

insufficient to accommodate the entire fish catch brought on board.

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DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 660

[Docket No. 071003556-7575-01]

RIN 0648-AW08

Fisheries Off West Coast States; Pacific Coast Groundfish Fishery; Amendment 15

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 to implement Amendment 15 to the Pacific Coast Groundfish Fishery Management Plan (FMP). Amendment 15 would modify the FMP to implement a limited entry program for the non-tribal Pacific whiting fishery. Amendment 15 was approved by NMFS on June 18, 2008, and in accordance with the notification procedures of the Magnuson-Stevens Fishery Conservation and Management Act, the Pacific Fishery Management Council was notified of this approval. Amendment 15 is intended to serve as an interim measure to limit potential participation in the Pacific whiting fishery within the U.S. West Coast Exclusive Economic Zone until implementation of a trawl rationalization program under Amendment 20 to the Groundfish FMP. **DATES:** Comments on this proposed rule must be received on or before August 11, 2008.

ADDRESSES: Amendment 15 is available on the Pacific Fishery Management Council's (Council's or Pacific Council's) website at: <http://www.pcouncil.org/groundfish/gffmp.html>.

You may submit comments, identified by RIN 0648-AW08 by any of the following methods:

- Electronic Submissions: Submit all electronic public comments via the FedereleRulemaking Portal: <http://www.regulations.gov>.
- Fax: 206-526-6736, Attn: Becky Renko.

- Mail: D. Robert Lohn, Administrator, Northwest Region, NMFS, Attn: Becky Renko, 7600 Sand Point Way NE, Seattle, WA 98115-0070.

Written comments regarding the burden-hour estimates or other aspects of the collection-of-information requirements contained in this proposed rule may be submitted to the Northwest Region (see **ADDRESSES**) and by e-mail to David_Rostker@omb.eop.gov, or fax to (202) 395-7285. Send comments on collection-of-information requirements to the NMFS address above and to the Office of Information and Regulatory Affairs (OIRA), Office of Management and Budget (OMB), Washington DC 20503 (Attn: NOAA Desk Officer).

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. Attachments to electronic comments will be accepted in Microsoft Word, Excel, WordPerfect, or Adobe PDF file formats only.

FOR FURTHER INFORMATION CONTACT: Becky Renko, phone: 206-526-6110, fax: 206-526-6736, or e-mail: becky.renko@noaa.gov, or for permitting information, Kevin Ford, phone: 206-526-6115, fax: 206-526-6736, or e-mail: kevin.ford@noaa.gov.

SUPPLEMENTARY INFORMATION:

Electronic Access

This proposed rule is accessible via the Internet at the Office of the **Federal Register's** Web site at http://www.access.gpo.gov/su_docs/aces/aces140.html. Background information and documents are available at the NMFS Northwest Region Web site at <http://www.nwr.noaa.gov/Groundfish-Halibut/Groundfish-Fishery-Management/index.cfm>.

NMFS is proposing this rule to implement Amendment 15 to the FMP, which would create a limited entry program for the three non-tribal sectors of the Pacific whiting fishery off the U.S. West Coast. Under current Federal regulations, Pacific whiting shoreside fishery catcher vessels, mothership catcher vessels, and catcher/processor vessels, must be registered to a groundfish limited entry permit. The limited entry program has been in place since 1994 and allows appropriately registered vessels to harvest groundfish,

targeting any of the 90+ species managed under the FMP. The proposed action to implement Amendment 15 to the FMP would require vessels that wish to harvest and/or process Pacific whiting in the non-tribal Pacific whiting fishery to qualify for a Pacific whiting vessel license limitation program. This is in addition to the requirement for harvesting vessels to be registered for use with groundfish limited entry permits. Amendment 15 is intended to serve as an interim measure that sunsets when the Pacific Fishery Management Council adopts and the National Marine Fisheries Service implements a trawl rationalization program under Amendment 20 to the Pacific Groundfish FMP. Amendment 20 is currently under development by the Council, which adopted its preliminary preferred alternative at the June Council meeting. The Council anticipates taking final action on the trawl rationalization program in November 2008. If NMFS approves the Amendment, implementation is scheduled for late 2010, at which time Amendment 15 would no longer be effective. If development and implementation of Amendment 20 is delayed beyond that point, NMFS intends to request that the Council reconsider the provisions of Amendment 15.

NMFS published a Notice of Availability for Amendment 15 on March 19, 2008 (73 FR 14765), and is requested public comment on it through May 19, 2008. Amendment 15 was approved by NMFS on June 18, 2008.

Background

Pacific whiting (*Merluccius productus*), also known as Pacific hake, is a semi-pelagic and relatively productive species that ranges from Sanak Island in the western Gulf of Alaska to Magdalena Bay, Baja California Sur, Mexico. They are most abundant in the California Current System, off the U.S. West Coast. Pacific whiting landings represent the most significant single-species contribution to West Coast groundfish landings from the 90+ groundfish species managed under the FMP by several orders of magnitude. In general, Pacific whiting is a very productive species with highly variable recruitment (the biomass of fish that mature and enter the fishery each year) and a relatively short life span when compared to other groundfish species. In 1987, the Pacific whiting biomass was at a historically high level due to an exceptionally large number of fish that had spawned in 1980 and 1984 (fished spawned during a particular year are referred to as year classes). As these large year classes of fish passed through

the population and were replaced by moderate sized year classes, the stock declined. The Pacific whiting stock stabilized between 1995 and 1997, but then declined to its lowest level in 2001. After 2001, the Pacific whiting biomass increased substantially as a strong 1999 year class matured and entered the spawning population. The contribution of the 1999 year class to the total population is rapidly declining as it matures.

