

Type of proceeding	Fee
(i) Complaint .....	\$75.
(ii) Answer (per defendant), Unless Declining to Submit to Any Arbitration .....	\$75.
(iii) Third Party Complaint .....	\$75.
(iv) Third Party Answer (per defendant), Unless Declining to Submit to Any Arbitration .....	\$75.
(v) Appeals of Arbitration Decisions or Petitions to Modify or Vacate an Arbitration Award .....	\$150.
(88) Basic fee for STB adjudicatory services not otherwise covered .....	\$250.
(89)–(95) [Reserved].	
PART VII: Services:	
(96) Messenger delivery of decision to a railroad carrier's Washington, DC, agent .....	\$32 per delivery.
(97) Request for service or pleading list for proceedings .....	\$24 per list.
(98) Processing the paperwork related to a request for the Carload Waybill Sample to be used in a Surface Transportation Board or State proceeding that:	
(i) Does not require a <b>Federal Register</b> notice:	
(a) Set cost portion .....	\$150.
(b) Sliding cost portion .....	\$48 per party.
(ii) Does require a <b>Federal Register</b> notice:	
(a) Set cost portion .....	\$400.
(b) Sliding cost portion .....	\$48 per party.
(99) (i) Application fee for the Surface Transportation Board's Practitioners' Exam .....	\$150.
(ii) Practitioners' Exam Information Package .....	\$25.
(100) Carload Waybill Sample data:	
(i) Requests for Public Use File for all years prior to the most current year Carload Waybill Sample data available, provided on CD–R.	\$250 per year.
(ii) Specialized programming for Waybill requests to the Board .....	\$109 per hour.

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**DEPARTMENT OF COMMERCE**

**National Oceanic and Atmospheric Administration**

**50 CFR Part 660**

[Docket No. 090324366–9371–01]

RIN 0648–AX81

**Fisheries Off West Coast States and in the Western Pacific; West Coast Salmon Fisheries; 2009 Management Measures**

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

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

**SUMMARY:** NMFS establishes fishery management measures for the 2009 ocean salmon fisheries off Washington, Oregon, and California and the 2010 salmon seasons opening earlier than May 1, 2010. Specific fishery management measures vary by fishery and by area. The measures establish fishing areas, seasons, quotas, legal gear, recreational fishing days and catch limits, possession and landing restrictions, and minimum lengths for salmon taken in the U.S. exclusive economic zone (EEZ) (3–200 NM) off Washington, Oregon, and California. The management measures are intended

to prevent overfishing and to apportion the ocean harvest equitably among treaty Indian, non-treaty commercial, and recreational fisheries. The measures are also intended to allow a portion of the salmon runs to escape the ocean fisheries in order to provide for spawning escapement and to provide for inside fisheries (fisheries occurring in state internal waters).

**DATES:** Final rule is effective from 0001 hours Pacific Daylight Time, May 1, 2009, until the effective date of the 2010 management measures, as published in the **Federal Register**.

Comments must be received by May 20, 2009.

**ADDRESSES:** You may submit comments, identified by 0648–AX81, by any one 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:* Peggy Busby, or 562–980–4047 *Attn:* Jennifer Isé

- *Mail:* Barry A. Thom, Acting Regional Administrator, Northwest Region, NMFS, 7600 Sand Point Way NE., Seattle, WA 98115–0070 or to Rod McInnis, Regional Administrator, Southwest Region, NMFS, 501 West Ocean Boulevard, Suite 4200, Long Beach, CA 90802–4213

*Instructions:* All comments received are a part of the public record and will generally be posted to <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 in the required fields 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 documents cited in this document are available from Dr. Donald O. McIsaac, Executive Director, Pacific Fishery Management Council, 7700 NE. Ambassador Place, Suite 200, Portland, OR 97220–1384, and are posted on its Web site ([www.pcouncil.org](http://www.pcouncil.org)).

Send comments regarding the reporting burden estimate or any other aspect of the collection-of-information requirements in these management measures, including suggestions for reducing the burden, to one of the NMFS addresses listed above and to David Rostker, Office of Management and Budget (OMB), by e-mail at [David.Rostker@omb.eop.gov](mailto:David.Rostker@omb.eop.gov), or by fax at (202)395–7285.

**FOR FURTHER INFORMATION CONTACT:** Peggy Busby at 206–526–4323, or Jennifer Isé at 562–980–4046.

**SUPPLEMENTARY INFORMATION:**

**Background**

The ocean salmon fisheries in the EEZ off Washington, Oregon, and California are managed under a “framework” fishery management plan entitled the Pacific Coast Salmon Fishery Management Plan (Salmon FMP). Regulations at 50 CFR part 660, subpart H, provide the mechanism for making

preseason and inseason adjustments to the management measures, within limits set by the Salmon FMP, by notification in the **Federal Register**.

These management measures for the 2009 and pre-May 2010 ocean salmon fisheries were recommended by the Pacific Fishery Management Council (Council) at its April 2 to 9, 2009, meeting.

#### **Schedule Used to Establish 2009 Management Measures**

The Council announced its annual preseason management process for the 2009 ocean salmon fisheries in the **Federal Register** on December 18, 2008 (73 FR 77010), and on their Web site at ([www.pcouncil.org](http://www.pcouncil.org)). This notice announced the availability of Council documents as well as the dates and locations of Council meetings and public hearings comprising the Council's complete schedule of events for determining the annual proposed and final modifications to ocean salmon fishery management measures. The agendas for the March and April Council meetings were published in the **Federal Register** and on the Council's Web site prior to the actual meetings.

In accordance with the Salmon FMP, the Council's Salmon Technical Team (STT) and staff economist prepared a series of reports for the Council, its advisors, and the public. All four reports were posted on the Council's web site and otherwise made available to the Council, its advisors, and the public upon their completion. The first of the reports was prepared in February when the scientific information necessary for crafting management measures for the 2009 and pre-May 2010 ocean salmon fishery first became available. The first report, "Review of 2008 Ocean Salmon Fisheries," summarizes biological and socio-economic data for the 2008 ocean salmon fisheries and assesses how well the Council's 2008 management objectives were met. The second report, "Preseason Report I Stock Abundance Analysis for 2009 Ocean Salmon Fisheries" (PRE I), provides the 2009 salmon stock abundance projections and analyzes the impacts on the stocks and Council management goals if the 2008 regulations and regulatory procedures were applied to the projected 2009 stock abundances. The completion of PRE I is the initial step in evaluating the full suite of preseason options.

Following completion of the first two reports, the Council met in Seattle, WA from March 7 to 13, 2009, to develop 2009 management options for proposal to the public. The Council proposed three options for commercial and

recreational fisheries management for analysis and public comment. These options consisted of various combinations of management measures designed to protect weak stocks of coho and Chinook salmon and to provide for ocean harvests of more abundant stocks. After the March Council meeting, the Council's STT and staff economist prepared a third report, "Preseason Report II Analysis of Proposed Regulatory Options for 2009 Ocean Salmon Fisheries," which analyzes the effects of the proposed 2009 management options.

Public hearings, sponsored by the Council, to receive testimony on the proposed options were held on March 30, 2009, in Westport, WA and Coos Bay, OR; and March 31, 2009, in Eureka, CA. The States of Washington, Oregon, and California sponsored meetings in various forums that also collected public testimony, which was then presented to the Council by each state's Council representative. The Council also received public testimony at both the March and April meetings and received written comments at the Council office.

