for the non-tribal commercial sectors. This final rule also announces the reapportionment of Pacific whiting allocation from the tribal sector to the non-tribal sectors; adjusts bycatch limits for the non-tribal commercial sectors of the Pacific whiting fishery; and corrects the Pacific whiting primary season dates.

DATES: Effective April 30, 2009. Comments on the revisions to bycatch limits must be received no later than 5 p.m., local time on May 20, 2009.

ADDRESSES: You may submit comments, identified by RIN 0648 AX24 by any of the following methods:

- *Electronic Submissions:* Submit all electronic public comments via the Federal eRulemaking Portal *http://www.regulations.gov*.
- *Fax:* 206–526–6736, *Attn:* Becky Renko.
- *Mail:* Barry A. Thom, Acting Regional Administrator, Northwest Region, NMFS, Attn: Becky Renko, 7600 Sand Point Way, NE., Seattle, WA 98115–0070.

Instructions: All comments received are a part of the public record and will generally be posted to *http://www.regulations.gov* <*http://www.regulations.gov/*> without change. All personal identifying information (for example, name, address, etc.)

voluntarily submitted by the commenter may be publicly accessible. Do not submit confidential business information, or otherwise sensitive or protected information.

NMFS will accept anonymous comments (enter N/A if you wish to remain anonymous). Attachments to electronic comments will be accepted in Microsoft Word, Excel, WordPerfect, or Adobe PDF file formats only.

Copies of the final environmental impact statement (FEIS) for this action are available from Donald McIsaac, Executive Director, Pacific Fishery Management Council (Council), 7700 NE., Ambassador Place, Portland, OR 97220, phone: 503–820–2280. Copies of additional reports referred to in this document may also be obtained from the Council. Copies of the Record of Decision (ROD), final regulatory flexibility analysis (FRFA), and the Small Entity Compliance Guide are available from Barry A. Thom, Acting Administrator, Northwest Region (Regional Administrator), NMFS, 7600 Sand Point Way, NE., Seattle, WA 98115–0070.

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 Web site 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 2009–2010 specifications and management measures for the Pacific Coast groundfish fishery was published on December 31, 2008 (73 FR 80516). A final rule was published on March 6, 2009 (74 FR 9874) which codified the specifications and management measures in the CFR (50 CFR part 660, subpart G), except for the Pacific Whiting harvest specifications. This final rule establishes the 2009 harvest specifications for Pacific whiting. The rules announced a range of Pacific whiting harvest specifications that were being considered for 2009 and 2010, and also announced the intent to adopt final specifications after the Council's March 2009 and 2010 meetings. As explained below, the information necessary for the updated stock assessment is not available until January or February, which necessarily delays the preparation of the stock assessment until almost February. Delaying the adoption of whiting specifications until March is consistent with the U.S.-Canada agreement for Pacific whiting.

In November 2003, the U.S. and Canada signed an agreement regarding the conservation, research, and catch sharing of Pacific whiting. 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. In addition to the time frame in which stock assessments are to be considered and harvest specifications established, the U.S.-Canada agreement specifies how the catch is to be shared between the two countries. The Pacific whiting catch sharing arrangement provides 73.88 percent of the total catch OY to the U.S. fisheries and 26.12 percent to the Canadian fisheries.

Pacific Whiting Stock Status

The joint U.S.-Canada Stock Assessment Review (STAR) panel met February 3–6, 2009, in Seattle, Washington to review a draft Stock Assessment of Pacific Hake (Pacific whiting) in U.S. and Canadian Waters in 2009. After careful consideration and review of the stock assessment model, the STAR panel recommended a final base model which was a particular configuration of the Stock Synthesis III model. The Stock Synthesis III model is an age-structured stock assessment model. Age-structured assessment models of various forms have been used to assess Pacific whiting since the early 1980s; these models use data on total fishery landings, fishery length and age compositions and survey abundance indices.