Coastwide Pacific whiting harvest is managed via a 2003 U.S.-Canada agreement on Pacific whiting conservation, research, and catch sharing. Under that agreement, U.S. fisheries have access to 73.88 percent of the total annual Pacific whiting optimum yield (OY), with Canadian fisheries having access to 26.12 percent of the OY.

Pacific whiting harvest within U.S. waters is first allocated between tribal and non-tribal fisheries. In 1994, the United States formally recognized that the four Washington coastal treaty Indian tribes (Makah, Quileute, Hoh, and Quinault) have treaty rights to fish for groundfish in the Pacific Ocean. In general terms, the quantification of those rights is 50 percent of the harvestable surplus of groundfish that pass through the tribes' usual and accustomed ocean fishing areas (described at 50 CFR 660.324). To date, only the Makah Tribe has participated in a tribal fishery for Pacific whiting. Beginning in 1999, NMFS set the tribal allocation according to an abundance-based sliding scale method, proposed by the Makah Tribe in 1998 (see 64 FR 27928 (May 29, 1999); 65 FR 221, (January 4, 2000); 66 FR 2338 (January 11, 2001).) On December 28, 2004, the Ninth Circuit Court of Appeals upheld the sliding scale approach in *Midwater Trawler Cooperative v. Daley*, 393 F. 3d 994 (9th Cir. 2004). Under the sliding scale allocation method, the tribal allocation varies with the U.S. Pacific whiting OY, ranging from 14 percent (or less) of the U.S. OY when OY levels are above 250,000 mt, to 17.5 percent of the U.S. OY when the OY level is at or below 145,000 mt.

Since 1997, the non-tribal Pacific whiting fishery has been divided into three separate sectors: the shore-based sector, which is composed of vessels that harvest whiting for delivery to land-based processors; the mothership sector, which is composed of catcher vessels that harvest whiting and mothership vessels that process; and, the catcher/processor sector, which is composed of vessels that harvest and process whiting. Domestic allocation of the annual U.S. Pacific whiting OY between

these three sectors is provided for within Federal regulations at 50 CFR 660.323(a)(2): 34 percent for the catcher/processor sector; 24 percent for the mothership sector; and 42 percent for the shore-based sector. In addition to these between-sector allocations, no more than 5 percent of the shore-based allocation may be taken and retained south of 42° N. lat. before the June 15 start of the shore-based sector primary Pacific whiting season north of 42° N. lat.

The American Fisheries Act (AFA) and Amendment 15

The 1998 AFA was designed to strengthen U.S. ownership standards that had been exploited under the Anti-reflagging Act, and to rationalize the Bering Sea and Aleutian Islands (BSAI) walleye pollock (pollock) fishery while protecting non-AFA participants in other fisheries. The AFA prioritized U.S. interests in the harvest of U.S. fishery resources and decapitalized the BSAI pollock fishery through buyouts. Management measures required by the AFA include (1) regulations that limit access into the fishing and processing sectors of the BSAI pollock fishery and that allocate pollock to such sectors, (2) regulations governing the formation and operation of fishery cooperatives in the BSAI pollock fishery, (3) regulations to protect other fisheries from spillover effects from AFA, and (4) regulations governing catch measurement and monitoring in the BSAI pollock fishery.

Section 211 of the AFA requires the Pacific Council, not later than July 1, 2000, to recommend conservation and management measures it determines necessary to protect fisheries under its jurisdiction and the participants in those fisheries from adverse impacts caused by the AFA, or by any fishery cooperatives in the directed pollock fishery. In response to this requirement, the Council initiated discussions on Amendment 15 to the FMP in September 1999. At that time, the initial intent of Amendment 15 was to restrict AFA-qualified vessels that had not met historic Pacific whiting landing requirements during the 1994–1999 period from future participation in the Pacific Coast groundfish fishery.

In September 2001, the Council reviewed a range of alternatives and initial analysis for Amendment 15. The draft environmental assessment (EA) identified four key issues: qualifying criteria for AFA catcher vessels; whether AFA catcher vessel restrictions would be on vessels, permits held by vessels, or both; qualifying criteria for AFA catcher processors; qualifying criteria for AFA motherships; and

duration of the restrictions. Upon reviewing the draft 2001 EA, the Council determined that there was no imminent harm to West Coast groundfish fisheries from the AFA. This determination, in combination with competing workload led the Council to table action on Amendment 15 in 2001.

