

reasonable progress goals.⁷ EPA is seeking comment only on the issues raised in this supplemental proposal and is not reopening for comment other issues addressed in its prior proposal.

IV. Summary of Reproposal

In summary, EPA proposes to approve West Virginia's progress report SIP revision submitted on April 30, 2013. EPA solicits comments on this supplemental proposal, but only with respect to the specific issues raised in this notice concerning our interpretation of the term "implementation plan" in the Regional Haze Rule, and our agreement with West Virginia's assessment that the current regional haze SIP for West Virginia in combination with our CSAPR FIP need not be revised at this time to achieve the established reasonable progress goals for West Virginia and other nearby states in light of the status of CAIR through 2014 and CSAPR starting in 2015. EPA is not reopening the comment period on any other aspect of the March 14, 2014 NPR as an adequate opportunity to comment on those issues has already been provided. The purpose of this supplemental proposal is limited to review of the West Virginia progress report in light of the Supreme Court's decision in *EME Homer City* and the D.C. Circuit's recent Order lifting the stay on CSAPR. This supplemental proposal reflects EPA's desire for public input into how it should proceed in light of those decisions when acting on the pending progress report, in particular the requirements that the State assess whether the current implementation plan is sufficient to ensure that reasonable progress goals are met. 40 CFR 51.308(g)(6) and (h).⁸

⁷ Many coal-fired EGUs have announced plans to deactivate by April 2015 including several plants in West Virginia, including Albright, Kammer, Kanawha River, Phillip Sporn and Rivesville, as well as plants or individual units at plants in states neighboring West Virginia including Glen Lynn, Walter C. Beckjord, Muskingum River, Elrama, Clinch River, Eastlake, Ashtabula, and Big Sandy. Additional SO₂ reductions will likely result from the deactivations of these coal-fired EGUs. For a listing of EGUs planning to deactivate in the states which are part of PJM Interconnection, L.L.C., a regional transmission organization which coordinates the movement of wholesale electricity within states including West Virginia, see <http://www.pjm.com/planning/generation-deactivation/gd-summaries.aspx>.

⁸ EPA previously determined that CSAPR (like CAIR before it) was "better than BART" because it would achieve greater reasonable progress toward the national goal than would source-specific BART. 77 FR 33642 (June 7, 2012). EPA is not taking comment in this supplemental proposal on whether the West Virginia implementation plan meets the BART requirements or whether CSAPR is an alternative measure to source-specific BART in accordance with 40 CFR 52.301(e)(2).

V. Statutory and Executive Order Reviews

Under the CAA, the Administrator is required to approve a SIP submission that complies with the provisions of the CAA and applicable Federal regulations. 42 U.S.C. 7410(k); 40 CFR 52.02(a). Thus, in reviewing SIP submissions, EPA's role is to approve state choices, provided that they meet the criteria of the CAA. Accordingly, this action merely proposes to approve state law as meeting Federal requirements and does not impose additional requirements beyond those imposed by state law. For that reason, this proposed action:

- Is not a "significant regulatory action" subject to review by the Office of Management and Budget under Executive Order 12866 (58 FR 51735, October 4, 1993);
 - Does not impose an information collection burden under the provisions of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*);
 - Is certified as not having a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*);
 - Does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Pub. L. 104-4);
 - Does not have Federalism implications as specified in Executive Order 13132 (64 FR 43255, August 10, 1999);
 - Is not an economically significant regulatory action based on health or safety risks subject to Executive Order 13045 (62 FR 19885, April 23, 1997);
 - Is not a significant regulatory action subject to Executive Order 13211 (66 FR 28355, May 22, 2001);
 - Is not subject to requirements of Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) because this action does not involve technical standards; and
 - Does not provide EPA with the discretionary authority to address, as appropriate, disproportionate human health or environmental effects, using practicable and legally permissible methods, under Executive Order 12898 (59 FR 7629, February 16, 1994).
- In addition, this supplemental proposed rule pertaining to West Virginia's regional haze progress report does not have tribal implications as specified by Executive Order 13175 (65 FR 67249, November 9, 2000), because the SIP is not approved to apply in Indian country located in the state, and EPA notes that it will not impose

substantial direct costs on tribal governments or preempt tribal law.

List of Subjects in 40 CFR part 52

Environmental protection, Air pollution control, Incorporation by reference, Intergovernmental relations, Nitrogen oxides, Particulate matter, Reporting and recordkeeping requirements, Sulfur dioxide, Volatile organic compounds.