The Council met from April 2 to 9, 2009, in Millbrae, CA to adopt its final 2009 recommendations. Following the April Council meeting, the Council's STT and staff economist prepared a fourth report, "Preseason Report III Analysis of Council-Adopted Management Measures for 2009 Ocean Salmon Fisheries," which analyzes the environmental and socio-economic effects of the Council's final recommendations. After the Council took final action on the annual ocean salmon specifications in April, it published the recommended management measures in its newsletter and also posted them on the Council Web site ([www.pcouncil.org](http://www.pcouncil.org)).

#### **Resource Status**

Fisheries south of Cape Falcon, OR are limited primarily by the status of Sacramento River fall Chinook salmon. Fisheries north of Cape Falcon are limited by Lower Columbia River Chinook salmon, Lower Columbia River coho salmon, and Oregon Coast coho, stocks which are all listed under the Endangered Species Act (ESA), and by Thompson River coho from Canada. At the start of the preseason planning process for the 2009 management season, NMFS provided a letter to the Council, dated March 3, 2009, summarizing its ESA consultation standards for listed species as required by the Salmon FMP. The Council's recommended management measures comply with NMFS ESA consultation

standards and guidance for those listed salmon species which may be affected by Council fisheries. In most cases, the recommended measures are more restrictive than NMFS's ESA requirements.

The Sacramento River fall Chinook salmon stock (SRFC) failed to meet its conservation objective of 122,000–180,000 adult natural and hatchery spawners in 2007 and 2008 (87,881 and 66,264 spawners respectively). The preseason forecast for SRFC escapement in 2009, in the absence of fishing, is 122,200. SRFC is the major contributing stock to ocean Chinook salmon fisheries off Oregon and California. To conserve this stock, the Council proposed no commercial fisheries on Chinook salmon for 2009 ocean fisheries south of Cape Falcon, Oregon, and a recreational Chinook salmon fishery that is restricted in time and place to target Klamath River fall Chinook salmon, which are projected to be well above their escapement goal. In addition to ocean fishing, SRFC is vulnerable to in-river fisheries that target *late* fall Chinook salmon, a separately managed stock. The in-river fishery is managed by the State of California and is thus outside the Council's jurisdiction. In March 2009, the Council's Salmon Technical Team met with representatives of the California Department of Fish and Game; it was agreed at this meeting that if the late fall Chinook salmon fishery were to begin after November 15, and occur only between Knights Landing and Red Bluff Diversion Dam, incidental harvest of SRFC would be negligible. The California Fish and Game Commission met on April 21, 2009 and confirmed that the Sacramento River late fall Chinook salmon fishery in 2009 will occur November 16 through December 31, and occur only between Knights Landing and Red Bluff Diversion Dam, resulting in negligible incidental harvest of SRFC.

NMFS consulted under ESA section 7 and provided guidance to the Council regarding the effects of the 2009 fisheries on the Lower Columbia River (LCR) Chinook salmon Evolutionarily Significant Unit (ESU). NMFS has completed a Biological Opinion concluding that the proposed 2009 fisheries are not likely to jeopardize the continued existence of LCR Chinook.

The LCR Chinook salmon ESU is comprised of a spring component, a "far-north" migrating bright component, and a component of north migrating tules. The bright and tule components both have fall run timing. The 2004 Interim Regional Recovery Plan identified twenty-one separate populations within the tule component

of this ESU. Unlike the spring or bright populations of the ESU, LCR tule populations are caught in large numbers in Council fisheries, as well as fisheries to the north and in the Columbia River. Therefore this component of the ESU is the one most likely to constrain Council area fisheries. Total exploitation rate on tule populations has been reduced from 49 percent in 2006, to 42 percent in 2007, and then to 41 percent in 2008.

The United States recently approved a new Pacific Salmon Treaty (PST) Agreement that was negotiated and recommended by the Pacific Salmon Commission. That Agreement includes a new Chinook salmon regime that reduces the allowable annual Chinook salmon catch by 30 percent in Canada's West Coast Vancouver Island (WCVI) troll and sport fishery and 15 percent in Alaska's Southeast Alaska all-gear fishery. Lower Columbia River tule Chinook salmon in particular will benefit from the reduction in the WCVI fishery. The United States negotiated for harvest reductions in Canadian intercepting fisheries largely to benefit the escapement of natural origin stocks. LCR tule and Puget Sound Chinook salmon were specifically identified to Canada as the intended beneficiaries of these reductions. NMFS indicated in its biological opinion on the PST Agreement that it intended to ensure that reductions in tule harvest secured by the new agreement would be passed through to escapement. In 2008 the total exploitation rate on LCR tule Chinook salmon was limited to a maximum of 41 percent. NMFS estimated in its biological opinion on the new PST Agreement that the catch reductions in the northern fisheries would reduce the exploitation rate on tule Chinook salmon by approximately three percentage points relative to what would have occurred under the previous Chinook salmon regime. Therefore, for 2009, Council fisheries should be managed such that the total exploitation rate in all fisheries on LCR tule Chinook salmon does not exceed 38 percent. This reduction is a further step intended to address the needs of the LCR Chinook salmon ESU and the weaker tule populations in the ESU in particular. NMFS intends to develop a longer-term biological opinion for LCR Chinook salmon in 2010 that will provide more certainty regarding harvest limits that would be required for LCR Chinook salmon in the future.

In 2008, NMFS conducted section 7 consultation and issued a biological opinion regarding the effects of Council fisheries and fisheries in the Columbia River on LCR coho. The states of Oregon and Washington have focused on use of

a harvest matrix for LCR coho, developed by Oregon, following their listing under Oregon's State ESA. Under the matrix the allowable harvest in a given year depends on indicators of marine survival and brood year escapement. The matrix has both ocean and in-river components which can be combined to define a total exploitation rate limit for all ocean and in-river fisheries. Generally speaking, NMFS supports use of management planning tools that allow harvest to vary depending on the year-specific circumstances. Conceptually, we think Oregon's approach is a good one. However, NMFS has taken a more conservative approach for LCR coho in recent years because of unresolved issues related to application of the matrix. NMFS will continue to apply the matrix as we have in the past, by limiting the total harvest to that allowed under the matrix for the ocean fisheries. For 2009, the harvest matrix prescribes an ocean exploitation rate of 20 percent, and a combined ocean and freshwater exploitation rate of 29.2 percent. However, under these circumstances, the 2008 biological opinion limits the overall exploitation rate to that specified in the ocean portion of the matrix. As a consequence, ocean salmon fisheries under the Council's jurisdiction in 2009, and commercial and recreational salmon fisheries in the mainstem Columbia River, including select area fisheries (e.g., Youngs Bay), must be managed subject to a total exploitation rate limit on LCR coho not to exceed 20 percent. Recommended management measures that would affect LCR coho are consistent with this requirement.

The ESA listing status of Oregon Coast (OC) coho has changed over the years. On February 11, 2008, NMFS again listed OC coho as threatened under the ESA (73 FR 7816 February 11, 2008). Regardless of their listing status, the Council has managed OC coho consistent with the terms of Amendment 13 of the Salmon FMP and subsequent guidance provided by the 2000 ad hoc Work Group appointed by the Council. NMFS concluded that the management provisions for OC coho would not jeopardize the continued existence of the ESU through its section 7 consultation on Amendment 13 in 1999, and has since supported use of the expert advice provided by the Council's ad hoc Work Group. For the 2009 season, the applicable spawner status is in the "low" category while the marine survival index is in the "medium" category. Under this circumstance, the Work Group report requires that the exploitation rate be limited to no more

than 15 percent. Recommended management measures that would affect OC coho are consistent with this requirement.