Amendment 15 in the 2007 Council Process

In 2005 and 2006, market conditions for Pacific whiting changed dramatically, with prices paid to fishermen increasing from an average price of about \$0.04 per pound (\$88 per ton) in the 1992–2005 period to more than \$ 0.06 per pound (\$143 per ton) in 2006. Preliminary information for Oregon shore-based landings of Pacific whiting indicates an increase from \$0.07 in 2006 to \$0.08 in 2007, doubling the historic average price. The rise in ex-vessel prices was stimulated by increased world demand for whiting products, in particular new markets for headed and gutted whiting. Higher Pacific whiting prices attracted new entrants to the Pacific whiting fishery from vessels with Pacific coast limited entry groundfish permits that had historically participated in the non-whiting groundfish fisheries, that had purchased West Coast limited entry permits for the purpose of joining the Pacific whiting fishery, or that had historic Pacific whiting catch in one sector but were newly entering other sectors. Historic fishery participants were concerned that new fishery entrants would ultimately accelerate the race for fish in the fishery, making the fishery more dangerous for participants and more prone to poor decision-making in fishing and which could ultimately result in higher rates of bycatch of protected or overfished species associated with Pacific whiting. Some of the new entrants to the Pacific whiting fishery were AFA-qualified vessels with fishing operations off Alaska. Therefore, in 2006, fishing industry members requested that the Council re-open consideration of Amendment 15 to the FMP.

In September 2006, the Council again took up Amendment 15 and, realizing that an FMP amendment could not be completed in time to affect the 2007 Pacific whiting fishery, discussed how to limit Pacific whiting fishery participation in 2007. To address short-term participation in the Pacific whiting fishery, the Council requested that NMFS implement an emergency rule for the 2007 fishery that would prohibit participation in a non-tribal sector by AFA-qualified vessels that had no historic participation in that sector prior

to 2006. NMFS denied this request primarily because it would not have restricted participation in the 2007 fishery by non-AFA vessels; therefore, the requested rule would not solve the serious conservation or management problems in the fishery the Council had identified. Current harm to the fishery could not be traced back solely to the AFA itself, which meant that an emergency rule designed to exclude only AFA-qualified vessels could not be approved.

The Council re-visited its emergency rule request at its March 2007 meeting, and ultimately recommended that NMFS implement an emergency rule. After concluding that conditions were such that new entry into the non-tribal sectors was likely in 2007, the Council recommended an emergency rule to prohibit participation in a particular non-tribal sector by a vessel without a history of sector-specific participation between January 1, 1997 and January 1, 2007. NMFS implemented this request on May 14, 2007 (72 FR 27759, May 17, 2007) stating concern that an accelerated "race for fish" was likely to cause serious conservation and management problems. The emergency rule was intended to be interim until longer term regulations could be implemented.

Continuing its work for 2008 and beyond, the Council again addressed Amendment 15 at its April, June, and September 2007 meetings. Based on continued concern with conservation effects of increased entry and the resulting race for fish, the Council discussed action alternatives that would restrict participation in the sectors by any vessel, not just AFA-qualified vessels, that did not meet particular landings requirements. The action alternatives differed only in the qualifications necessary to participate in particular non-tribal sectors of the Pacific whiting fishery. At its September 9–14, 2007 meeting in Portland, Oregon, the Council reviewed an EA and draft amendatory language for Amendment 15, and listened to the advice of its advisory bodies and members of the public on choosing a preferred alternative for implementing Amendment 15. Council discussions concerned the likelihood of new entry given increased whiting exvessel prices and declining pollock quotas. Council discussions centered on the effects of new entry into a fishery already experiencing declining limited West Coast trawl opportunities due to overfished species rebuilding measures, concerns about the conservation of overfished groundfish stocks and salmon stocks listed under the

Endangered Species Act, increased costs to manage the fishery if it becomes faster paced due to increased participation, and the decreased economic returns to historical harvesters from new entrants. Ultimately, the Council chose a hybrid alternative that combined historic qualification preferences expressed by participants in the three different non-tribal sectors, based on the evolution of the different sectors.

The Council's preferred alternative for Amendment 15, which this rule proposes to implement, would restrict participation in the non-tribal sectors as follows: catcher vessels in the Pacific whiting shoreside fishery would be required to have made sector-specific Pacific whiting landings in any one calendar year during the period of January 1, 1994, through January 1, 2007; vessels participating in either the catcher/processor or mothership sector would be required to have either caught and processed Pacific whiting (catcher/processor sector,) caught and delivered Pacific whiting (catcher vessels in mothership sector,) or processed Pacific whiting (motherships) in any one calendar year during the period of January 1, 1997 through January 1, 2007. This would be the first participation requirement for motherships, which, unlike catcher vessels, have not needed a groundfish limited entry permit registered to them. The Council preferred the 1994 qualifying period start date for the shore-based sector because that was the first year the groundfish limited entry program was in effect. For the at-sea sectors, however, 1997 was the preferred qualifying period start date because that was the first year that Pacific whiting was specifically allocated between the three sectors. Prior to 1997, Pacific whiting catch was allocated between vessels that landed on shore and those that caught Pacific whiting for processing at sea.