Dated: March 2, 2015.

William C. Early,

Acting Regional Administrator, Region III.

[FR Doc. 2015-05468 Filed 3-9-15; 8:45 am]

BILLING CODE 6560-50-P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 660

[Docket No. 141219999-5174-01]

RIN 0648-BE74

Magnuson-Stevens Act Provisions; Fisheries off West Coast States; Pacific Coast Groundfish Fishery; 2015 Tribal Fishery for Pacific Whiting

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

ACTION: Proposed rule; request for comments.

SUMMARY: NMFS issues this proposed rule for the 2015 Pacific whiting fishery under the authority of the Pacific Coast Groundfish Fishery Management Plan (FMP), the Magnuson Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act), and the Pacific Whiting Act of 2006. This proposed rule would allocate 17.5% of the U.S. Total Allowable Catch of Pacific whiting for 2015 to Pacific Coast Indian tribes that have a Treaty right to harvest groundfish, and would revise the regulation authorizing NMFS to reapportion unused allocation from the tribal allocation to the non-tribal sectors earlier in the fishing season.

DATES: Comments on this proposed rule must be received no later than April 9, 2015.

ADDRESSES: You may submit comments on this document, identified by NOAA-NMFS-2015-0017, by any of the following methods:

- *Electronic Submission:* Submit all electronic public comments via the Federal eRulemaking Portal. Go to www.regulations.gov/#!docketDetail;D=

NOAA-NMFS-2015-0017, click the “Comment Now!” icon, complete the required fields, and enter or attach your comments.

• **Mail:** William W. Stelle, Jr., Regional Administrator, Northwest Region, NMFS, 7600 Sand Point Way NE., Seattle, WA 98115-0070, Attn: Miako Ushio.

Instructions: Comments sent by any other method, to any other address or individual, or received after the end of the comment period, may not be considered by NMFS. All comments received are part of the public record and will generally be posted for public viewing on www.regulations.gov without change. All personal identifying information (e.g., name, address, etc.), confidential business information, or otherwise sensitive information submitted voluntarily by the sender will be publicly accessible. NMFS will accept anonymous comments (enter “N/A” in the required fields if you wish to remain anonymous). Attachments to electronic comments will be accepted in Microsoft Word, Excel, or Adobe PDF file formats only.

FOR FURTHER INFORMATION CONTACT: Miako Ushio (West Coast Region, NMFS), phone: 206-526-4644, and email: miako.ushio@noaa.gov.

SUPPLEMENTARY INFORMATION:

Electronic Access

This proposed rule is accessible via the Internet at the Office of the Federal Register Web site at <https://www.federalregister.gov>. Background information and documents are available at the NMFS West Coast Region Web site at http://www.westcoast.fisheries.noaa.gov/fisheries/management/whiting/pacific_whiting.html and at the Pacific Fishery Management Council’s Web site at <http://www.pcouncil.org/>.

Background

The regulations at 50 CFR 660.50(d) establish the process by which the tribes with treaty fishing rights in the area covered by the Pacific Coast Groundfish Fishery Management Plan (FMP) request new allocations or regulations specific to the tribes, in writing, during the biennial harvest specifications and management measures process. The regulations state that “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 procedures NOAA employs in implementing tribal treaty rights under the FMP, were designed to provide a framework process by which

NOAA Fisheries can accommodate tribal treaty rights by setting aside appropriate amounts of fish in conjunction with the Pacific Fishery Management Council (Council) process for determining harvest specifications and management measures.

Since the FMP has been in place, NMFS has been allocating a portion of the U.S. total allowable catch (TAC) (called Optimum Yield (OY) or Annual Catch Limit (ACL) prior to 2012) of Pacific whiting to the tribal fishery, following the process established in 50 CFR 660.50(d). The tribal allocation is subtracted from the U.S. Pacific whiting TAC before allocation to the non-tribal sectors.

There are four tribes that can participate in the tribal whiting fishery: The Hoh, Makah, Quileute, and Quinault. The Hoh tribe has not expressed an interest in participating to date. The Quileute Tribe and Quinault Indian Nation have expressed interest in commencing participation in the whiting fishery. However, to date, only the Makah Tribe has prosecuted a tribal fishery for Pacific whiting. They have harvested whiting every year since 1996 using midwater trawl gear. Tribal allocations have been based on discussions with the tribes regarding their intent for those fishing years. Table 1 below provides a history of U.S. OYs and annual tribal allocation in metric tons (mt).