Interior Fraser (Thompson River) coho, a Canadian stock, continues to be depressed, remaining in the "low" status category under the Pacific Salmon Treaty and, along with LCR coho, is the coho stock most limiting the 2009 ocean fisheries north of Cape Falcon. The recommended management measures satisfy the maximum 10.0 percent total U.S. exploitation rate called for by the Pacific Salmon Treaty agreements and the Salmon FMP, with a marine exploitation rate of 9.8 percent in U.S. fisheries.

#### **Management Measures for 2009 Fisheries**

The Council-recommended ocean harvest levels and management measures for the 2009 fisheries are designed to apportion the burden of protecting the weak stocks identified and discussed in PRE I equitably among ocean fisheries and to allow maximum harvest of natural and hatchery runs surplus to inside fishery and spawning needs. NMFS finds the Council's recommendations responsive to the goals of the Salmon FMP, the requirements of the resource, and the socioeconomic factors affecting resource users. The recommendations are consistent with the requirements of the Magnuson-Stevens Fishery Conservation and Management Act and U.S. obligations to Indian tribes with federally recognized fishing rights, and U.S. international obligations regarding Pacific salmon. Accordingly, NMFS has adopted them.

North of Cape Falcon the 2009 management measures have a similar Chinook salmon quota and a substantially higher coho quota relative to the 2008 season. The total allowable catch for 2009 is 80,000 Chinook and 270,000 marked hatchery coho. These fisheries are restricted to protect threatened Lower Columbia River Chinook, threatened Lower Columbia River coho, threatened Oregon Coastal Natural coho, and coho salmon from the Thompson River in Canada. Washington coastal and Puget Sound Chinook generally migrate to the far north and are not significantly affected by ocean harvests from Cape Falcon, OR, to the U.S.-Canada border. Nevertheless, ocean fisheries in combination with fisheries inside Puget Sound are also restricted in order to meet ESA related conservation objectives for Puget Sound Chinook. North of Cape Alava, WA, the Council recommended a provision prohibiting retention of chum salmon during

August and September to protect ESA listed Hood Canal summer chum. The Council has recommended such a prohibition for the last eight years.

South of Cape Falcon, OR, the commercial salmon fishery will be limited to an 11,000-fish quota of coho between Cape Falcon and Humbug Mountain, Oregon. There will be no commercial salmon fishery on Chinook salmon south of Cape Falcon in 2009 because Sacramento River Fall Chinook salmon are projected to be at the lower end of the range of their conservation objective, even with no fishing on the stock. Recreational fisheries south of Cape Falcon will have a quota of 117,000 marked hatchery coho, thus providing increased opportunity for coho fishing off Oregon compared to 2008. Recreational fisheries for Chinook salmon south of Cape Falcon will be limited to a 10-day season, August 29 through September 7, in the Klamath Management Zone (Humbug Mountain, Oregon to Horse Mountain, California) with a quota of 30,800 Chinook salmon.

The treaty-Indian commercial troll fishery quota is 39,000 Chinook in ocean management areas and Washington State Statistical Area 4B combined. This quota is slightly higher than the 37,500-Chinook quota in 2008. The fisheries include a Chinook-directed fishery in May and June with a quota of 19,000 Chinook, and an all-salmon season beginning July 1 with a 20,000 Chinook sub-quota. The coho quota for the treaty-Indian troll fishery in ocean management areas, including Washington State Statistical Area 4B, for the July-September period is 60,000 coho, a substantial increase from the 20,000-coho quota in 2008.

#### Management Measures for 2010 Fisheries

The timing of the March and April Council meetings makes it impracticable for the Council to recommend fishing seasons that begin before May 1 of the same year. Therefore, the 2010 fishing seasons opening earlier than May 1 are also established in this action. The Council recommended, and NMFS concurs, that the commercial season off Oregon from Cape Falcon to Humbug Mountain, from Humbug Mountain to the Oregon/California border and the recreational season off Oregon from Cape Falcon to Humbug Mountain and off California south of Horse Mountain will open in 2010 as indicated in the Season Description section. At the March 2010 meeting, the Council may consider inseason recommendations to adjust the commercial season prior to May 1 in the areas off Oregon and California.

#### Inseason Actions

The following sections set out the management regime for the salmon fishery. Open seasons and days are described in Sections 1, 2, and 3 of the 2009 management measures. Inseason closures in the commercial and recreational fisheries are announced on the NMFS hotline and through the U.S. Coast Guard Notice to Mariners as described in Section 6. Other inseason adjustments to management measures are also announced on the hotline and through the Notice to Mariners. Inseason actions will also be published in the **Federal Register** as soon as practicable.

The following are the management measures recommended by the Council and approved and implemented here for 2009 and, as specified, for 2010.

#### Section 1. Commercial Management Measures for 2009 Ocean Salmon Fisheries

**Note:** This section contains restrictions in parts A, B, and C that must be followed for lawful participation in the fishery. Each fishing area identified in part A specifies the fishing area by geographic boundaries from north to south, the open seasons for the area, the salmon species allowed to be caught during the seasons, and any other special restrictions effective in the area. Part B specifies minimum size limits. Part C specifies special requirements, definitions, restrictions and exceptions.

##### A. Season Description

North of Cape Falcon, OR—U.S./Canada Border to Cape Falcon

May 1 through the earlier of June 30 or 13,735 Chinook quota. Open May 1–5, 8–12, then Saturday through Tuesday thereafter with a landing and possession limit of 75 Chinook per vessel for each open period north of Leadbetter Point or 75 Chinook south of Leadbetter Point (C.1, C.8.e). All salmon except coho (C.7). Mandatory Yelloweye Rockfish Conservation Area, Cape Flattery and Columbia Control Zones closed (C.5). See gear restrictions and definitions (C.2, C.3). Oregon State regulations require that fishers south of Cape Falcon, OR intending to fish within this area notify Oregon Department of Fish and Wildlife before transiting the Cape Falcon, OR line (45°46′00″ N. lat.) at the following number: 541–867–0300 Ext. 271. Vessels must land and deliver their fish within 24 hours of any closure of this fishery. Under state law, vessels must report their catch on a state fish receiving ticket. Vessels fishing or in possession of salmon while fishing north of Leadbetter Point must land and deliver their fish within the area and

north of Leadbetter Point. Vessels fishing or in possession of salmon while fishing south of Leadbetter Point must land and deliver their fish within the area and south of Leadbetter Point, except that Oregon permitted vessels may also land their fish in Garibaldi, Oregon. Oregon State regulations require all fishers landing salmon into Oregon from any fishery between Leadbetter Point, Washington and Cape Falcon, Oregon must notify ODFW within one hour of delivery or prior to transport away from the port of landing by calling 541–867–0300 Ext. 271. Notification shall include vessel name and number, number of salmon by species, port of landing and location of delivery, and estimated time of delivery. Inseason actions may modify harvest guidelines in later fisheries to achieve or prevent exceeding the overall allowable troll harvest impacts (C.8).