Amendment 15 Implementing Regulations

Amendment 15 proposes to implement a limited entry program for the three non-tribal sectors of the Pacific whiting fishery. Vessels would be required to meet certain participation criteria and, with the exception of the motherships, would also be required to have the vessel registered to a Pacific Coast groundfish limited entry permit. Motherships would only be required to meet the participation criteria. The regulations proposed in this rule for Amendment 15 would follow NMFS Northwest Region's historic practices for implementing license limitation and permit limitation programs, such as the

groundfish limited entry program itself, the sablefish endorsement program, and the three-tier sablefish program.

Under the proposed regulations, NMFS would mail Pacific whiting vessel license applications to all current and prior owners of vessels that have been registered for use with limited entry permits with trawl endorsements, excluding owners of those vessels whose permits were purchased through the Pacific Coast groundfish fishing capacity reduction program. NMFS would also make license applications available online at: <http://www.nwr.noaa.gov/Groundfish-Halibut/Groundfish-Permits/index.cfm>.

To participate in the fishery in 2009 and beyond, a vessel owner who believes that his/her vessel may qualify for the Pacific whiting vessel license would have until December 31, 2008, to submit documentation showing how his/her vessel has met the qualifying criteria. NMFS will not accept applications for Pacific whiting vessel licenses received after December 31, 2008. After receipt of a complete application, NMFS will notify applicants by letter of its determination whether their vessels qualify for Pacific whiting vessel licenses and the sector or sectors to which the licenses apply. Vessels that have met the qualification criteria will be issued the appropriate licenses at that time.

For 2008, the proposed action would prohibit vessels from fishing, landing, or processing Pacific whiting in a primary whiting season from the effective date of this action through December 31, 2008, with a catcher/processor, mothership or mothership catcher vessel that has no history of participation within that specific sector of the whiting fishery during the period from January 1, 1997, through January 1, 2007, or with a shoreside catcher vessel that has no history of participation within the shore-based sector of the whiting fishery during the period from January 1, 1994 through January 1, 2007, as specified in § 660.373(j). Participation in the shore-based sector is in reference to participation in the primary whiting season. This rule proposes that, in order to qualify for a Pacific whiting vessel license in the shore-based sector, documentation is required to show the vessel made at least one landing of whiting taken with mid-water trawl gear during a primary shore based season during the period January 1, 1994 through January 1, 2007, and that the weight of whiting exceeded 50 percent of the total weight of the landing.

NMFS is authorized under the Magnuson-Stevens Act to collect funds from permit recipients to recover the

cost of the permitting process. NMFS initially estimates that the fee for initial issuance of Pacific whiting licenses will be \$650 per license it issued. NMFS must receive the fee payment in full to consider the application complete and to process the application.

For 2009, NMFS would both publish a list of vessels that have qualified for the Pacific whiting vessel license in the **Federal Register**, and would issue licenses to those vessels that apply prior to the start of the 2009 fishing season. Each license will indicate the sector or sectors for which the vessel has qualified. To participate in any of the non-tribal whiting sectors in 2009 and beyond, a harvesting vessel would be required to be registered for use with both a groundfish limited entry permit and with a Pacific whiting vessel license. The license would be associated with the vessel, not with a limited entry permit. A mothership vessel that processes whiting, but does not harvest would only be required to have a whiting vessel license for the mothership sector. Therefore, once issued, the Pacific whiting vessel license would not be re-issued unless it has been lost, or unless there is some change in the vessel owner information for the vessel to which it is registered. Consistent with the intent of Amendment 15, Pacific whiting vessel license holders would not be allowed to transfer those licenses to any other vessels.

Based on an initial review of potential qualifying vessels for each sector, NMFS anticipates that there would be some catcher vessels that qualify to be licensed for both the shore-based and mothership sectors. However, NMFS also anticipates that there would not be any vessels that qualify to be licensed as both a catcher/processor and as a mothership processor. Therefore, NMFS is proposing via this action to remove § 660.373(h), which allows that catcher/processor vessels have mobility between the different sectors mobility that the Council has recommended eliminating via Amendment 15.

The proposed regulations to implement Amendment 15 would also correct an error made in the temporary rule discussed above and published on May 14, 2007 (72 FR 27759.) Through a mistake in the “**DATES**” section of the May 17, 2007, temporary rule, NMFS made permanent revisions to 50 CFR 660.333 and 660.335. These permanent revisions allow limited entry trawl permits that were created between December 31, 2006, and May 14, 2007, by aggregating multiple limited entry permits, to be disaggregated back into the initially combined component parts

- an action otherwise prohibited by limited entry permit regulations. At least one vessel owner who had, prior to the implementation of the temporary rule, prepared for participating in the 2007 Pacific whiting fishery by purchasing and aggregating permits in order to create a permit with a length endorsement long enough to suit their vessel. The temporary rule provided an exception to regulations that would normally not allow disaggregating permits, in order to mitigate for the potential long-term effects on vessel owners who had expected to become new participants in the 2007 Pacific whiting fishery, but who were prevented by the temporary rule. Because this provision was improperly implemented as a permanent change to Federal regulations instead of temporarily as provided by the Magnuson-Stevens Act, NMFS proposes to correct that mistake via this proposed rule to implement Amendment 15. NMFS announced this intent in the notice that extended the emergency rule (72 FR 64953; November 19, 2007) These corrections would affect 50 CFR 660.333(f) and 660.335(f)(3).

