the labor unions with employees on the affected line(s), setting forth the types and numbers of jobs expected to be available, the terms of employment and principles of employee selection, and the lines that are to be transferred.

PART 1150—CERTIFICATE TO CONSTRUCT, ACQUIRE, OR OPERATE RAILROAD LINES

3. The authority citation for part 1150 continues to read as follows:

Authority: 5 U.S.C. 553 and 559; 49 U.S.C. 721(a), 10502, 10901 and 10902.

4. Section 1150.32 is amended by adding a new paragraph (e) to read as follows:

§ 1150.32 Procedures and relevant dates—transactions that involve creation of Class III carriers.

* * * * *

(e) If the projected annual revenue of the carrier to be created by a transaction under this exemption exceeds $5 million, applicant must, at least 60 days before the exemption becomes effective, post a notice of intent to undertake the proposed transaction at the workplace of the employees on the affected line(s) and serve a copy of the notice on the national offices of the labor unions with employees on the affected line(s), setting forth the types and numbers of jobs expected to be available, the terms of employment and principles of employee selection, and the lines that are to be transferred, and certify to the Board that it has done so.

5. Section 1150.35 is amended by revising paragraph (a) to read as follows:

§ 1150.35 Procedures and relevant dates—transactions that involve creation of Class I or Class II carriers.

(a) To qualify for this exemption, applicant must serve a notice of intent to file a notice of exemption no later than 14 days before the notice of exemption is filed with the Board, and applicant must comply with the notice requirement of § 1150.32(e).

* * * * *

6. Section 1150.42 is amended by adding a new paragraph (e) to read as follows:

§ 1150.42 Procedures and relevant dates for small line acquisitions.

* * * * *

(e) If the projected annual revenue of the rail lines to be acquired or operated, together with the acquiring carrier's projected annual revenue, exceeds $5 million, the applicant must, at least 60 days before the exemption becomes effective, post a notice of applicant's intent to undertake the proposed transaction at the workplace of the employees on the affected line(s) and serve a copy of the notice on the national offices of the labor unions with employees on the affected line(s), setting forth the types and numbers of jobs expected to be available, the terms of employment and principles of employee selection, and the lines that are to be transferred, and certify to the Board that it has done so.

7. Section 1150.45 is amended by revising paragraph (a) to read as follows:

§ 1150.45 Procedures and relevant dates-transactions under section 10902 that involve creation of Class I or Class II rail carriers.

(a) To qualify for this exemption, applicant must serve a notice of intent to file a notice of exemption no later than 14 days before the notice of exemption is filed with the Board, and applicant must comply with the notice requirement of § 1150.42(e).

* * * * *

[FR Doc. 97–23827 Filed 9–9–97; 8:45 am]

BILLING CODE 4915–00–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 600

[Docket No. 970527125–7219–02; I.D. 032797B]

RIN 0648–AJ95

Magnuson Act Provisions; Appointment of Regional Fishery Management Council Members

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

ACTION: Final rule.

SUMMARY: NMFS issues this final rule to amend the regulations governing the nomination and appointment of members of regional fishery management councils to establish the procedures applicable to the nomination and appointment to the Pacific Fishery Management Council of a representative of an Indian tribe with federally recognized fishing rights from California, Oregon, Washington, or Idaho. The purpose of this rule is to implement certain sections of the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act) as amended by the Sustainable Fisheries Act (SFA) which require such an appointment.

EFFECTIVE DATE: September 5, 1997.

ADDRESSES: Comments on the collection of information aspects of this rule should be sent to Mr. William Stelle, Jr., Administrator, Northwest Region, NMFS, 76000 Sand Point Way, BIN C15700, Seattle, WA 98115–0070; or to Mr. William Hogarth, Acting Administrator, Southwest Region, NMFS, 501 West Ocean Boulevard, Suite 4200, Long Beach, CA 90802–4213.

FOR FURTHER INFORMATION CONTACT: William L. Robinson at 206–526–6142 or Rodney McInnis at 562–980–4040.

SUPPLEMENTARY INFORMATION: On October 11, 1996, President Clinton signed into law the Sustainable Fisheries Act, which, in pertinent part, amended the Magnuson-Stevens Act to add a seat on the Pacific Fishery Management Council (Pacific Council) exclusively for a representative of an Indian tribe with federally recognized fishing rights:

> The Secretary shall appoint to the Pacific Council one representative of an Indian tribe with Federally recognized fishing rights from California, Oregon, Washington, or Idaho from a list of not less than 3 individuals submitted by the tribal governments. The Secretary, in consultation with the Secretary of the Interior and tribal governments, shall establish by regulation the procedure for submitting a list under this subparagraph (section 302(b)(5)(A)).

Sections 302(b)(5)(B)(i), (ii), and (iii) of the Magnuson-Stevens Act require that representation be rotated among the tribes taking into consideration the qualifications of the individuals on the list, the various rights of the Indian tribes involved and judicial cases that set out how those rights are to be exercised, and the geographic area in which the tribe of the representative is located.

NMFS published a proposed rule to implement these provisions of the Magnuson-Stevens Act with a 30-day comment period on July 1, 1997 (62 FR 35468). The comment period was subsequently extended through August 11, 1997, at the request of the Quileute Tribal Council.