The final base model used for the 2009 stock assessment built on the 2008 model but included new data and refined the modeling of aging imprecision. The primary differences between the 2008 and 2009 stock assessment models are that the 2009 assessment included more flexibility in modeling fishery selectivity, improves the manner in which aging errors are handled, and freely estimated the level of recruitment variability (recruitment is the biomass of fish that mature and enter the fishery each year). The following new data were incorporated into the 2009 stock assessment: historical length data from Santa Barbara, California (1963–1970); 2008 catches from the U.S. and Canada; and 2008 length and conditional age-at-length compositions from the U.S. and Canada. In combination, these model changes and additional data produced a large downward shift in the absolute scale of Pacific whiting biomass estimate.

Imprecisely estimated stock assessment parameters are expected to change as new data are added or when changes are made to the model's structure. The 2009 stock assessment did not show an obvious retrospective pattern. The retrospective analysis was conducted by systematically removing the terminal years' (2008–2001) data, one after the other, for eight years. An obvious retrospective pattern is not a desirable characteristic and would indicate a pathological model misspecification.

In general, Pacific whiting is a very productive species with highly variable recruitment and a relatively short life span when compared to most other groundfish species. The base model indicates that the Pacific whiting female spawning biomass declined rapidly after a peak in 1984. The decline continued until 2000 and was followed by a brief increase to a peak in 2003 as the large 1999 year class matured (fish spawned during a particular year are referred to as a year class). The stock biomass at the beginning of 2009 is estimated to be at 32 percent of the estimated unfished spawning biomass. The revised estimate of the 2008 spawning biomass is 51 percent lower than the estimate from the previous assessment, reflecting a downward revision in the estimated absolute scale of the Pacific whiting biomass. However, a revised estimate of the 2008 depletion level is 41 percent, which is slightly higher than the 38 percent estimated by the 2008 assessment.

The 1999 year class was estimated to be the largest in the last 25 years and has supported fishery catches since 2002. Although the 1999 year class is still available to the fishery, the stock assessment results indicate that the biomass continues to decline as the 1999 year class moves through the fishery. Estimates of the stock status indicate that the Pacific whiting stock is at the lowest spawning biomass ever observed. Without another strong year class the biomass is projected to further decline. The 2005 year class is believed to be reasonably strong. However, the strength of the 2005 recruitment is still very uncertain, because the last survey was in 2007, and also because fewer than half of the fish younger than 4 are generally selected by either the survey or the fishery. Better information on the strength of the 2005 year class, as well as the 2006 year class, will be available

following survey work scheduled for 2009.

At the Council's March 2009 meeting the Scientific and Statistical Committee (SSC) reviewed the assessments and the STAR Panel report, and endorsed the use of the stock synthesis III model as the best available scientific data and recommended the use of the stock assessment in selecting harvest specifications. The SSC also recommended using the decision table based on Markov Chain Monte Carlo (MCMC—a computing technique used for sampling probabilistically from the possible parameterizations of the model, thus representing the uncertainty in the present state) integration of the posterior distribution for management purposes. The SSC made this recommendation because the MCMC decision table describes the Pacific whiting biomass depletion levels in probabilistic terms rather than as point estimates, and thus provides improved information on the uncertainty and risk (of both overfishing and of being overfished in any subsequent year) associated with each possible management action. The MCMC decision table is based on the distribution of possible current states of nature for the following characteristics of stock status—the female spawning biomass, the state of depletion, and the relative state of overfishing (relative spawning potential ratio)—generated from the MCMC modeling. Within the MCMC decision table, probabilities ranging from 5 percent to 95 percent were presented. The 5th percentile column identifies values where there is only a 5-percent likelihood of the true value being lower. Values in the 50th percentile (middle) columns are the best risk neutral characterization of current states, because there is an equal chance that the true values are either higher or lower.

ABC/OY Recommendations

Following the review of the new stock assessment results and consideration of the SSC comments and public comments, the Council recommended harvest specifications for 2009. The final ABC and OY values recommended by the Council for 2009 are based on a new stock assessment, and are consistent with the U.S.-Canada agreement and the impacts considered in the FEIS for the 2009 and 2010 management measures. The following use of the term ABC is not in the same sense as in Magnuson-Stevens Act's National Standard One Guidelines. It is used as defined in the Pacific Coast Groundfish FMP. The FMP defines the ABC as the Maximum Sustainable Yield (the largest average catch that can be taken continuously from a stock under average environmental conditions) harvest level associated with the current stock abundance.

