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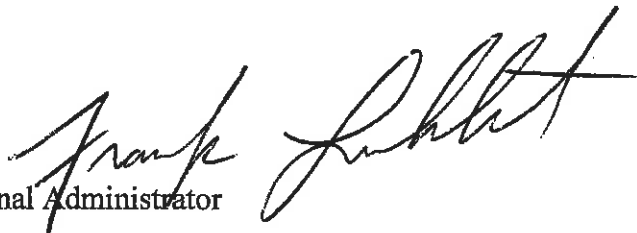


UNITED STATES DEPARTMENT OF COMMERCE
National Oceanic and Atmospheric Administration
NATIONAL MARINE FISHERIES SERVICE
Sustainable Fisheries Division F/NWR2
7600 Sand Point Way N.E., Bldg. 1
Seattle, WA 98115-0070

FEB 20 2013

PFMC

MEMORANDUM FOR: The Record

FROM: Frank Lockhart 
Assistant Regional Administrator

SUBJECT: Categorical Exclusion Determination under National
Environmental Policy Act (NEPA) for Rule to establish an interim
2013 Tribal Whiting Allocation

This memorandum provides the National Marine Fisheries Service's (NMFS) rationale for determining that a categorical exclusion (CE) is the appropriate level of NEPA review for a proposed and final rule establishing an interim allocation of Pacific whiting to the Washington coastal treaty Indian tribes in 2013. This rule meets the requirements of CEQ regulations at 40 CFR Part 1500-1508 and NOAA Administrative Order NAO 2166 for a categorical exclusion from detailed environmental review.

Background Information and Description of the Action

The 1996 regulations at 50 CFR 660.324(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. 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." Procedures set forth in the above-described regulations were developed to coordinate the tribes' exercise of their treaty right in ocean fisheries within the Council and NOAA's decision-making processes for the groundfish fishery.

NMFS is in the process of developing, in coordination with the tribes and states of Washington and Oregon, scientific information needed to negotiate a long term tribal allocation, but this process is not yet complete. Therefore, NMFS is moving forward with this proposed rule as an interim measure to address the allocation for the 2013 tribal Pacific whiting fishery. As with the 2012 allocation, this rule is not intended to establish any precedent for future whiting seasons or for the long-term tribal allocation of whiting. In the proposed rule NMFS states its' belief that the proposed tribal allocation formula will result in a tribal allocation that lies within the range of the long term tribal treaty right to Pacific whiting. This belief is based on the best available scientific information gathered to date.

NMFS' proposed Pacific whiting allocation for the 2013 tribal fishery [17.5% of the U.S. TAC] plus 16,000 mt is based on discussions over the last six months with the Makah and Quileute Tribes and Quinault Indian Nation regarding their intent for the 2013 fishing season. The Makah

tribe indicated their intent to continue to fish as in previous years. The Quileute tribe indicated that they will participate in 2013 and requested 16,000 mt. The Quinault Indian Nation indicated that they did not plan to participate in the fishery, but reserved the right to harvest, should they change their mind. NMFS will again contact the tribes during the proposed rule comment period to refine, if necessary, the 2013 allocation before a final decision is made. A specific amount for the tribal allocation for 2013 cannot be provided until late March, 2013 when the bilateral Joint Management Committee for the Pacific Whiting Treaty with Canada makes the decision on a coastwide TAC for 2013 following review, evaluation, and comment by the Scientific Review Group, Joint Technical Committee, and Advisory Panels established through the Treaty.

During the public comment period, NMFS will continue to consult with the tribes. After the comment period concludes, NMFS will consider these discussions as well as any public comments received, before making a final decision on the specific tribal allocation of Pacific whiting for 2013.

Effects of the Action

This action does not affect the overall amount of whiting that may be harvested. That amount is decided under the whiting treaty process, as described above. This action allocates a portion of the U.S. TAC to the treaty tribes. The potential effects of this allocation, and the resulting harvest and bycatch considerations, were analyzed and accounted for in the Environmental Impact Statement supporting the 2013-2014 groundfish harvest specifications and management measures.

The allocation of Pacific whiting to the treaty tribes provides additional economic opportunities in their respective coastal communities. Socioeconomic effects of the tribal whiting fishery are further evaluated in the RIR/IRFA as a component of the proposed rule:

Categorical Exclusion Determination Based on CEQ Regulations and NOAA Administrative order -NAO 216-6

In analyzing the appropriateness of a categorical exclusion (CE) determination for the Tribal whiting fishery in 2013, factors at section 5.05b NAO 216-6 and the specific guidance on significance at sections 6.01 and 6.02 were considered. Further, the allocation of whiting to the tribes in 2013 was evaluated on whether the action could be categorically excluded from the requirement to prepare an Environmental Assessment (EA) or Environmental Impact Statement (EIS) in accordance with NAO 216-6 Section 6.03a.3(b), 6.03c.3, and 6.03d regarding fishery management actions under the Magnuson-Stevens Act. Specifically, 6.03d.4(a) states that fishery management actions that are ongoing or recurring fisheries actions of a routine administrative nature may qualify for a CE if the actions do not have an impact beyond what was already considered. This action does not affect the overall amount of Pacific whiting harvested on an annual basis. The potential effects of this allocation, and the resulting harvest and bycatch considerations, including potential impacts on overfished species, were analyzed and accounted for in the Environmental Impact Statement supporting the 2013-2014 groundfish harvest specifications and management measures. This action provides the Washington coastal treaty Indian tribes with whiting harvest opportunities as a portion of the overall whiting TAC, which is considered a routine matter.

NAO 216-6 Sections 6.01 and 6.02 state that when adverse impacts are possible, the responsible program manager (RPM) should determine the appropriate course of action. If none of these situations may be reasonably expected to occur, NAO 216-6 states that the RPM should prepare an EA or determine, in accordance with Section 5.05, the applicability of a CE. This project does not trigger the six exceptions for categorical exclusions listed in NAO 216-6, Section 5.05c: (1) A geographic area with unique characteristics; (2) public controversy based on potential environmental consequences; (3) uncertain environmental impacts or unique or unknown risks; (4) establishment of a precedent or decision in principle about future proposals; (5) cumulatively significant impacts; or (6) adverse effects upon endangered or threatened species or their habitats. Accordingly, NMFS finds that the 2013 allocation of Pacific whiting to the Washington coastal treaty Indian tribes, as listed herein, is appropriate for a CE, and will not result in any potential significant impact under these factors.

In summary, NMFS finds that the 2013 proposed allocation of Pacific whiting to the Washington coastal treaty Indian tribes does not have the potential to individually or cumulatively pose significant effects to the quality of the human environment, either under the tests of NAO 216-6 Sections 6.01 and 6.02 or under 40 CFR 1508.27. Based on the above determination, the 2013 proposed allocation of Pacific whiting to the Washington coastal treaty Indian tribes is categorically excluded under NAO 216-6 and NEPA from both further analysis and requirements to prepare detailed environmental documents.

cc: GCNW (McNulty)
NWR (Lockhart)
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