July 1 through the earlier of September 15 or 6,765 preseason Chinook guideline (C.8) or a 33,600 marked coho quota (C.8.d). Open July 1–7, then Saturday through Tuesday thereafter, with a landing and possession limit of 40 Chinook and 200 coho per vessel for each open period north of Leadbetter Point or 40 Chinook and 200 coho south of Leadbetter Point (C.1, C.8.e). All Salmon except no chum retention north of Cape Alava, Washington beginning August 1 (C.7). All coho must be marked (C.8.d). Mandatory Yelloweye Rockfish Conservation Area, Cape Flattery and Columbia Control Zones closed (C.5). Oregon State regulations require that fishers south of Cape Falcon, OR intending to fish within this area notify Oregon Department of Fish and Wildlife before transiting the Cape Falcon, OR line (45°46′00″ N. lat.) at the following number: 541–867–0300 Ext. 271. Vessels must land and deliver their fish within 24 hours of any closure of this fishery. Under state law, vessels must report their catch on a state fish receiving ticket. Vessels fishing or in possession of salmon while fishing north of Leadbetter Point must land and deliver their fish within the area and north of Leadbetter Point. Vessels fishing or in possession of salmon while fishing south of Leadbetter Point must land and deliver their fish within the area and south of Leadbetter Point, except that Oregon permitted vessels may also land their fish in Garibaldi, Oregon. Oregon State regulations require all fishers landing salmon into Oregon from any fishery between Leadbetter Point, Washington and Cape Falcon, Oregon must notify ODFW within one hour of delivery or prior to

transport away from the port of landing by calling 541-867-0300 Ext. 271. Notification shall include vessel name and number, number of salmon by species, port of landing and location of delivery, and estimated time of delivery. Inseason actions may modify harvest guidelines in later fisheries to achieve or prevent exceeding the overall allowable troll harvest impacts (C.8).

South of Cape Falcon, OR—Cape Falcon to Humbug Mountain

September 1 through the earlier of September 30 or an 11,000 preseason coho quota (C.8.f). All salmon except

Chinook (B, C.8.f, C.9). Seven days per week with a landing and possession limit of 100 coho per vessel per calendar week (Sunday through Saturday) (C.1, C.8.e), no coho mark-selective restriction (C.7). All vessels fishing in the area must land their fish in the State of Oregon. See gear restrictions and definitions (C.2, C.3) and Oregon State regulations for a description of special regulations at the mouth of Tillamook Bay.

In 2010, the season will open March 15 for all salmon except coho, with a 27 inch Chinook minimum size limit. This opening could be modified following

Council review at its March 2010 meeting.

Humbug Mountain to Oregon/California Border

Closed in 2009. In 2010, the season will open March 15 for all salmon except coho, with a 27 inch Chinook minimum size limit. This opening could be modified following Council review at its March 2010 meeting.

Oregon/California Border to U.S./Mexico Border

Closed.

*B. Minimum Size (Inches) (See C.1)*

Area (when open)	Chinook		Coho		Pink
	Total length	Head-off	Total length	Head-off	
North of Cape Falcon, OR .....	28.0	21.5	16.0	12.0	None.
Cape Falcon to OR-CA Border .....	—	—	16.0	12.0	None.
OR-CA Border to US-Mexico Border .....	.....	.....	.....	.....	.....

Metric equivalents: 28.0 in = 71.1 cm, 27.0 in = 68.6 cm, 26.0 in = 66.0 cm, 21.5 in = 54.6 cm, 19.5 in = 49.5 cm, 16.0in = 40.6 cm, and 12.0 in = 30.5 cm.

*C. Special Requirements, Definitions, Restrictions, or Exceptions*

**C.1. Compliance With Minimum Size or Other Special Restrictions:**

All salmon on board a vessel must meet the minimum size, landing/possession limit, or other special requirements for the area being fished and the area in which they are landed if the area is open. Salmon may be landed in an area that has been closed more than 96 hours only if they meet the minimum size, landing/possession limit, or other special requirements for the area in which they were caught. Salmon may be landed in an area that has been closed less than 96 hours only if they meet the minimum size, landing/possession limit, or other special requirements for the areas in which they were caught and landed.

States may require fish landing/receiving tickets to be kept on board the vessel for 90 days after landing to account for all previous salmon landings.

**C.2. Gear Restrictions:**

Salmon may be taken only by hook and line using barbless hooks.

a. Single point, single shank, barbless hooks are required in all fisheries.

b. Cape Falcon, Oregon, to the OR/CA border: No more than 4 spreads are allowed per line.

c. OR/CA border to U.S./Mexico border: No more than 6 lines are allowed per vessel, and barbless circle hooks are required when fishing with bait by any means other than trolling.

**C.3. Gear Definitions:**

Trolling defined: Fishing from a boat or floating device that is making way by means of a source of power, other than drifting by means of the prevailing water current or weather conditions.

Troll fishing gear defined: One or more lines that drag hooks behind a moving fishing vessel. In that portion of the fishery management area (FMA) off Oregon and Washington, the line or lines must be affixed to the vessel and must not be intentionally disengaged from the vessel at any time during the fishing operation.

Spread defined: A single leader connected to an individual lure or bait.

Circle hook defined: A hook with a generally circular shape and a point which turns inward, pointing directly to the shank at a 90 °angle.

**C.4. Transit Through Closed Areas With Salmon on Board:**

It is unlawful for a vessel to have troll or recreational gear in the water while transiting any area closed to fishing for a certain species of salmon, while possessing that species of salmon; however, fishing for species other than salmon is not prohibited if the area is open for such species, and no salmon are in possession.

**C.5. Control Zone Definitions:**

a. Cape Flattery Control Zone—The area from Cape Flattery (48°23'00" N. lat.) to the northern boundary of the U.S. EEZ; and the area from Cape Flattery south to Cape Alava (48°10'00" N. lat.) and east of 125°05'00" W. long.

b. Mandatory Yelloweye Rockfish Conservation Area—The area in Washington Marine Catch Area 3 from

48°00.00' N. lat.; 125°14.00' W. long. to 48°02.00' N. lat.; 125°14.00' W. long. to 48°02.00' N. lat.; 125°16.50' W. long. to 48°00.00' N. lat.; 125°16.50' W. long. and connecting back to 48°00.00' N. lat.; 125°14.00' W. long.

c. Columbia Control Zone—An area at the Columbia River mouth, bounded on the west by a line running northeast/southwest between the red lighted Buoy #4 (46°13'35" N. lat., 124°06'50" W. long.) and the green lighted Buoy #7 (46°15'09" N. lat., 124°06'16" W. long.); on the east, by the Buoy #10 line which bears north/south at 357° true from the south jetty at 46°14'00" N. lat., 124°03'07" W. long. to its intersection with the north jetty; on the north, by a line running northeast/southwest between the green lighted Buoy #7 to the tip of the north jetty (46°15'48" N. lat., 124°05'20" W. long.), and then along the north jetty to the point of intersection with the Buoy #10 line; and, on the south, by a line running northeast/southwest between the red lighted Buoy #4 and tip of the south jetty (46°14'03" N. lat., 124°04'05" W. long.), and then along the south jetty to the point of intersection with the Buoy #10 line.

d. Bandon High Spot Control Zone—The area west of a line between 43°07'00" N. lat.; 124°37'00" W. long. and 42°40'30" N. lat.; 124°52'0" W. long. extending to the western edge of the exclusive economic zone (EEZ).

e. Klamath Control Zone—The ocean area at the Klamath River mouth bounded on the north by 41°38'48" N. lat. (approximately six nautical miles

north of the Klamath River mouth); on the west, by 124°23'00" W. long. (approximately 12 nautical miles off shore); and on the south, by 41°26'48" N. lat. (approximately six nautical miles south of the Klamath River mouth).

**C.6. Notification When Unsafe Conditions Prevent Compliance With Regulations:**

If prevented by unsafe weather conditions or mechanical problems from meeting special management area landing restrictions, vessels must notify the U.S. Coast Guard and receive acknowledgment of such notification prior to leaving the area. This notification shall include the name of the vessel, port where delivery will be made, approximate amount of salmon (by species) on board, and the estimated time of arrival.