Two U.S.-Canada coastwide ABC values were considered by the Council: An ABC of 291,965 metric tons (mt) based on $F_{40\%}$ harvest rate; and an ABC of 253,582 mt based on an estimated catch level at the center of the distribution (the mean value or that which produces a 50 percent probability of overfishing). The SSC indicated that with the $F_{40\%}$ harvest rate, the whiting biomass would be expected to fluctuate at a level below $B_{40\%}$ (the biomass level set out in the FMP as that at which a stock is estimated to be able to maintain its maximum sustainable yield over time). The value that the SSC identified as being the better estimate of ABC was 253,582 mt because the amount corresponds to the 50th percentile of the MCMC distribution. Following public testimony and Council deliberation, the Council recommended adoption of a U.S.-Canada coastwide ABC of 253,582 mt, and the U.S. share of the ABC is 187,346 mt (73.88 percent of the coastwide ABC).

The range of U.S. OYs analyzed in the FEIS for 2009 and 2010 specifications and management measures included: a low OY of 134,773 mt and a high OY of 404,318 mt (A U.S.-Canada OY range of 182,421 mt–547,263 mt) This range represents 50 percent to 150 percent of the 2008 U.S. OY of 269,545. 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.

The range of U.S.-Canada coastwide OY values considered by the Council at its March meeting included: A high OY of 365,784 mt which is a constant harvest option based on the status quo harvest in 2008; an OY of 253,582 mt approximates to a 40–10 harvest policy with a higher ABC (The 40–10 harvest policy is used to set OYs for species that are below $B_{40\%}$ and not managed under overfished species rebuilding plans); a constant catch OY for 2009 of 215,000 mt which is an amount that has a greater than 50 percent probability that the stock depletion will fall below the overfished level by the beginning of 2010; a constant catch OY for 2009 of 184,000 mt which is the maximum harvest amount that maintains a greater than 50 percent probability of the stock remaining above $B_{25\%}$ (the overfished threshold) by the beginning of 2010; an OY of 137,526 mt based on the results of an alternative stock assessment model and the application of the 40–10 harvest policy; and 100,000 mt, the maximum constant catch amount that keeps the female spawning biomass from further decline over the next two years.

The high OY of 365,784 mt was not a viable alternative because it is expected to result in a greater than 50 percent probability of overfishing in 2009 and the stock being overfished by 2010. Under the Magnuson-Stevens Act National Standards, the choice of OY and the conservation and management measures proposed to achieve it must prevent overfishing. An OY of 253,582 mt is equal to the recommended ABC and is without the precautionary adjustments that are made to the OYs when a stock's biomass is less than $B_{40\%}$. Although an OY of 253,582 mt approximates the 40–10 harvest policy value for the maximum likelihood model, which had a higher ABC, the SSC expressed concern that given the variability in the Pacific whiting recruitment, the biomass could be expected to fluctuate below the overfished threshold ($B_{25\%}$). With an OY higher than 184,000 mt there would be a greater than 50 percent probability of the stock being overfished in 2010. The 2009 assessment indicates that with a U.S.-Canada OY of 184,000 mt or less there is a greater than 50 percent probability that the Pacific whiting biomass will stay above the overfished threshold throughout 2009.

Following deliberation and public testimony, the Council recommended adopting a U.S.-Canada coastwide OY of 184,000 mt with a corresponding U.S. OY of 135,939 mt for 2009. In making the OY recommendation, the Council expressed concern about the risk of the stock falling into the overfished category. The Council recommended this level so as to prevent overfishing, and to provide greater than a 50-percent probability that the stock will not be overfished at the beginning of 2010. The Council recommended this level with the understanding that through surveys conducted in 2009, there would be a much better understanding of the relative strength of the 2005 year class, as well as the 2006 year class, leading to better indicators of the overall abundance of Pacific whiting. The harvest will be adjusted next year, based on new information, taking into account the status of the stock at that time. Given the variation in the stock assessment results between years, the Council felt that this OY value for 2009 was a conservative approach. In reaching a conclusion the Council also considered how reductions in OY greater than this level would negatively impact fishers and processors, due to

the fact that Pacific whiting is the most abundant stock in the Pacific coast groundfish fishery and generates the highest value.