Regulations Steamlining

In addition to this correction, this action also proposes a measure for Federal regulations at § 660.335(a). In their review of Chapter 11 of the FMP, NMFS and the Council noted that the chapter includes a requirement held over from Amendment 6, the original limited entry program, that calls for NMFS to send out notification of annual limited entry permit renewals by September 1 of each year. This September 1 notification date was included in the FMP in order to accommodate an annual 60-day renewal period for vessel owners of October 1 through November 30. This provision is implemented in Federal regulations at § 660.335(a)(2), which states in part, “Notification to renew limited entry permits will be issued by SFD prior to September 1 each year to the most recent address of the permit owner...”

The Council recommended that Amendment 15 include a shift in the permit renewal notification date from September 1 to September 15. This shift would not alter the October 1 through November 30 renew period; rather, it would help to ensure that renewals do not occur prior to October 1st, which would be beneficial both from an accounting perspective and from an agency workload perspective.

The Federal fiscal year begins October 1st. When NMFS sends permit renewal notices by September 1st, many permit

owners diligently renew their permits as quickly as possible, often sending renewals and fees by mid-September. NMFS immediately deposits funds received, in keeping with good accounting practices. As a result of this one-month lag between renewal notices and fiscal year start date, each renewal period inevitably includes funds received in two separate fiscal years. Moving the renewal date to September 15th would aid NMFS by ensuring that funds received to renew permits for a particular fishing year are credited to the applicable fiscal year.

September 1st is also the start of a two-month cumulative limit period, which means that the week just prior to September 1st, numerous permit owners submit permit transfers to move their permits to new boats for the start of the September-October cumulative limit period. This particular cumulative limit period is often active for permit transfers, since it is the last cumulative limit period that also falls within the April - October primary tier sablefish fishing season. Moving the renewal date to September 15th would allow NMFS to process last-minute permit transfer requests before sending renewal notification packets to permit owners. This will ensure that all renewal forms reflect the most recent changes to these permits. For these reasons, Amendment 15 authorizes Federal regulations at § 660.335(a)(2) to be revised to read in part, “Notification to renew limited entry permits will be issued by SFD prior to September 15 each year to the most recent address of the permit owner. . . .”

Classification

Pursuant to section 304 of the Magnuson-Stevens Act, the NMFS Assistant Administrator has determined that this proposed rule is consistent with the FMP, other provisions of the Magnuson-Stevens Act, and other applicable law, subject to further consideration after public comment.

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

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

The Small Business Administration has established size criteria for all major industry sectors in the US including fish harvesting and fish processing businesses. The RFA recognizes and defines three kinds of small entities: small businesses, small organizations, and small governmental jurisdictions. NMFS March 2007 Economic Guidelines (http://www.nmfs.noaa.gov/sfa/domes_fish/EconomicGuidelines.pdf) establish the current size standards for Magnuson-Stevens Act related rules as follows: Any fish-harvesting or hatchery business is a small business if it is independently owned and operated and not dominant in its field of operation and if it has total annual gross receipts not in excess of \$4.0 million. Total annual gross receipts should include those of affiliates when practicable and appropriate to do so. Any vessel which both harvests and processes fish (also referred to as a catcher processor) is currently considered a small business if its combined total annual gross receipts (including all affiliates, worldwide, where practicable and appropriate) are not in excess of \$4.0 million.

Adoption of Amendment 15 under the preferred alternative is expected to maintain the existing economic character of the Pacific whiting fishery. The actual levels of jobs, revenues, profits and total personal income for fishery participants and the affected communities will be influenced by such things as the abundance of Pacific whiting, market prices for Pacific whiting and substitute commodities and the condition of other fishery resources.

The number of fishery participants is expected to stay relatively consistent with the numbers observed in past years as no new entrants to the Pacific whiting fishery will be permitted. Accordingly, the economic impacts of the proposed action per se on existing businesses are expected to be minimal provided that a significant number of historically active vessels are not both eligible for the limited Pacific whiting licenses and choose to enter the fishery. Either because of participation in Alaska Pollock and other fisheries or being affiliated with large seafood companies, catcher/processor and mothership operations operating in the WOC are not considered small businesses.

Since 1994, approximately 26–31 catcher vessels have participated in the shoreside fishery annually. Approximately 10–43 catcher vessels have participated in the mothership fishery annually since 1994. These companies are all assumed to be small businesses. This rulemaking is expected to have minimal impacts on the

business that catcher vessels conduct with the mothership processors and shore-based processors. It is also expected to have minimal impact on vessels in the catcher/processor sector of the fishery. If anything, this rule maintains the economics of the existing small businesses participating in the fishery as it prevents new vessels, potentially the larger vessels from Alaska, from participating in the fishery. NMFS is aware of one company that has purchased several permits for possible combination into a single large permit that has the length endorsement for use with a catcher/processor vessel, but this company is not considered a small company as its involvement in Alaska pollock fisheries suggests that it earns more than \$4.0 million in revenues. There may be other companies large or small that wish to enter the fishery but we are unaware of any investments that have been undertaken specifically for entering the whiting fishery.