**C.7. Incidental Halibut Harvest:**

During authorized periods, the operator of a vessel that has been issued an incidental halibut harvest license may retain Pacific halibut caught incidentally in Area 2A while trolling for salmon. Halibut retained must be no less than 32 inches (81.28 cm) in total length, measured from the tip of the lower jaw with the mouth closed to the extreme end of the middle of the tail, and must be landed with the head on. License applications for incidental harvest must be obtained from the International Pacific Halibut Commission (phone: 206-634-1838). Applicants must apply prior to April 1 of each year. Incidental harvest is authorized only during May and June troll seasons and after June 30 if quota remains and if announced on the NMFS hotline (phone: 800-662-9825). ODFW and Washington Department of Fish and Wildlife (WDFW) will monitor landings. If the landings are projected to exceed the 29,362 pound preseason allocation or the total Area 2A non-Indian commercial halibut allocation, NMFS will take inseason action to prohibit retention of halibut in the non-Indian salmon troll fishery.

Beginning May 1, license holders may possess or land no more than one Pacific halibut per each two Chinook, except one Pacific halibut may be possessed or landed without meeting the ratio requirement, and no more than 35 halibut may be possessed or landed per trip. Pacific halibut retained must be no less than 32 inches in total length (with head on).

A "C-shaped" yelloweye rockfish conservation area is an area to be voluntarily avoided for salmon trolling. NMFS and the Council request salmon trollers voluntarily avoid this area in order to protect yelloweye rockfish. The area is defined in the Pacific Council

Halibut Catch Sharing Plan in the North Coast subarea (Washington marine area 3), with the following coordinates in the order listed:

48°18' N. lat.; 125°18' W. long.;  
48°18' N. lat.; 124°59' W. long.;  
48°11' N. lat.; 124°59' W. long.;  
48°11' N. lat.; 125°11' W. long.;  
48°04' N. lat.; 125°11' W. long.;  
48°04' N. lat.; 124°59' W. long.;  
48°00' N. lat.; 124°59' W. long.;  
48°00' N. lat.; 125°18' W. long.;

and connecting back to 48°18' N. lat.; 125°18' W. long.

**C.8. Inseason Management:**

In addition to standard inseason actions or modifications already noted under the season description, the following inseason guidance is provided to NMFS:

a. Chinook remaining from the May through June non-Indian commercial troll harvest guideline north of Cape Falcon may be transferred to the July through September harvest guideline on a fishery impact equivalent basis.

b. NMFS may transfer fish between the recreational and commercial fisheries north of Cape Falcon on a fishery impact equivalent basis if there is agreement among the areas' representatives on the Salmon Advisory Subpanel (SAS).

c. At the March 2010 meeting, the Council will consider inseason recommendations for special regulations for any experimental fisheries (proposals must meet Council protocol and be received in November 2009).

d. If retention of unmarked coho is permitted in the area from the U.S./Canada border to Cape Falcon, Oregon, by inseason action, the allowable coho quota will be adjusted to ensure preseason projected mortality of critical stocks is not exceeded.

e. Landing limits may be modified inseason to sustain season length and keep harvest within overall quotas.

f. Marked coho remaining from the June through August Cape Falcon to OR/CA border recreational coho quota may be transferred to the Cape Falcon to Humbug Mt. non-Indian commercial non-mark-selective all salmon fishery on a fishery impact equivalent basis.

**C.9. State Waters Fisheries:**

Consistent with Council management objectives:

a. The State of Oregon may establish additional late-season fisheries in state waters.

b. The State of California may establish limited fisheries in selected state waters.

Check state regulations for details.

**C.10.** For the purposes of California Department of Fish and Game (CDFG)

Code, Section 8232.5, the definition of the Klamath Management Zone (KMZ) for the ocean salmon season shall be that area from Humbug Mt., Oregon, to Horse Mt., California.

**Section 2. Recreational Management Measures for 2009 Ocean Salmon Fisheries**

**Note:** This section contains restrictions in parts A, B, and C that must be followed for lawful participation in the fishery. Each fishing area identified in part A specifies the fishing area by geographic boundaries from north to south, the open seasons for the area, the salmon species allowed to be caught during the seasons, and any other special restrictions effective in the area. Part B specifies minimum size limits. Part C specifies special requirements, definitions, restrictions and exceptions.

**A. Season Description**

North of Cape Falcon, OR—U.S./Canada Border to Cape Alava (Neah Bay)

June 27 through the earlier of September 20 or 18,350 marked coho subarea quota with a subarea guideline of 2,200 Chinook (C5). Tuesday through Saturday through July 17; seven days per week thereafter. All salmon except no chum retention beginning August 1 and no Chinook retention east of the Bonilla-Tatoosh line beginning August 1 during Council managed ocean fishery. Two fish per day, only one of which can be a Chinook, plus two additional pink salmon. Chinook 24-inch total length minimum size limit (B). All retained coho must be marked. See gear restrictions and definitions (C.2, C.3). Inseason management may be used to sustain season length and keep harvest within the overall Chinook recreational TAC for north of Cape Falcon (C.5).

Cape Alava to Queets River (La Push Subarea)

June 27 through the earlier of September 20 or 4,480 marked coho subarea quota with a subarea guideline of 950 Chinook (C5).

September 26 through the earlier of October 11 or 100 marked coho quota or 100 Chinook quota (C5) in the area north of 47°50'00" N. lat. and south of 48°00'00" N. lat. (C.6).

Tuesday through Saturday through July 17; seven days per week thereafter. All salmon. Two fish per day, no more than one of which can be a Chinook, plus two additional pink salmon. All retained coho must be marked. Chinook 24-inch total length minimum size limit (B). See gear restrictions (C.2). Inseason management may be used to sustain season length and keep harvest within the overall Chinook recreational TAC for north of Cape Falcon (C.5).

Queets River to Leadbetter Point (Westport Subarea)

June 28 through the earlier of September 20 or 65,270 marked coho subarea quota with a subarea guideline of 11,850 Chinook (C.5). Sunday through Thursday through July 23, seven days per week thereafter. All salmon, two fish per day, no more than one of which can be a Chinook, plus one additional pink salmon. Chinook 24-inch total length minimum size limit (B). All retained coho must be marked. See gear restrictions and definitions (C.2, C.3). Grays Harbor Zone closed beginning August 1 (C.4.b). Inseason management may be used to sustain season length and keep harvest within the overall Chinook recreational TAC for north of Cape Falcon (C.5).

Leadbetter Point to Cape Falcon (Columbia River Subarea)

June 28 through the earlier of September 30 or 88,200 marked coho subarea quota with a subarea guideline of 5,400 Chinook (C.5). Seven days per week. All salmon, two fish per day, no more than one of which can be a Chinook. Chinook 24-inch total length minimum size limit (B). All retained coho must be marked. See gear restrictions and definitions (C.2, C.3). Columbia Control Zone closed (C.4.c). Inseason management may be used to sustain season length and keep harvest within the overall Chinook recreational TAC for north of Cape Falcon (C.5).

South of Cape Falcon, OR—Cape Falcon to Humbug Mt.

June 20 through the earlier of August 31 or an 110,000 marked coho quota for the area between Cape Falcon and the OR/CA border (C.5.e, C.6). Seven days per week. All salmon except Chinook, three fish per day (B, C.1). All retained coho must be marked.