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 (set-aside) 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.

Since 1996, only the Makah Tribe has prosecuted the tribal fishery for Pacific whiting. However, for the 2009–2010 harvest specification cycle, three of the four coastal tribes indicated their intent to participate in the fishery at some point during the two-year period. The Quinault Nation indicated their intent to start fishing in 2010, and both the Quileute and Makah Tribes indicated they intended to fish in both 2009 and 2010.

A Pacific whiting tribal allocation of 50,000 mt was adopted for 2009 in the 2009–2010 specifications and management measures published on March 6, 2009 (74 FR 9874) and set forth in regulation at 50 CFR 660.385. The set aside of 50,000 mt was based on the separate requests of the Quileute for up to 8,000 mt in 2009 and the Makah for up to 42,000 mt in 2009.

The 2009 commercial OY (non-tribal) for Pacific whiting is 81,939 mt. This is calculated by deducting the 50,000 mt tribal allocation and 4,000 mt for research catch and bycatch in non-groundfish fisheries from the 135,939 mt total catch OY. Regulations at 50 CFR 660.323(a)(2) 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 motherships and 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, with the catcher/processors getting 34 percent (27,859 mt), motherships getting 24 percent (19,665 mt), and the shore-based sector getting 42 percent (34,414 mt).

Reapportionment

Regulations at 50 CFR 660.323(c) provide that if the Regional Administrator determines that a portion of the tribal set aside or another sector's allocation will not be used during the year, the Regional Administrator can reapportion that Pacific whiting to other sectors in proportion to their initial allocations. Given the low OY recommended by the Council, at the March PFMC meeting, the Makah Tribal representatives stated their intent to harvest only 23,789 mt of their 42,000 mt set aside and asked that the remaining 18,211 mt be reapportioned to the non-tribal sectors of the fishery. This notice announces the reapportionment of 18,211 mt of the tribal set aside to the non-tribal sectors of the Pacific whiting fishery. The resulting Pacific whiting allocations by sector are: catcher/processor 34,051 mt, mothership 24,034 mt, and shore-based 42,063 mt.

Bycatch Limit Adjustments

Bycatch limits have been used to restrict the catch of overfished species, particularly canary, darkblotched and widow rockfish, in the non-tribal Pacific whiting fisheries. With bycatch limits, the industry has the opportunity to harvest a larger Pacific whiting OY, providing the incidental catch of overfished species does not exceed the adopted bycatch limits. In recent years, bycatch limits have been used for the most constraining overfished species; darkblotched, canary and widow rockfish. Since 2005, a single bycatch limit for each species has been used for all commercial sectors of the fishery. However, for the 2009 fishery, concern that bycatch in one sector would result in the closure of a different sector of the fishery led to the implementation of sector-specific bycatch limits rather than a single bycatch limit for all commercial sectors (74 FR 9874; March 6, 2009).

If a sector-specific bycatch limit is reached or is projected to be reached, the Pacific whiting fishery for that sector will be closed, regardless of whether the Pacific whiting allocation has been achieved. When a sector is closed because a bycatch limit has been reached or was projected to be reached, unused amounts of the other bycatch limit species will be rolled-over to the remaining sectors of the non-tribal Pacific whiting fishery. If a sector reaches its whiting allocation, unused amounts of bycatch limit species will be shifted to those sectors of the non-tribal Pacific whiting fishery that remain open. Sector-specific bycatch limits are apportioned on the same percentages used to calculate the original sector whiting allocations.