This proposed rule contains a collection-of-information requirement subject to review and approval by the Office of Management and Budget (OMB) under the Paperwork Reduction Act (PRA). This requirement has been submitted to OMB for approval. Public reporting burden for applying for a Pacific whiting license is estimated to average 60 minutes per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection information.

Public comment is sought regarding: whether this proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; the accuracy of the burden estimate; ways to enhance the quality, utility, and clarity of the information to be collected; and ways to minimize the burden of the collection of information, including through the use of automated collection techniques or other forms of information technology. Send comments on these or any other aspects of the collection of information to Northwest Region at the **ADDRESSES** above, and by e-mail to David_Rostker@omb.eop.gov or fax to (202) 395-7285.

Notwithstanding any other provision of the law, no person is required to respond to, and no person shall be subject to 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 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, and Oregon 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, southern California).

NMFS reinitiated a formal section 7 consultation under the ESA in 2005 for both the Pacific whiting midwater trawl fishery and the groundfish bottom trawl fishery. The December 19, 1999, Biological Opinion had defined an 11,000 Chinook incidental take threshold for the Pacific whiting fishery. During the 2005 Pacific whiting season, the 11,000–fish Chinook incidental take threshold was exceeded, triggering reinitiation. Also in 2005, new data from the West Coast Groundfish Observer Program became available, allowing NMFS to do a more complete analysis of salmon take in the bottom trawl fishery.

NMFS completed its reinitiation consultation and prepared a Supplemental Biological Opinion dated March 11, 2006. In its 2006 Supplemental Biological Opinion, NMFS concluded that catch rates of salmon in the 2005 Pacific whiting fishery were consistent with expectations considered during prior consultations. Chinook bycatch has averaged about 7,300 over the last 15 years and has only occasionally exceeded the reinitiation trigger of 11,000. Since 1999, annual Chinook bycatch has averaged about 8,450. The Chinook ESUs most likely affected by the Pacific whiting fishery have generally improved in status since the 1999 section 7 consultation. Although these species remain at risk, as indicated by their ESA listing, NMFS concluded that the higher observed bycatch in 2005 does not require a reconsideration of its prior “no jeopardy” conclusion with respect to the fishery. For the groundfish bottom trawl fishery, NMFS concluded that incidental take in the groundfish fisheries is within the overall limits articulated in the Incidental Take

Statement of the 1999 Biological Opinion. The groundfish bottom trawl limit from that opinion was 9,000 fish annually. NMFS will continue to monitor and collect data to analyze take levels. NMFS also reaffirmed its prior determination that implementation of the Groundfish FMP is not likely to jeopardize the continued existence of any of the affected ESUs.

Lower Columbia River coho (70 FR 37160, June 28, 2005) were recently listed 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. The Southern Distinct Population Segment (DPS) of green sturgeon (71 FR 17757, April 7, 2006) were also recently listed as threatened under the ESA. As a consequence, NMFS has reinitiated its Section 7 consultation on the PFMFC's Groundfish FMP.

After reviewing the available information, NMFS concluded that, in keeping with Sections 7(a)(2) and 7(d) of the ESA, the proposed action would not result in any irreversible or irretrievable commitment of resources that would have the effect of foreclosing the formulation or implementation of any reasonable and prudent alternative measures.

Under the Magnuson-Stevens Act at 16 U.S.C. 1852(b)(5), one of the voting members of the Council must be a representative of an Indian tribe with federally recognized fishing rights from the area of the Council's jurisdiction. Pursuant to Executive Order 13175, this action was developed through the Council process with meaningful collaboration with tribal officials from the area covered by the FMP. The tribal representative on the Council did not make a motion on this action for tribal fisheries.

List of Subjects in 50 CFR Part 660

Fisheries, Fishing, Indian fisheries.

Dated: July 7, 2008.

Samuel D. Rauch III,

Deputy Assistant Administrator for Regulatory Programs, 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.*

2. In § 660.306, paragraph (f)(7) is removed, paragraphs (f)(1) through (f)(6) are redesignated as paragraphs (f)(2) through (f)(7), respectively, and a new paragraph (f)(1) is added to read as follows:

§ 660.306 Prohibitions.

* * * * *

(f) * * *

(1) Fish in any of the sectors of the whiting fishery described at § 660.373(a) after January 1, 2009 using a vessel that is not registered for use with a sector-appropriate Pacific whiting vessel license under § 660.336. Prior to January 1, 2009, vessels are prohibited from fishing, landing, or processing Pacific whiting with a catcher/processor, mothership or mothership catcher vessel that has no history of participation within that specific sector of the whiting fishery during the period from January 1, 1997, through January 1, 2007, or with a shoreside catcher vessels that has no history of participation within the shore-based sector of the whiting fishery during the period from January 1, 1994 through January 1, 2007, as specified in § 660.373(j). For the purpose of this paragraph, "historic participation" for a specific sector is the same as the qualifying criteria listed in § 660.336 (a)(2).

(i) If a Pacific whiting vessel license is registered for use with a vessel, fail to carry that license onboard the vessel registered for use with the license at any time the vessel is licensed. A photocopy of the license may not substitute for the license itself.