TABLE 1—U.S. OPTIMUM YIELDS (OYS) AND ANNUAL TRIBAL ALLOCATION IN METRIC TONS (MT)

Year	U.S. OY	Tribal allocation
2005	269,069 mt	35,000 mt.
2006	269,069 mt	32,500 mt.
2007	242,591 mt	35,000 mt.
2008	269,545 mt	35,000 mt.
2009	135,939 mt	50,000 mt.
2010	193,935 mt	49,939 mt.
2011	290,903 mt	66,908 mt.
2012	186,037 mt TAC ¹	48,556 mt.
2013	269,745 mt TAC	63,205 mt.
2014	316,206 mt TAC	55,336 mt.

¹ Beginning in 2012, the United States started using the term Total Allowable Catch, based on the Agreement between the Government of the United States of America and the Government of Canada on Pacific Hake/Whiting.

In 2009, NMFS, the states of Washington and Oregon, and the Treaty tribes started a process to determine the long-term tribal allocation for Pacific whiting; however, no long-term allocation has been determined. In order to ensure Treaty tribes continue to receive allocations, this rulemaking proposes the 2015 tribal allocation of

Pacific whiting. This is an interim allocation not intended to set precedent for future allocations.

Tribal Allocation for 2015

In exchanges between NMFS and the tribes during December of 2014, the Makah tribe indicated their intent to participate in the tribal whiting fishery in 2015. The Makah tribe has requested 17.5% of the U.S. TAC. The Quileute tribe and the Quinault Indian Nation indicated that they are not planning to participate in 2015. NMFS proposes a tribal allocation that accommodates the Makah request, specifically 17.5% of the U.S. TAC. NMFS believes that the current scientific information regarding the distribution and abundance of the coastal Pacific whiting stock suggests that the 17.5% is within the range of the tribal treaty right to Pacific whiting.

The Joint Management Committee (JMC), which was established pursuant to the Agreement between the United States and Canada on Pacific Hake/Whiting (the Agreement), is anticipated to recommend the coastwide and corresponding U.S./Canada TACs no later than March 25, 2015. The U.S. TAC is 73.88% of the coastwide TAC. Until this TAC is set, NMFS cannot propose a specific amount for the tribal allocation. The whiting fishery typically begins in May, and the final rule establishing the whiting specifications for 2015 is anticipated to be published by early May. Therefore, in order to provide for public input on the tribal allocation, NMFS is issuing this proposed rule without the final 2015 TAC. However, to provide a basis for public input, NMFS is describing a range of potential tribal allocations in this proposed rule, applying the proposed approach to determining the tribal allocation to a range of potential TACs derived from historical experience.

In order to project a range of potential tribal allocations for 2015, NMFS is applying its proposed approach to determining the tribal allocation to the range of U.S. TACs over the last 10 years, 2005 through 2014 (plus or minus 25% to capture variability in stock abundance). The range of TACs in that time period was 135,939 mt (2009) to 316,206 mt (2014). Applying the 25% variability results in a range of potential TACs of 101,954 mt to 395,258 mt for 2015. Therefore, using the proposed allocation rate of 17.5%, the potential range of the tribal allocation for 2015 would be between 17,842 and 69,170 mt.

This proposed rule would also modify the regulatory mechanism whereby NMFS may, upon determining based on

discussion with the participating tribes and consideration of available catch information that some portion of the tribal allocation will not be used during the fishing year, reapportion that part to the non-tribal sectors of the whiting fishery. Currently, regulations at 50 CFR 660.131(h) call for reapportionment to occur on September 15 or as soon as practicable thereafter. NMFS has reapportioned Pacific whiting from the tribal sector to the non-tribal sectors in four of the past five years, after consultation with the participating (Makah) tribe to ensure such reapportionments will not limit tribal harvest opportunities. The timing of reapportionment in the regulation was intended to allow for the tribal fishery to proceed to the point where it could determine whether the full allocation was likely to be used, while providing time for the non-treaty sectors to catch the reallocated fish prior to the onset of winter weather conditions. In some years, the participating tribes may determine prior to September 15 that they will not use a portion of the tribal allocation. In late 2014, representatives of the Makah expressed an interest in possibly supporting earlier reapportionments to be used in situations such as this, and NMFS proposes amending regulations via this rulemaking to allow for that possibility.