During the development of the 2009–2010 specifications and management measures, the fleetwide widow rockfish impacts were estimated to be 450 mt. The best available data at the March Council meeting projected an increase in the catch of widow rockfish in the non-whiting groundfish fisheries over what was considered in the 2009–2010 specifications and management measures. If no reductions were made in the widow rockfish bycatch limit, the projected catch of widow rockfish in all groundfish fisheries could exceed the 2009 OY of 522 mt. Given the reductions in the Pacific whiting OY for 2009 and the projected increase in non-whiting groundfish fisheries, the Council recommended reducing the overall widow rockfish bycatch limit for the Pacific whiting fisheries to 250 mt. From the overall bycatch limit of 250 mt the following sector-specific bycatch limits are being established for widow rockfish: the catcher/processors bycatch limit is reduced from 153.0 mt to 85.0 mt; the mothership bycatch limit is reduced from 108.0 mt to 60.0 mt; and the shore-based bycatch limit is reduced from 189.0 mt to 105.0 mt. The Council also considered revising the canary and darkblotched rockfish bycatch limits, at their March meeting, but found no reason to revise them before the start of the season.

Correction

NMFS is correcting an error in the regulatory text at 50 CFR 660.373 (b)(1)(ii), which is the section that announces the start dates for the primary whiting fishery. Because of an early closure of the fishery and subsequent reopening in 2008 due to the canary rockfish bycatch limit being reached, the regulatory text in this section was revised to include the start and end dates specifically for 2008 (73 FR 60642, October 14, 2008). Inadvertently, the regulatory text was not changed back to eliminate the specific references to 2008, and to eliminate the closing dates. The correction reinstates the existing opening dates without closure dates.

This is consistent with the introductory text of the paragraph which describes a primary season fishery remaining open until the allocation or a bycatch limit is reached. Failure to make this change would leave the regulatory language outdated, confusing and internally inconsistent.

Classification

The final Pacific whiting specifications and management measures for 2009 are issued under the authority of the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act), and the Pacific Whiting Act of 2006, and are in accordance with 50 CFR part 660, subpart G, the regulations implementing the FMP. The Administrator, Northwest Region, NMFS, has determined that the 2009–2010 groundfish harvest specifications and management measures, which this final rule implements a portion of, are consistent with the national standards of the Magnuson-Stevens Act and other applicable laws.

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 2009 Pacific whiting specifications. 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, 2009, fishery start date.

The FMP requires that fishery specifications be evaluated periodically using the best scientific information available. NMFS does a Pacific whiting stock assessment every year in which U.S. and Canadian scientists cooperate. The 2009 stock assessment for Pacific whiting was prepared in early 2009, which is the optimal time of year to conduct stock assessments for this species. New 2008 data used in this assessment that were not available until January, 2009 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 data and then 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. Delaying this action would be contrary to the public interest and NMFS's obligations under the Magnuson-Stevens Act because it would allow the fishery to proceed under the 2008 OY, which is approximately 50 percent higher than the 2009 OY. This could allow a sector to exceed its 2009 allocation, or at a minimum cause disruption of the fishery by lowering the OY part way through the season. Revisions to the season dates are necessary for regulatory consistency and to avoid confusion. Delaying action for public notice and comment is impracticable because without this correction the public will not have clear guidance regarding the timing and duration of the fishery. Under the standard regulations, the fishery opens in different areas on April 1, April 15, May 15 and June 15. Causing delay in a season because of confusion would prevent fishermen from accessing the whiting as it becomes available off their ports as the Pacific whiting migrate northward. Because notice and comment are not required, no RFA analysis is required and none was prepared.

The proposed rulemaking to implement the 2009 specifications and management measures, published on December 31, 2008 (73 FR 80516), addressed the delay in adopting the Pacific whiting ABC and harvest specifications. NMFS requested public comment on the proposed rule through January 30, 2009. The final rule was published on March 6, 2009 (74 FR 9874) and again explained that the final specifications within the proposed range would be recommended at the Council's March 2009 and 2010 meetings and implemented in the **Federal Register** as a final rule shortly thereafter.

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 2009–2010 specification and management measures. In approving the 2009–2010 groundfish harvest specifications and management measures, NMFS issued a Record of Decision (ROD). The ROD was signed on February 23, 2009. 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 2009–2010 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 December 31, 2008 (73 FR 80516). A 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 March 6, 2009 (74 FR 9874). A summary of the FRFA is contained below. The need for and objectives of this final rule are contained in the **SUMMARY** and in the Background section under **SUPPLEMENTARY INFORMATION**.