(ii) [Reserved]

* * * * *

3. In § 660.333, paragraph (f) is removed and paragraph (a) is revised to read as follows:

§ 660.333 Limited entry fishery eligibility and registration.

(a) *General.* A limited entry permit confers a conditional privilege of participating in the Pacific coast groundfish limited entry fishery, in accordance with Federal regulations in 50 CFR part 660. In order for a vessel to participate in the limited entry fishery, the vessel owner must hold a limited entry permit and, through SFD, must register that permit for use with his/her vessel. When participating in the limited entry fishery, a vessel is authorized to fish with the gear type endorsed on the limited entry permit registered for use with that vessel. There are three types of gear endorsements: trawl, longline, and pot (or trap). All limited entry permits have size endorsements and a vessel registered for

use with a limited entry permit must comply with the vessel size requirements of this subpart. A sablefish endorsement is also required for a vessel to participate in the primary season for the limited entry fixed gear sablefish fishery, north of 36° N. lat. After December 31, 2008, a catcher vessel participating in either the whiting shore-based or mothership sector must, in addition to being registered for use with a limited entry permit, be registered for use with a sector-appropriate Pacific whiting vessel license under § 660.336. After December 31, 2008, a vessel participating in the whiting catcher/processor sector must, in addition to being registered for use with a limited entry permit, be registered for use with a sector-appropriate Pacific whiting vessel license under § 660.336. After December 31, 2008, although a mothership vessel participating in the whiting mothership sector is not required to be registered for use with a limited entry permit, such vessel must be registered for use with a sector-appropriate Pacific whiting vessel license under § 660.336.

* * * * *

4. In § 660.335, paragraph (f)(3) is removed and paragraph (a)(2) is revised to read as follows:

§ 660.335 Limited entry permits renewal, combination, stacking, change of permit ownership or permit holdership, and transfer.

(a) * * *

(2) Notification to renew limited entry permits will be issued by SFD prior to September 15 each year to the most recent address of the permit owner. The permit owner shall provide SFD with notice of any address change within 15 days of the change.

* * * * *

5. A new § 660.336 is added to read as follows:

§ 660.336 Pacific whiting vessel licenses.

(a) *Pacific whiting vessel license*—(1) *General.* After December 31, 2008, participation in the non-tribal primary whiting season described in § 660.373(b) requires that an owner of any vessel that catches or processes Pacific whiting hold: a limited entry permit, registered for use with that vessel, with a trawl gear endorsement; and, a Pacific whiting vessel license, registered for use with that vessel, appropriate to the sector or sectors in which the vessel intends to participate. Pacific whiting vessel licenses are separate from limited entry permits and do not license a vessel to harvest whiting in the primary whiting season unless that vessel is also

registered for use with a limited entry permit with a trawl gear endorsement.

(2) *Pacific whiting vessel license qualifying criteria.*

(i) *Qualifying criteria.* Vessel catch and/or processing history will be used to determine whether that vessel meets the qualifying criteria for a Pacific whiting vessel license and to participate in a specific sector of the Pacific whiting fishery in 2008 and to determine the sectors for which that vessel may qualify. Vessel catch and/or processing history includes only the catch and/or processed product of that particular vessel, as identified in association with the vessel's USCG number. Only whiting regulated by this subpart that was taken with midwater (or pelagic) trawl gear will be considered for the Pacific whiting vessel license. Whiting harvested or processed by a vessel that has since been totally lost or decommissioned will not be considered for this license. Whiting harvested or processed illegally or landed illegally will not be considered for this license. Catch and/or processing history associated with a vessel whose permit was purchased by the Federal government through the Pacific Coast groundfish fishing capacity reduction program, as identified in 68 FR 62435 - 62440 (November 4, 2003), does not qualify a vessel for a Pacific whiting vessel license and no vessel owner may apply for or receive a Pacific whiting vessel license based on catch and/or processing history from one of those buyback vessels. The following sector-specific license qualification criteria apply:

(A) For catcher/processor vessels, the qualifying criteria for a Pacific whiting vessel license is evidence of having caught and processed any amount of whiting during a primary catcher/processor season during the period January 1, 1997 through January 1, 2007.

(B) For mothership at-sea processing vessels, the qualifying criteria for a Pacific whiting vessel license is documentation of having received and processed any amount of whiting during a primary mothership season during the period January 1, 1997 through January 1, 2007.

(C) For catcher vessels delivering whiting to at-sea mothership processing vessels, the qualifying criteria for a Pacific whiting vessel license is documentation of having delivered any amount of whiting to a mothership processor during a primary mothership season during the period January 1, 1997, through January 1, 2007.

(D) For catcher vessels delivering whiting to Pacific whiting first receiver,

the qualifying criteria for a Pacific whiting vessel license is documentation of having made at least one landing of whiting taken with mid-water trawl gear during a primary shore-based season during the period January 1, 1994, through January 1, 2007, and where the weight of whiting exceeded 50 percent of the total weight of the landing.