This proposed rule would be implemented under authority of Section 305(d) of the Magnuson-Stevens Act, which gives the Secretary responsibility to “carry out any fishery management plan or amendment approved or prepared by him, in accordance with the provisions of this Act.” With this proposed rule, NMFS, acting on behalf of the Secretary, would ensure that the FMP is implemented in a manner consistent with treaty rights of four Northwest tribes to fish in their “usual and accustomed grounds and stations” in common with non-tribal citizens. *United States v. Washington*, 384 F. Supp. 313 (W.D. 1974).

Classification

NMFS has preliminarily determined that the management measures for the 2015 Pacific whiting tribal fishery are consistent with the national standards of the Magnuson-Stevens Act and other applicable laws. In making the final determination, NMFS will take into account the data, views, and comments received during the comment period.

The Office of Management and Budget has determined that this proposed rule is not significant for purposes of Executive Order 12866.

As required by section 603 of the Regulatory Flexibility Act (RFA), an

Initial Regulatory Flexibility Analysis (IRFA) was prepared. The IRFA describes the economic impact this proposed rule, if adopted, would have on small entities. A summary of the analysis follows. A copy of this analysis is available from NMFS.

Under the RFA, the term “small entities” includes small businesses, small organizations, and small governmental jurisdictions. This rulemaking affects vessels engaged in small businesses. The Small Business Administration (SBA) has established size criteria for all major industry sectors in the U.S., including fish harvesting and fish processing businesses. A business involved in fish harvesting is a small business if it is independently owned and operated and not dominant in its field of operation (including its affiliates), and if it has combined annual receipts not in excess of \$20.5 million for all its affiliated operations worldwide (79 FR 33647). For marinas and charter/party boats, a small business is defined as one with annual receipts, not in excess of \$7.5 million. For purposes of rulemaking, NMFS is also applying the \$20.5 million standard to catcher processors (C/Ps) because whiting C/Ps are involved in the commercial harvest of finfish. A seafood processor is a small business if it is independently owned and operated, not dominant in its field of operation, and employs 500 or fewer persons on a full time, part time, temporary, or other basis, at all its affiliated operations worldwide. A wholesale business servicing the fishing industry is a small business if it employs 100 or fewer persons on a full-time, part-time, temporary, or other basis, at all its affiliated operations worldwide.

Small organizations. The RFA defines small organizations as any nonprofit enterprise that is independently owned and operated and is not dominant in its field.

Small governmental jurisdictions. The RFA defines small governmental jurisdictions as governments of cities, counties, towns, townships, villages, school districts, or special districts with populations of less than 50,000.

This proposed rule would allocate 17.5% of the U.S. Total Allowable Catch of Pacific whiting for 2015 to Pacific Coast Indian tribes that have a Treaty right to harvest groundfish. This allocation rule was used for the 2014 fishery. The entities that this rulemaking directly impacts are the Makah Tribe, and the following in the non-tribal fisheries: Quota share (QS) holders in the Shorebased IFQ Program—Trawl Fishery; vessels in the Mothership Coop (MS) Program—

Whiting At-sea Trawl Fishery; and the Catcher/Processor (C/P) Coop Whiting At-sea Trawl Fishery. These entities determine how much of their allocations are to be actually fished and what vessels are allowed to fish their allocations. This rulemaking proposes to allocate fish to the Makah Tribe. Based on groundfish ex-vessel revenues and on tribal enrollments (the population size of each tribe), the Makah Tribe is considered a small entity.

Currently, the Shorebased IFQ Program is composed of 149 Quota Share permits/accounts, 152 vessel accounts, and 43 first receivers. The MS fishery is currently composed of a single coop, with six mothership processor permits, and 34 Mothership/Catcher-Vessel (MS/CV) endorsed permits, with three permits each having two catch history assignments. The C/P Program is composed of 10 C/P permits owned by three companies that have formed a single coop.