The final 2009–2010 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 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 engaged in the Pacific whiting fishery has varied with changes in the whiting OY and economic conditions. Pacific whiting shoreside vessels (26 to 29), mothership processors (4 to 6), mothership catcher vessels (11–20), catcher/processors (5 to 9), Pacific whiting shoreside first receivers (8–16), and four tribal trawlers are the major units of this fishery.

In 2008, these participants harvested about 248,000 tons of whiting worth about $63 million in ex-vessel value based on shoreside ex-vessel prices of $254 per ton—the highest ex-vessel revenues and prices on record. In comparison, the 2007 fishery harvested about 224,000 tons worth $36 million at an average ex-vessel price of about $160 per ton. Over the years 2003–2007, estimated Pacific whiting ex-vessel values averaged about $29 million.

Seafood processors convert whiting into surimi, fillets, fish meal, and headed gutted products. Besides recent high OY levels, ex-vessel revenues have been increasing because of increased prices for headed and gutted whiting. From 2004–2007, wholesale prices for headed and gutted whiting product increased from about $1,200 per ton to $1,600 per ton. In 2008, wholesale

prices averaged $1,980 per ton according to U.S. Export Trade statistics. Fuel prices, a major expense for whiting vessels, also increased dramatically. For example, at the start of the primary fishery in June 2008 fuel prices were about $4.30 per gallon compared to June 2007 levels of $2.70 per gallon.

Being able to harvest the entire Pacific whiting OY will depend on how well the industry stays within the overfished species bycatch limits. For example, in 2008 the Pacific whiting shoreside fishery was closed prematurely because of overfished species bycatch issues, leaving a major portion of its allocation unharvested. Although NMFS transferred the unharvested allocations to the other nontribal fleets, by year-end, 7 percent of the 2008 whiting OY was unharvested. Assuming no bycatch issues, the 2009 allocations to the nontribal (100,150 mt) and tribal (31,789 mt) fleets will lead to a potential harvest of about 132,000 tons, a decrease of 47 percent from the harvest level in 2008 (248,000 mt). Assuming 2008 ex-vessel prices ($254/mt), this harvest could be potentially worth about $33.5 million. This level is similar to values earned in 2007 ($36 million) and greater than the 2003–2007 average ($29 million), but representing a 47 percent decrease from estimated 2008 ex-vessel value ($63 million).

However, market conditions in 2009 will not likely be the same as in 2008. On the positive side, the price of fuel has been declining since June of 2008. March 2009 fuel price estimates typically range from $1.60 to $1.70 a gallon depending on the port. On the negative side, some members of the industry expect whiting prices to fall substantially from record highs because of the recent decline in the U.S. and world economies.

In January 2009, the Pacific Fishery Management Council published the Final Environmental Impact Statement (FEIS): Proposed Acceptable Biological Catch and Optimum Yield Specifications and Management Measures for the 2009–2010 Pacific Coast Fishery. The FEIS includes an economic analysis of the range of alternatives the Council had under consideration. While that analysis included an assessment of the Council's Preferred Alternative, it realized the Council would make its final choice of the Pacific whiting OY in March 2009. The FEIS compared the Preferred Alternative to a No-Action Alternative (expected 2008 commercial groundfish landings and deliveries including whiting). The FEIS estimated that compared to the No-Action Alternative the Preferred Alternative would lead to an increase of $13.3 million in total tribal and nontribal commercial groundfish ex-vessel value (*See* Table 7–57a of the FEIS). However, that analysis included an assumed 2009 whiting catch of 298,000 mt (248,300 nontribal and 50,000 tribal) and an average 2009 ex-vessel value of $171/mt.