(ii) *Documentation and burden of proof.* A vessel owner applying for a Pacific whiting vessel license has the burden to submit documentation that qualification requirements are met. An application that does not include documentation of meeting the qualification requirements during the qualifying years will be considered incomplete and will not be reviewed. The following standards apply:

(A) A certified copy of the current vessel document (USCG or State) is the best documentation of vessel ownership and LOA.

(B) A certified copy of a State fish receiving ticket is the best documentation of a landing at a Pacific whiting shoreside first receiver, and of the type of gear used.

(C) For participants in the at-sea whiting fisheries, documentation of participation could include, but is not limited to: a final observer report documenting a particular catcher vessel, mothership, or catcher/processor's participation in the whiting fishery in an applicable year and during the applicable primary season, a bill of lading for whiting from an applicable year and during the applicable primary season, a catcher vessel receipt from a particular mothership known to have participated in the whiting fishery during an applicable year, a signed copy of a Daily Receipt of Fish and Cumulative Production Logbook (mothership sector) or Daily Fishing and Cumulative Production Logbook (catcher/processor sector) from an applicable year during the applicable primary season.

(E) Such other relevant, credible documentation as the applicant may submit, or the SFD or the Regional Administrator request or acquire, may also be considered.

(3) *Issuance process for Pacific whiting vessel licenses.*

(i) SFD will mail Pacific whiting vessel license applications to all current and prior owners of vessels that have been registered for use with limited entry permits with trawl endorsements, excluding owners of those vessels whose permits were purchased through the Pacific Coast groundfish fishing capacity reduction program. NMFS will also make license applications available online at: <http://www.nwr.noaa.gov/>

Groundfish-Halibut/Groundfish-Permits/index.cfm. A vessel owner who believes that his/her vessel may qualify for the Pacific whiting vessel license will have until December 31, 2008, to submit an application with documentation showing how his/her vessel has met the qualifying criteria described in this section. NMFS will not accept applications for Pacific whiting vessel licenses received after December 31, 2008.

(ii) After receipt of a complete application, NMFS will notify applicants by letter of its determination whether their vessels qualify for Pacific whiting vessel licenses and the sector or sectors to which the licenses apply. Vessels that have met the qualification criteria will be issued the appropriate licenses at that time. After December 31, 2008, NMFS will publish a list of vessels that qualified for Pacific whiting vessel licenses in the **Federal Register**.

(iii) If a vessel owner files an appeal from the determination under paragraph (a)(3)(ii) of this section the appeal must be filed with the Regional Administrator within 30 calendar days of the issuance of the letter of determination. The appeal must be in writing and must allege facts or circumstances, and include credible documentation demonstrating why the vessel qualifies for a Pacific whiting vessel license. The appeal of a denial of an application for a Pacific whiting vessel license will not be referred to the Council for a recommendation, nor will any appeals be accepted by NMFS after April 1, 2009.

(iv) Absent good cause for further delay, the Regional Administrator will issue a written decision on the appeal within 30 calendar days of receipt of the appeal. The Regional Administrator's decision is the final administrative decision of the Department of Commerce as of the date of the decision.

(4) *Notification to NMFS of changes to Pacific whiting vessel license information.* The owner of a vessel registered for use with a Pacific whiting vessel license must provide a written request to NMFS to change the name or names of vessel owners provided on the vessel license, or to change the licensed vessel's name. The request must detail the names of all new vessel owners, a business address for the vessel owner, business phone and fax number, tax identification number, date of birth, and/or date of incorporation for each individual and/or entity, and a copy of the vessel documentation (USCG 1270) to show proof of ownership. NMFS will reissue a new vessel license with the names of the new vessel owners and/or

vessel name information. The Pacific whiting vessel license is considered void if the name of the vessel or vessel owner is changed from that given on the license. In addition, the vessel owner must report to NMFS any change in address for the vessel owner within 15 days of that change. Although the name of an individual vessel registered for use with a Pacific whiting vessel license may be changed, the license itself may not be registered to any vessel other than the vessel to which it was originally issued, as identified by that vessel's United States Coast Guard documentation number.

6. Section 660.339 is revised to read as follows:

§ 660.339 Limited entry permit and Pacific whiting vessel license fees.

The Regional Administrator will charge fees to cover administrative expenses related to issuance of limited entry permits, and Pacific whiting vessel licenses including initial issuance, renewal, transfer, vessel registration, replacement, and appeals. The appropriate fee must accompany each application.

7. In § 660.373, paragraph (h) is removed, and paragraphs (i) and (j) are redesignated as (h) and (i), respectively, and paragraph (a) is revised to read as follows:

§ 660.373 Pacific whiting (whiting) fishery management.

(a) *Sectors and licensing requirements.* The catcher/processor sector is composed of catcher/

processors, which are vessels that harvest and process whiting during a calendar year. The mothership sector is composed of motherships vessels that process whiting and catcher vessels that harvest whiting for delivery to motherships. Motherships are vessels that process, but do not harvest, whiting during a calendar year. The shore-based sector is composed of vessels that harvest whiting for delivery to Pacific whiting shoreside first receivers. In order for a vessel to participate in a particular whiting fishery sector, that vessel must be registered for use with a sector-specific Pacific whiting vessel license under § 660.336.

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