September 1 through the earlier of September 30 or a 7,000 preseason marked coho quota (C.5.e, C.6). Seven days per week. All salmon except Chinook, two fish per day (B). All retained coho must be marked. Coho remaining from the June through August recreational 110,000 coho quota may be transferred inseason to the coho quota for this fishery. See gear restrictions and definitions (C.2, C.3). Fishing in the Stonewall Bank groundfish conservation area restricted to trolling only on days the all depth recreational halibut fishery is open (call the halibut fishing hotline 1-800-662-9825 for specific dates) (C.3, C.4.d). Open days and bag limit may be adjusted inseason to utilize the available quota (C.5).

In 2010, the season between Cape Falcon and Humbug Mt. will open March 15 for all salmon except coho, two fish per day (B, C.1, C.2, C.3).

Humbug Mt. to OR/CA Border

June 20 through the earlier of August 31 or a 110,000 marked coho quota for the area between Cape Falcon and the OR/CA border (C.5.e, C.6). Seven days

per week. Except as provided below for the all salmon fishery, all salmon except Chinook. Two fish per day (B, C.1). All retained coho must be marked.

August 29 through September 7 (C.6). Seven days per week. Except as provided above for the mark selective coho fishery, all salmon except coho. Two fish per day (C.1). Chinook minimum size limit of 24 inches total length (B).

See gear restrictions and definitions (C.2, C.3).

OR/CA Border to Horse Mt. (California KMZ)

August 29 through September 7 (C.6). Seven days per week. All salmon except coho. Two fish per day (C.1). Chinook minimum size limit of 24 inches total length (B). See gear restrictions and definitions (C.2, C.3). Klamath Control Zone closed in August (C.4.e).

Horse Mt. to U.S./Mexico Border

Closed. In 2010, season opens April 3 for all salmon except coho, two fish per day (C.1). Chinook minimum size limit of 20 inches total length (B); and the same gear restrictions as in 2009 (C.2, C.3).

*B. Minimum Size (Total Length in Inches) (See C.1)*

Area (when open)	Chinook	Coho	Pink
North of Cape Falcon .....	24.0	16.0	None
Cape Falcon to Humbug Mt .....	24.0	16.0	None
Humbug Mt. to OR/CA Border .....	24.0	16.0	None
OR/CA Border to Horse Mountain .....	24.0	.....	24.0
Horse Mt. to U.S./Mexico Border .....	.....	.....	.....

Metric equivalents: 28.0 in = 71.1 cm, 27.0 in = 68.6 cm, 26.0 in = 66.0 cm, 21.5 in = 54.6 cm, 19.5 in = 49.5 cm, 16.0in = 40.6 cm, and 12.0 in = 30.5 cm.

*C. Special Requirements, Definitions, Restrictions, or Exceptions*

**C.1. Compliance With Minimum Size and Other Special Restrictions:**

All salmon on board a vessel must meet the minimum size or other special requirements for the area being fished and the area in which they are landed if that area is open. Salmon may be landed in an area that is closed only if they meet the minimum size or other special requirements for the area in which they were caught.

Ocean Boat Limits: Off the coast of Washington, Oregon, and California, each fisher aboard a vessel may

continue to use angling gear until the combined daily limits of salmon for all licensed and juvenile anglers aboard has been attained (additional state restrictions may apply).

**C.2. Gear Restrictions:**

Salmon may be taken only by hook and line using barbless hooks. All persons fishing for salmon, and all persons fishing from a boat with salmon on board, must meet the gear restrictions listed below for specific areas or seasons.

a. U.S./Canada Border to Point Conception, California: No more than one rod may be used per angler; and no

more than two single point, single shank barbless hooks are required for all fishing gear. [Note: ODFW regulations in the state-water fishery off Tillamook Bay may allow the use of barbed hooks to be consistent with inside regulations.]

b. Horse Mt., California, to Point Conception, California: Single point, single shank, barbless circle hooks (see gear definitions below) are required when fishing with bait by any means other than trolling, and no more than two such hooks shall be used. When angling with two hooks, the distance between the hooks must not exceed five inches when measured from the top of

the eye of the top hook to the inner base of the curve of the lower hook, and both hooks must be permanently tied in place (hard tied). Circle hooks are not required when artificial lures are used without bait.

C.3. Gear Definitions:

a. Recreational fishing gear defined: Angling tackle consisting of a line with no more than one artificial lure or natural bait attached. Off Oregon and Washington, the line must be attached to a rod and reel held by hand or closely attended; the rod and reel must be held by hand while playing a hooked fish. No person may use more than one rod and line while fishing off Oregon or Washington. Off California, the line must be attached to a rod and reel held by hand or closely attended. Weights directly attached to a line may not exceed four pounds (1.8 kg). While fishing off California north of Point Conception, no person fishing for salmon, and no person fishing from a boat with salmon on board, may use more than one rod and line. Fishing includes any activity which can reasonably be expected to result in the catching, taking, or harvesting of fish.

b. Trolling defined: Angling from a boat or floating device that is making way by means of a source of power, other than drifting by means of the prevailing water current or weather conditions.

c. Circle hook defined: A hook with a generally circular shape and a point which turns inward, pointing directly to the shank at a 90° angle.

C.4. Control Zone Definitions:

a. The Bonilla-Tatoosh Line: A line running from the western end of Cape Flattery to Tatoosh Island Lighthouse (48°23'30" N. lat., 124°44'12" W. long.) to the buoy adjacent to Duntze Rock (48°28'00" N. lat., 124°45'00" W. long.), then in a straight line to Bonilla Point (48°35'30" N. lat., 124°43'00" W. long.) on Vancouver Island, British Columbia.

b. Grays Harbor Control Zone—The area defined by a line drawn from the Westport Lighthouse (46°53'18" N. lat., 124°07'01" W. long.) to Buoy #2 (46°52'42" N. lat., 124°12'42" W. long.) to Buoy #3 (46°55'00" N. lat., 124°14'48" W. long.) to the Grays Harbor north jetty (46°36'00" N. lat., 124°10'51" W. long.).

c. Columbia Control Zone: An area at the Columbia River mouth, bounded on the west by a line running northeast/southwest between the red lighted Buoy

#4 (46°13'35" N. lat., 124°06'50" W. long.) and the green lighted Buoy #7 (46°15'09" N. lat., 124°06'16" W. long.); on the east, by the Buoy #10 line which bears north/south at 357° true from the south jetty at 46°14'00" N. lat., 124°03'07" W. long. to its intersection with the north jetty; on the north, by a line running northeast/southwest between the green lighted Buoy #7 to the tip of the north jetty (46°15'48" N. lat., 124°05'20" W. long. and then along the north jetty to the point of intersection with the Buoy #10 line; and on the south, by a line running northeast/southwest between the red lighted Buoy #4 and tip of the south jetty (46°14'03" N. lat., 124°04'05" W. long.), and then along the south jetty to the point of intersection with the Buoy #10 line.

d. Stonewall Bank Groundfish Conservation Area: The area defined by the following coordinates in the order listed:

44°37.46' N. lat.; 124°24.92' W. long.;  
 44°37.46' N. lat.; 124°23.63' W. long.;  
 44°28.71' N. lat.; 124°21.80' W. long.;  
 44°28.71' N. lat.; 124°24.10' W. long.;  
 44°31.42' N. lat.; 124°25.47' W. long.;  
 and connecting back to 44°37.46' N. lat.; 124°24.92' W. long.

e. Klamath Control Zone: The ocean area at the Klamath River mouth bounded on the north by 41°38'48" N. lat. (approximately six nautical miles north of the Klamath River mouth); on the west, by 124°23'00" W. long. (approximately 12 nautical miles off shore); and, on the south, by 41°26'48" N. lat. (approximately 6 nautical miles south of the Klamath River mouth).