This rule limits the total tribal and nontribal catch to 132,000 mt. Thus compared to the No-Action Alternative in the FEIS, whiting harvest will decrease, not increase. Assuming average whiting ex-value used in the Council's analysis ($171 per mt), this rule would result in the total 2009 whiting ex-vessel value of $22.6 million. This is $28.5 million less than the FEIS projection of $51.1 million. When this change is combined with the projections for the other groundfish fisheries, rather than an increase of $13.3 million this rule would result in a $15.1 million decrease in the total combined tribal and non-tribal groundfish value. Updating the Council's analysis using the 2008 average whiting ex-vessel of $254/mt, the Preferred Alternative would lead to a projected decrease of $4.2 million in total combined tribal and nontribal groundfish ex-vessel value, not an increase of $13.3 million as shown in Table 7–57a of the FEIS.

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. Both the Makah and Quileute Tribes requested a whiting allocation for 2009. The regulations at 50 CFR 660.324(d) further states ''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 release of some Pacific whiting from the Makah tribal set aside was proposed by the Makah tribe.

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: April 30, 2009.

James W. Balsiger,

Acting Assistant Administrator for Fisheries, National Marine Fisheries Service.

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

PART 660—FISHERIES OFF WEST COAST STATES

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

Authority: 16 U.S.C. 1801 *et seq.* and 16 U.S.C. 7001 *et seq.*

■ 2. In § 660.373 paragraphs (b)(1)(iii) and (b)(4)(i) are revised to read as follows:

§ 660.373 Pacific whiting (whiting) fishery management.

* * * * *

(b) * * *

(1) * * * * *

(iii) *Primary whiting seasons.* After the start of a primary season for a sector of the whiting fishery, the season remains open for that sector until the quota is taken or a bycatch limit is reached and the fishery season for that sector is closed by NMFS. The starting dates for the primary seasons for the whiting fishery are as follows:

(A) Catcher/processor sector—May 15.

(B) Mothership sector—May 15.

(C) Shore-based sector

(*1*) North of 42° N. lat.—June 15;

(*2*) Between 42°–40°30′ N. lat.—April 1; and

(*3*) South of 40°30′ N. lat.—April 15.

* * * * *

(4) * * *

(i) The whiting fishery bycatch limit is apportioned among the sectors identified in paragraph (a) of this section based on the same percentages used to allocate whiting among the sectors, established in § 660.323(a). The sector specific bycatch limits are: For catcher/processors 6.1 mt of canary rockfish, 85.0 mt of widow rockfish, and 8.5 mt of darkblotched rockfish; for motherships 4.3 mt of canary rockfish, 60.0 mt of widow rockfish, and 6.0 mt of darkblotched rockfish; and for shore-based 7.6 mt of canary rockfish, 105.0 mt of widow rockfish, and 10.5 mt of darkblotched rockfish.

* * * * *

■ 3. In part 660, subpart G, Table 1a is revised to read as follows:

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Table 1a. To Part 660, Subpart G-2009, Specifications of ABCs, OYs, and HGs, by Management Area (weights in metric tons).

Species	ABC Specifications						OY	HG b/	
	ABC Contributions by Area					ABC			
	Vancouver a/	Columbia	Eureka	Monterey	Conception			Commercial	Recreation-al
ROUNDFISH:									
Lingcod c/ N of 42 N. lat.	4,473					5,278	5,278		
S of 42 N. lat.			805						
Pacific Cod e/	3,200		d/			3,200	1,600	1,200	
Pacific Whiting f/	187,346					187,346	135,939	81,939	
Sablefish g/ N of 36 N. lat.	9,914					9,914	7,052	6,347	
S of 36 N. lat.							1,371	1,371	
Cabezon h/ S of 42 N. lat.	d/		81		25	106	69		
FLATFISH:									
Dover sole i/	29,453					29,453	16,500		
English sole j/	14,326					14,326	14,326	-	
Petrale sole k/	1,509		1,302			2,811	2,433	-	
Arrowtooth flounder l/	11,267					11,267	11,267	-	
Starry Flounder m/	1,509					1,509	1,004		
Other flatfish n/	6,731					6,731	4,884	-	
ROCKFISH:									
Pacific Ocean Perch o/	1,160					1,160	189	187	