Many companies participate in two sectors and some participate in all three sectors. All of the 34 mothership catch history assignments are associated with a single mothership coop and all ten of the catcher-processor permits are associated with a coop. These coops are considered large entities from several perspectives; they have participants that are large entities, whiting coop revenues exceed or have exceeded the \$20.5 million, or coop members are connected to American Fishing Act permits or coops where the NMFS Alaska Region has determined they are all large entities (79 FR 54597; September 12, 2014). After accounting for cross participation, multiple QS account holders, and affiliation through ownership, NMFS estimates that there are 103 non-tribal entities directly affected by these proposed regulations, 89 of which are considered “small” businesses.

For the years 2010 to 2014, the total whiting fishery (tribal and non-tribal) averaged harvests of approximately 183,000 mt annually, worth over \$43 million in ex-vessel revenues. As the U.S. whiting TAC has been highly variable during this time, so have harvests. In the past five years, harvests have ranged from 160,000 mt (2012) to 264,000 mt (2014). Ex-vessel revenues have also varied. Annual ex-vessel revenues have ranged from \$30 million (2010) to \$65 million (2013). Total whiting harvest in 2013 was approximately 233,000 mt worth \$65 million, at an ex-vessel price of \$280 per mt. Ex-vessel revenues in 2014 were over \$64 million with a harvest of 264,000 tons and ex-vessel price of \$240 per mt. The prices for whiting are largely determined by the world market

for groundfish, because most of the whiting harvested is exported. Note that the use of ex-vessel values does not take into account the wholesale or export value of the fishery or the costs of harvesting and processing whiting into a finished product. NMFS does not have sufficient information to make a complete assessment of these values.

The Pacific whiting fishery harvests almost exclusively Pacific whiting. While bycatch of other species occurs, the fishery is constrained by bycatch limits on key overfished species. This is a high-volume fishery with low ex-vessel prices per pound. This fishery also has seasonal aspects based on the distribution of whiting off the west coast.

Since 1996, there has been a tribal allocation of the U.S. whiting TAC. Tribal fisheries undertake a mixture of fishing activities that are similar to the activities that non-tribal fisheries undertake. Tribal harvests have been delivered to both shoreside plants and at-sea processors. These processing facilities also process fish harvested by non-tribal fisheries.

This proposed rule would allocate 17.5% of Pacific whiting to the tribal fishery, and would ultimately determine how much is left for allocation to the non-tribal sectors, which are the Shorebased IFQ Program—Trawl Fishery; Mothership Coop (MS) Program—Whiting At-sea Trawl Fishery; and C/P Coop Program—Whiting At-sea Trawl Fishery. The amount of whiting allocated to both the tribal and non-tribal sectors is based on the U.S. TAC. From the U.S. TAC, small amounts of whiting that account for research catch and for bycatch in other fisheries are deducted. The amount of the tribal allocation is also deducted directly from the TAC. After accounting for these deductions, the remainder is the commercial harvest guideline. This guideline is then allocated among the three non-tribal sectors as follows: 34 percent for the C/P Coop Program; 24 percent for the MS Coop Program; and 42 percent for the Shorebased IFQ Program.

The effect of the tribal allocation on non-tribal fisheries will depend on the level of tribal harvests relative to their allocation and the reapportioning process. Total whiting harvest in 2014 was approximately 264,000 mt worth \$64 million, at an ex-vessel price of \$240 per mt. Assuming a similar harvest level and ex-vessel price in 2015, if the tribe were to harvest 17.5%, the approximate value of that harvest would be \$11 million. If the tribes do not harvest their entire allocation, there are opportunities during the year to

reapportion unharvested tribal amounts to the non-tribal fleets. For example, last year, NMFS executed two such reapportionments. In the first reapportionment, the best available information through September 12, 2014 indicated that at least 25,000 mt of the tribal allocation would not be harvested by December 31, 2014. To allow for full utilization of the resource, NMFS reapportioned 25,000 mt to the shorebased IFQ Program, C/P Coop and MS Coop in proportion to each sector's original allocation on September 12, 2014. Reapportioning this amount was expected to allow for greater attainment of the OY while not limiting tribal harvest opportunities for the remainder of the year. Subsequently, the C/P Coop, MS Coop, and Shorebased IFQ sectors expressed an interest in additional harvest of Pacific whiting via written notice to NMFS.

In the second reapportionment, the best available information on October 22, 2014, indicated that an additional 20,000 mt of the tribal allocation would not be harvested by December 31, 2014. To allow for full utilization of the resource, NMFS reapportioned an additional 20,000 mt of the non-tribal sector and distributed to the C/P Coop and MS Coop in proportion to each sector's original allocation on October 23, 2014. The Shorebased IFQ Program's share of the second reapportionment was not distributed due to concerns regarding Chinook salmon catch.