C.5. Inseason Management:

Regulatory modifications may become necessary inseason to meet preseason management objectives such as quotas, harvest guidelines, and season duration. In addition to standard inseason actions or modifications already noted under the season description, the following inseason guidance is provided to NMFS:

a. Actions could include modifications to bag limits, or days open to fishing, and extensions or reductions in areas open to fishing.

b. Coho may be transferred inseason among recreational subareas north of Cape Falcon on an impact neutral basis to help meet the recreational season duration objectives (for each subarea) after conferring with representatives of

the affected ports and the Council's SAS recreational representatives north of Cape Falcon.

c. Chinook and coho may be transferred between the recreational and commercial fisheries north of Cape Falcon on an impact neutral basis if there is agreement among the representatives of the Salmon Advisory Subpanel (SAS).

d. If retention of unmarked coho is permitted in the area from the U.S./Canada border to Cape Falcon, Oregon, by inseason action, the allowable coho quota will be adjusted to ensure preseason projected mortality of critical stocks is not exceeded.

e. Marked coho remaining from the June through August Cape Falcon to OR/CA border recreational coho quota may be transferred to the September Cape Falcon to Humbug Mt. recreational fishery, or the Cape Falcon to Humbug Mt. non-Indian commercial non-mark-selective all salmon fishery on a fishery impact equivalent basis.

C.6. Additional Seasons in State Territorial Waters:

Consistent with Council management objectives, the States of Washington, Oregon, and California may establish limited seasons in state waters. Check state regulations for details.

**Section 3. Treaty Indian Management Measures for 2009 Ocean Salmon Fisheries**

**Note:** This section contains restrictions in parts A, B, and C which must be followed for lawful participation in the fishery.

*A. Season Descriptions*

U.S./Canada Border to Cape Falcon

May 1 through the earlier of June 30 or 19,000 Chinook quota. All salmon except coho. If the Chinook quota for the May-June fishery is not fully utilized, the excess fish cannot be transferred into the later all-salmon season. If the Chinook quota is exceeded, the excess will be deducted from the later all-salmon season. See size limit (B) and other restrictions (C).

July 1 through the earlier of September 15, or 20,000 preseason Chinook quota, or 60,000 coho quota. All Salmon. See size limit (B) and other restrictions (C).

*B. Minimum Size (Inches)*

Area (when open)	Chinook		Coho		Pink
	Total	Head-off	Total	Head-off	
North of Cape Falcon .....	24.0	18.0	16.0	12.0	None

Metric equivalents: 24.0 in = 61.0 cm, 18.0 in = 45.7 cm, 16.0in = 40.6 cm, and 12.0 in = 30.5 cm.

*C. Special Requirements, Restrictions, and Exceptions*

C.1. Tribe and Area Boundaries:

All boundaries may be changed to include such other areas as may hereafter be authorized by a Federal court for that tribe's treaty fishery.

S'KLALLAM—Washington State Statistical Area 4B (All).

MAKAH—Washington State Statistical Area 4B and that portion of the FMA north of 48°02'15" N. lat. (Norwegian Memorial) and east of 125°44'00" W. long.

QUILEUTE—That portion of the FMA between 48°07'36" N. lat. (Sand Pt.) and 47°31'42" N. lat. (Queets River) and east of 125°44'00" W. long.

HOH—That portion of the FMA between 47°54'18" N. lat. (Quillayute River) and 47°21'00" N. lat. (Quinault River) and east of 125°44'00" W. long.

QUINAULT—That portion of the FMA between 47°40'06" N. lat. (Destruction Island) and 46°53'18" N. lat. (Point Chehalis) and east of 125°44'00" W. long.

C.2. Gear Restrictions:

a. Single point, single shank, barbless hooks are required in all fisheries.

b. No more than eight fixed lines per boat.

c. No more than four hand held lines per person in the Makah area fishery (Washington State Statistical Area 4B and that portion of the FMA north of 48°02'15" N. lat. (Norwegian Memorial) and east of 125°44'00" W. long.)

C.3. Quotas:

a. The quotas include troll catches by the S'Klallam and Makah tribes in Washington State Statistical Area 4B from May 1 through September 15.

b. The Quileute Tribe will continue a ceremonial and subsistence fishery during the time frame of September 15 through October 15 in the same manner as in 2004–2008. Fish taken during this fishery are to be counted against treaty troll quotas established for the 2009 season (estimated harvest during the October ceremonial and subsistence fishery: 100 Chinook; 200 coho).

C.4. Area Closures:

a. The area within a six nautical mile radius of the mouths of the Queets River (47°31'42" N. lat.) and the Hoh River (47°45'12" N. lat.) will be closed to commercial fishing.

b. A closure within two nautical miles of the mouth of the Quinault River (47°21'00" N. lat.) may be enacted by the Quinault Nation and/or the State of Washington and will not adversely affect the Secretary of Commerce's management regime.

**Section 4. Halibut Retention**

Under the authority of the Northern Pacific Halibut Act, NMFS promulgated regulations governing the Pacific halibut fishery which appear at 50 CFR part 300, subpart E. On March 19, 2009, NMFS published a final rule (74 FR 11681) to implement the International Pacific Halibut Commission's (IPHC) recommendations, to announce fishery regulations for U.S. waters off Alaska and fishery regulations for treaty commercial and ceremonial and subsistence fisheries, some regulations for non-treaty commercial fisheries for U.S. waters off the West Coast, and approval of and implementation of the Area 2A Pacific halibut Catch Sharing Plan and the Area 2A management measures for 2009. The regulations and management measures provide that vessels participating in the salmon troll fishery in Area 2A (all waters off the States of Washington, Oregon, and California), which have obtained the appropriate IPHC license, may retain halibut caught incidentally during authorized periods in conformance with provisions published with the annual salmon management measures. A salmon troller may participate in the halibut incidental catch fishery during the salmon troll season or in the directed commercial fishery targeting halibut, but not both.

The following measures have been approved by the IPHC, and implemented by NMFS. During authorized periods, the operator of a vessel that has been issued an incidental halibut harvest license may retain Pacific halibut caught incidentally in Area 2A while trolling for salmon. Halibut retained must be no less than 32 inches (81.28 cm) in total length, measured from the tip of the lower jaw with the mouth closed to the extreme end of the middle of the tail, and must be landed with the head on. License applications for incidental harvest must be obtained from the International Pacific Halibut Commission (phone: 206–634–1838). Applicants must apply prior to April 1 of each year. Incidental harvest is authorized only during May and June troll seasons and after June 30 if quota remains and if announced on the NMFS hotline (phone: 800–662–9825). ODFW and WDFW will monitor landings. If the landings are projected to exceed the 29,362 pound preseason allocation or the total Area 2A non-Indian commercial halibut allocation, NMFS will take inseason action to close the incidental halibut fishery.

Beginning May 1, license holders may possess or land no more than one Pacific halibut per each two Chinook,

except one Pacific halibut may be possessed or landed without meeting the ratio requirement, and no more than 35 halibut may be possessed or landed per trip. Pacific halibut retained must be no less than 32 inches in total length (with head on).

NMFS and the Council request that salmon trollers voluntarily avoid a "C-shaped" YRCA (North Coast Recreational YRCA) in order to protect yelloweye rockfish. The area is defined in the Pacific Council Halibut Catch Sharing Plan in the North Coast subarea (WA marine area 3) (See Section 1.C.7. for the coordinates).