Species	ABC Specifications						OY	HG b/	
	ABC Contributions by Area					ABC		Commercial	Recreational
	Vancouver a/	Columbia	Eureka	Monterey	Conception				
Shortbelly p/	6,950					6,950	6,950		
Widow q/	7,728					7,728	522	460.4	7.2
Canary r/	937					937	105	42.3	43.8
Chilipepper s/	d/			3,037		3,037	2,885	2,885	
Bocaccio t/	d/			793		793	288	206.4	67.3
Splitnose u/	d/			615		615	461		
Yellowtail v/	4,562			d/		4,562	4,562		
Shortspine thornyhead w/ N of 34 27' N. lat.	2,437					2,437	1,608	1,608	
S of 34 27' N. lat.							414		
Longspine thornyhead x/ N of 34 27' N. lat.	3,766					3,766	2,231		
S of 34 27' N. lat.							395		
Cowcod y/	d/			13		13	4		
Darkblotched z/	437					437	285	282.05	
Yelloweye aa/	31					31	17	3.1	8
California Scorpionfish bb/					175	175	175		
Black cc/ N of 46 16' N. lat.	490					490	490		
S of 46 16' N. lat.			1,469			1,469	1,000		

Species	ABC Specifications							OY	HG b/	
	ABC Contributions by Area						ABC		Commercial	Recreational
	Vancouver a/	Columbia	Eureka	Monterey	Conception					
Minor Rockfish dd/ N of 40 10' N. lat.		3,678		--			3,678	2,283		
Minor Rockfish ee/ S of 40 10' N. lat.		--		3,384			3,384	1,990		
Remaining		1,640		1,318						
bank ff/		d/		350						
blackgill gg/		d/		292						
blue		28		213						
bocaccio north		318		--						
chilipepper north		32		--						
redstripe		576		d/						
sharpchin		307		45						
silvergrey		38		d/						
splitnose north		242		--						
yellowmouth		99		d/						
yellowtail		--		116						
gopher		d/		302						
Other rockfish hh/		2,038		2,066						
SHARKS/SKATES/RATFISH/MORIDS/GRENADIERS/KELP GREENLING:										
Longnose Skate ii/			3,428				3,428	1,349		
Other fish jj/			11,200				11,200	5,600		

* * * * *

■ 4. Footnotes f/ and q/ to Tables 1a through 1c are revised to read as follows:

* * * * *

[f] Pacific whiting—The most recent stock assessment was prepared in February 2009. The stock assessment base model estimated the Pacific whiting biomass to be at 32 percent (50th percentile estimate of

depletion) of its unfished biomass in 2009. The U.S Canada coastwide ABC is 253,582 mt, the U.S. share of the ABC is 187,346 mt (73.88 percent of the coastwide ABC). The U.S.-Canada coastwide OY is 184,000 mt with a corresponding U.S. OY of 135,939 mt. The tribal set aside is 50,000 mt. The amount estimated to be taken as research catch and in non-groundfish fisheries is 4,000 mt. The commercial OY is 81,939 mt. Each sector receives a portion of the commercial OY, with the catcher/processors getting 34 percent (27,859 mt), motherships getting 24 percent (19,665 mt), and the shore-based sector getting 42 percent (34,414 mt). The allocation for the fishery south of 42°N. lat. is 1,721 mt.

* * * * *

q Widow rockfish was assessed in 2005 and an update was prepared in 2007. The stock assessment update estimated the stock to be at 36.2 percent of its unfished biomass in 2006. The ABC of 7,728 mt is based on the stock assessment update with an $F_{50\% FMSY}$ proxy. The OY of 522 mt is based on a rebuilding plan with a target year to rebuild of 2015 and an SPR harvest rate of 95 percent. To derive the commercial harvest guideline of 460.4 mt the OY is reduced by 1.1 mt for the amount anticipated to be taken during research activity, 45.5 mt for the tribal set-aside, 7.2 mt the amount estimated to be taken in the recreational fisheries, 0.4 mt for the amount expected to be taken incidentally in non-groundfish fisheries, and 7.4 mt for the amount projected to be taken during EFP fishing. The following are the sector specific bycatch limits established for the Pacific whiting fishery: 85.0 mt for catcher/processors, 60.0 mt for motherships, and 105.0 mt for shore-based.

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