Reapportioning a combined total of 45,000 mt was expected to allow for greater attainment of the OY while not limiting tribal harvest opportunities for the remainder of the year. The revised Pacific whiting allocations for 2014 were: Tribal 10,336 mt, C/P Coop 103,486 mt; MS Coop 73,049 mt; and Shorebased IFQ Program 127,835 mt.

NMFS considered two alternatives for this action: The "No-Action" and the "Proposed Action." NMFS did not consider a broader range of alternatives to the proposed allocation. The tribal allocation is based primarily on the requests of the tribes. These requests reflect the level of participation in the fishery that will allow them to exercise their treaty right to fish for whiting. Under the Proposed Action alternative, NMFS proposes to set the tribal allocation percentage at 17.5%, as requested by the tribes. This would yield a tribal allocation of between 17,842 and 69,170 mt for 2015. Consideration of a percentage lower than the tribal request of 17.5% is not appropriate in this instance. As a matter of policy, NMFS has historically supported the harvest levels requested by the tribes. Based on the information

available to NMFS, the tribal request is within their tribal treaty rights. A higher percentage would arguably also be within the scope of the treaty right. However, a higher percentage would unnecessarily limit the non-tribal fishery.

Under the no-action alternative, NMFS would not make an allocation to the tribal sector. This alternative was considered, but the regulatory framework provides for a tribal allocation on an annual basis only. Therefore, no action would result in no allocation of Pacific whiting to the tribal sector in 2015, which would be inconsistent with NMFS' responsibility to manage the fishery consistent with the tribes' treaty rights. Given that there is a tribal request for allocation in 2015, this alternative received no further consideration.

NMFS believes this proposed rule would not adversely affect small entities. This reapportioning process allows unharvested tribal allocations of whiting, fished by small entities, to be fished by the non-tribal fleets, benefitting both large and small entities. Nonetheless, NMFS has prepared this IRFA and is requesting comments on this conclusion. See **ADDRESSES**.

There are no reporting, recordkeeping or other compliance requirements in the proposed rule.

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

NMFS issued Biological Opinions under the ESA on August 10, 1990, November 26, 1991, August 28, 1992, September 27, 1993, May 14, 1996, and December 15, 1999 pertaining to the effects of the 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), chum salmon (Hood Canal summer, Columbia River), sockeye salmon (Snake River, Ozette Lake), and steelhead (upper, middle and lower Columbia River, Snake River Basin, upper Willamette River, central California coast, California Central Valley, south/central California, northern California, southern California). These biological opinions have concluded that implementation of the FMP for the Pacific Coast groundfish fishery was not expected to jeopardize the continued existence of any endangered or threatened species under the jurisdiction of NMFS, or result in the

destruction or adverse modification of critical habitat.

NMFS issued a Supplemental Biological Opinion on March 11, 2006, concluding that neither the higher observed bycatch of Chinook in the 2005 whiting fishery nor new data regarding salmon bycatch in the groundfish bottom trawl fishery required a reconsideration of its prior “no jeopardy” conclusion. NMFS also reaffirmed its prior determination that implementation of the Groundfish PCGFMP is not likely to jeopardize the continued existence of any of the affected ESUs. The effect of the Pacific whiting fishery on protected Chinook salmon is currently under ESA Section 7 consultation to reconsider this “no jeopardy” conclusion. The trigger for this reinitiation of consultation was the 2014 Pacific whiting fishery exceeding the Chinook salmon incidental take statement from the 1999 Biological Opinion by a level similar to 2005. NMFS has considered the effects of this proposed rule on listed salmonids, consistent with ESA Section 7(a)(2) and 7(d). The proposed action is not likely to adversely affect, or would not jeopardize the continued existence of any listed species or result in the destruction or adverse modification of designated critical habitat.

Lower Columbia River coho (70 FR 37160, June 28, 2005) and Oregon Coastal coho (73 FR 7816, February 11, 2008) were recently relisted as threatened under the ESA. The 1999 biological opinion concluded that the bycatch of salmonids in the Pacific whiting fishery were almost entirely Chinook salmon, with little or no bycatch of coho, chum, sockeye, and steelhead.