**Section 5. Geographical Landmarks**

Wherever the words "nautical miles off shore" are used in this document, the distance is measured from the baseline from which the territorial sea is measured.

Geographical landmarks referenced in this document are at the following locations:

Cape Flattery, WA—48°23'00" N. lat.

Cape Alava, WA—48°10'00" N. lat.

Queets River, WA—47°31'42" N. lat.

Leadbetter Point, WA—46°38'10" N. lat.

Cape Falcon, OR—45°46'00" N. lat.

Florence South Jetty, OR—44°00'54" N. lat.

Humbug Mountain, OR—42°40'30" N. lat.

Oregon-California Border—42°00'00" N. lat.

Humboldt South Jetty, CA—40°45'53" N. lat.

Horse Mountain, CA—40°05'00" N. lat.

Point Arena, CA—38°57'30" N. lat.

Point Reyes, CA—37°59'44" N. lat.

Point San Pedro, CA—37°35'40" N. lat.

Pigeon Point, CA—37°11'00" N. lat.

Point Sur, CA—36°18'00" N. lat.

Point Conception, CA—34°27'00" N. lat.

**Section 6. Inseason Notice Procedures**

Actual notice of inseason management actions will be provided by a telephone hotline administered by the Northwest Region, NMFS, 206–526–6667 or 800–662–9825, and by U.S. Coast Guard Notice to Mariners broadcasts. These broadcasts are announced on Channel 16 VHF–FM and 2182 KHz at frequent intervals. The announcements designate the channel or frequency over which the Notice to Mariners will be immediately broadcast. Inseason actions will also be filed with the **Federal Register** as soon as practicable. Since provisions of these management measures may be altered by inseason actions, fishermen should monitor either the telephone hotline or Coast Guard broadcasts for current information for the area in which they are fishing.

## Classification

This rule is necessary for conservation and management and is consistent with the Magnuson-Stevens Act.

This notification of annual management measures is exempt from review under Executive Order 12866.

The provisions of 50 CFR 660.411 state that if, for good cause, an action must be filed without affording a prior opportunity for public comment, the measures will become effective; however, public comments on the action will be received for a period of 15 days after the date of publication in the **Federal Register**. NMFS will receive public comments on this action until May 20, 2009. These regulations are being promulgated under the authority of 16 USC 1855(d) and 16 USC 773(c).

The Assistant Administrator for Fisheries, NOAA (AA) finds good cause under 5 U.S.C. 553(b)(B), to waive the requirement for prior notice and opportunity for public comment, as such procedures are impracticable and contrary to the public interest.

The annual salmon management cycle begins May 1 and continues through April 30 of the following year. May 1 was chosen because the pre-May harvests constitute a relatively small portion of the annual catch. The time-frame of the preseason process for determining the annual modifications to ocean salmon fishery management measures depends on when the pertinent biological data are available. Salmon stocks are managed to meet annual spawning escapement goals or specific exploitation rates. Achieving either of these objectives requires designing management measures that are appropriate for the ocean abundance predicted for that year. These pre-season abundance forecasts, which are derived from the previous year's observed spawning escapement, vary substantially from year to year, and are not available until January and February because spawning escapement continues through the fall.

The preseason planning and public review process associated with developing Council recommendations is initiated in February as soon as the forecast information becomes available. The public planning process requires coordination of management actions of four states, numerous Indian tribes, and the Federal Government, all of which have management authority over the stocks. This complex process includes the affected user groups, as well as the general public. The process is compressed into a 2-month period which culminates at the April Council meeting at which the Council adopts a

recommendation that is forwarded to NMFS for review, approval and implementation of fishing regulations effective on May 1.

Providing opportunity for prior notice and public comments on the Council's recommended measures through a proposed and final rulemaking process would require 30 to 60 days in addition to the two-month period required for development of the regulations. Delaying implementation of annual fishing regulations, which are based on the current stock abundance projections, for an additional 60 days, would require that fishing regulations for May and June be set in the previous year, without knowledge of current stock status. Although this is currently done for fisheries opening prior to May, relatively little harvest occurs during that period (*e.g.*, in 2007 less than one percent of commercial and recreational harvest occurred prior to May 1). Allowing the much more substantial harvest levels normally associated with the May and June seasons to be regulated in a similar way would impair NMFS ability to protect weak stocks and ESA listed stocks, and provide harvest opportunity where appropriate. The choice of May 1 as the beginning of the regulatory season balances the need to gather and analyze the data needed to meet the management objectives of the Salmon FMP and the requirements to provide adequate public notice and comment on the regulations implemented by NMFS.

If these measures are not in place on May 1, the previous year's management measures will continue to apply in most areas. However, since the 2008 recreational management measures between Cape Falcon, Oregon and the Oregon/California border were implemented through an emergency rule, which has since expired, fisheries in this area will be closed until this rule is implemented. In 2008, the commercial fishery north of Cape Falcon began on May 3, with an 11,700 Chinook salmon quota, Saturday through Tuesday, with a landing limit of 50 Chinook salmon per vessel per period. In 2009 the commercial fishery north of Cape Falcon begins on May 1, on specific dates that are not the same as last year's dates, with a 13,745 Chinook salmon quota and a landing limit of 75 Chinook salmon per vessel per period. Therefore, if this regulation is not in place on May 1, fishers will lose the opportunity to fish during the first complete periods, and will be unnecessarily restricted to a lower period limit. In addition, the discrepancy will cause confusion for the fishermen. In addition, recreational

ocean salmon fisheries north of Cape Falcon had a quota of 13,500 Chinook salmon between June 1 and June 28, while under the recommended 2009 regulations those fisheries will not open before June 27. Earlier season fisheries may use up the available Chinook salmon quota early and preclude fishing opportunity later in the summer. This could reduce or eliminate opportunity for fisheries targeted at more abundant coho. It could also result in unanticipated adverse impacts to key Chinook salmon stocks that were not considered during the preseason planning process. Recreational fisheries south of Cape Falcon were greatly restricted in 2008, and would be closed until this rule is effective. Under the recommended 2009 regulations recreational fishing south of Cape Falcon will start in June, and have a quota of 110,000 coho; managing these 2009 fisheries according to 2008 regulations would limit harvest opportunity that could otherwise be available.

Overall, the annual population dynamics of the various salmon stocks require managers to vary the season structure of the various West Coast area fisheries to both protect weaker stocks and give fishers access to stronger salmon stocks, particularly hatchery produced fish. Failure to implement these measures immediately could compromise the status of certain stocks, or result in foregone opportunity to harvest stocks whose abundance has increased relative to the previous year thereby undermining the purpose of this agency action. Based upon the above-described need to have these measures effective on May 1 and the fact that there is limited time available to implement these new measures after the final Council meeting in April and before the commencement of the ocean salmon fishing year on May 1, NMFS has concluded it is impracticable and contrary to the public interest to provide an opportunity for prior notice and public comment under 5 U.S.C. 553(b)(B).

The AA also finds that good cause exists under 5 U.S.C. 553(d)(3), to waive the 30-day delay in effectiveness of this final rule. As previously discussed, data are not available until February and management measures not finalized until early April. These measures are essential to conserve threatened and endangered ocean salmon stocks, and to provide for harvest of more abundant stocks. Failure to implement these measures immediately could compromise the ability of some stocks to attain their conservation objectives preclude harvest opportunity, and

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](http://www.nwr.noaa.gov) and [swr.nmfs.noaa.gov](http://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](mailto: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.*

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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.)