On December 7, 2012, NMFS completed a biological opinion concluding that the groundfish fishery is not likely to jeopardize non-salmonid marine species including listed eulachon, green sturgeon, humpback whales, Steller sea lions, and leatherback sea turtles. The opinion also concludes that the fishery is not likely to adversely modify critical habitat for green sturgeon and leatherback sea turtles. An analysis included in the same document as the opinion concludes that the fishery is not likely to adversely affect green sea turtles, olive ridley sea turtles, loggerhead sea turtles, sei whales, North Pacific right whales, blue whales, fin whales, sperm whales, Southern Resident killer whales, Guadalupe fur seals, or the critical habitat for Steller sea lions.

Steller sea lions and humpback whales are protected under the Marine Mammal Protection Act (MMPA).

Impacts resulting from fishing activities proposed in this rulemaking are discussed in the FEIS for the 2015–2016 groundfish fishery specifications and management measures. West coast pot fisheries for sablefish are considered Category II fisheries under the MMPA’s List of Fisheries, indicating occasional interactions. All other west coast groundfish fisheries, including the trawl fishery, are considered Category III fisheries under the MMPA, indicating a remote likelihood of or no known serious injuries or mortalities to marine mammals. MMPA section 101(a)(5)(E) requires that NMFS authorize the taking of ESA-listed marine mammals incidental to U.S. commercial fisheries if it makes the requisite findings, including a finding that the incidental mortality and serious injury from commercial fisheries will have negligible impact on the affected species or stock. As noted above, NMFS concluded in its biological opinion for the groundfish fisheries that these fisheries were not likely to jeopardize Steller sea lions or humpback whales. The eastern distinct population segment of Steller sea lions was delisted under the ESA on November 4, 2013 (78 FR 66140). On September 4, 2013, based on its negligible impact determination dated August 28, 2013, NMFS issued a permit for three years to authorize the incidental taking of humpback whales by the sablefish pot fishery (78 FR 54553).

On November 21, 2012, the U.S. Fish and Wildlife Service (FWS) issued a biological opinion concluding that the groundfish fishery will not jeopardize the continued existence of the short-tailed albatross. The FWS also concurred that the fishery is not likely to adversely affect the marbled murrelet, California least tern, southern sea otter, bull trout, nor bull trout critical habitat.

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

List of Subjects in 50 CFR Part 660

Fisheries, Fishing, Indian fisheries.

Dated: March 3, 2015.

Eileen Soback,

Assistant Administrator for Fisheries,
National Marine Fisheries Service.

For the reasons set out in the preamble, 50 CFR part 660 is proposed to be 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.*, 16 U.S.C. 773 *et seq.*, and 16 U.S.C. 7001 *et seq.*

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

§ 660.50 Pacific Coast treaty Indian fisheries.

* * * * *

(f) * * *

(4) *Pacific whiting.* The tribal allocation for 2015 will be 17.5% of the U.S. TAC.

* * * * *

■ 3. In § 660.131, revise paragraph (h) to read as follows:

§ 660.131 Pacific whiting fishery management measures.

* * * * *

(h) *Reapportionment of pacific whiting.* (1) Upon receipt of written notice to the Regional Administrator from the tribe(s) participating in the fishery that they do not intend to use a portion of the tribal allocation, the Regional Administrator may, no earlier than 7 days following notice to other treaty tribes with rights to whiting, reapportion any remainder to the other sectors of the trawl fishery as soon as practicable after receiving such notice. If no such reapportionment has occurred prior to September 15 of the fishing year, the Regional Administrator will, based on discussions with representatives of the tribes participating in the Pacific whiting fishery for that fishing year, consider the tribal harvests to date and catch projections for the remainder of the year relative to the tribal allocation of Pacific whiting, as specified at § 660.50. That portion of the tribal allocation that the Regional Administrator determines will not be used by the end of the fishing year may be reapportioned to the other sectors of the trawl fishery on September 15 or as soon as practicable thereafter. Subsequent reapportionments may be made based on subsequent determinations by the Regional Administrator based on the factors described above in order to ensure full utilization of the resource. However, no reapportionments will

occur after December 1 of the fishing year.

(2) NMFS will reapportion unused tribal allocation to the other sectors of the trawl fishery in proportion to their initial allocations.

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

(4) Estimates of the portion of the tribal allocation that will not be used by

the end of the fishing year will be based on the best information available to the Regional Administrator.

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