As in the proposed rule, the final rule requires the Secretary of Commerce (Secretary) to consult with the Bureau of Indian Affairs (BIA), Department of the Interior, to determine from which Indian tribes to solicit nominations for the Council seat. By statute, NMFS must solicit nominees from those Indian tribes with federally recognized fishing rights from California, Oregon, Washington, or Idaho. The rule requires the Secretary to solicit written nominations from each tribal government and produce a list of not less than three individuals who are

knowledgeable and experienced regarding the fishery resources affected by the recommendations of the Pacific Council. The Secretary will appoint one individual from this list to the Pacific Council for a term of 3 years. Under the rule, prior service on the Council in a different capacity will not disqualify a nominee proposed by a tribal government. Also, if any tribal representative appointed to the Council vacates the Council seat prior to the expiration of any term, the Secretary may appoint a replacement for the remainder of the vacant term from the original list of nominees or may solicit a new set of nominees following the process described above. Under the rule, no tribal representative may serve more than three consecutive terms in the Indian tribal seat.

The rule requires the Secretary to rotate the appointment of a tribal representative to the Pacific Council among the tribes, taking into consideration the qualifications of the individuals nominated, the various rights of the Indian tribes involved and judicial cases that set out how those rights are to be exercised, and the geographic area in which the tribe of the representative is located.

Comments and Responses

NMFS received five letters from tribal organizations commenting on the proposed rule. Two letters were received from the Quileute Tribal Council and one letter each from the Hoh Tribe, the Quinault Indian Nation and the Columbia River Inter-Tribal Fish Commission (CRITFC) representing the four Columbia River Treaty Tribes (Yakama, Warm Springs, Umatilla and Nez Perce). These comments and NMFS' responses are summarized below.

Comment 1: NMFS did not adequately consult with tribal governments, as required by the Magnuson-Stevens Act, before preparing the proposed rule. The CRITFC suggested that final regulations not be implemented until that deficiency is cured by NMFS.

Response: NMFS needed to act quickly to implement procedures to appoint a tribal member to the Council in order to have a tribal representative appointed and seated on the Council for the very important September and November 1997 Council meetings. At these Council meetings, decisions will be made regarding harvestable amounts of Pacific groundfish that will directly affect tribal harvests. NMFS staff consulted informally with the staffs of the CRITFC, Northwest Indian Fisheries Commission (NWIFC), and the Yurok and Hoopa Valley Tribes prior to publication of the proposed rule. NMFS did not formally send the proposed rule to each individual tribal government until after the rule was published for public comment. After the rule was published, it was sent to each individual tribal government to solicit comment during the comment period. At the request of the Quileute Tribe, the comment period was extended until August 11, 1997, to provide additional time for tribal governments to comment. NMFS is publishing the final rule without further delay in order to implement the new provisions for the appointment of a tribal member to the Council before the September Pacific Council meeting.

Comment 2: Both the CRITFC and Quileute Tribal Council commented that the appointment of a tribal member to the Council should be rotated among the three tribal regions (*U.S.* v. *Washington* tribes, the Columbia River-*U.S.* v. *Oregon* and Idaho tribes, and the California tribes). The Quileute stated that the Secretary ''shall'' rotate the appointment every three years, and proposed that no tribal representative may serve more than one term. CRITFC commented only that it was their expectation that the ''appointments would rotate among the three Regions.'' The Quinault opposed the required rotation among the three areas every three years and the one-term limit.

Response: The Magnuson-Stevens Act, section 302(b)(5)(B), states only that ''Representation shall be rotated among the tribes taking into consideration—(i) the qualifications of the individuals on the list referred to in subparagraph (A), (ii) the various rights of the Indian tribes involved and judicial cases that set forth how those rights are to be exercised, and (iii) the geographic area in which the tribe of the representative is located.'' Although not specifically identifying the areas/regions or tribes among which the appointment shall be rotated, the statute provides the Secretary with the discretion to rotate the appointment among the three regions identified by the two commentators. In addition, as pointed out by the Quinault Indian Nation, requiring rotation of the Council seat each 3 years and limiting the tribal representative to one term appears inconsistent with the provision of the Act that limits the number of times a single individual can hold a Council seat to three consecutive terms. The three term limitation implicitly recognizes the value of experience gained by longer term service. In addition, the statute lists two additional criteria the Secretary must take into account when rotating the seat: The qualifications of the nominees and the rights of the tribes. Therefore, the regulations use the plain language of the statute in the belief that Congress wanted the Secretary to have some discretion in rotating the appointments consistent with the guidance contained in the statute. If Congress had intended the appointment to rotate among three specific regions without exception, the statutory language would have been more specific. *Comment 3:* Both the CRITFC and the Quileute Tribal Council proposed modification of the NMFS-proposed process for appointing a tribal member to the Council. This modification would add an additional step to the process where, after NMFS has solicited initial nominations from each individual tribal government, NMFS would send the list of nominees back to each tribal government so that the tribes could select a preferred nominee from each of the three regions. The Quileute proposal suggested that each tribe would vote for one of the nominees in its area. The Secretary would be required to make the Council appointment from a list of the three nominees with the most votes from each area. The nominees with the most votes from the other two areas would serve as alternates. The CRITFC proposal was similar to the Quileute proposal but not as detailed. CRITFC suggested the same process by which NMFS would return the list of nominees to the tribal governments for them to choose a preferred nominee from each area, but CRITFC would expect the Secretary to ''defer to the tribes in each respective area where there is a consensus on their nominee.'' CRITFC also suggested that the BIA should provide to the NMFS a list of tribes with federally recognized rights and contacts at that tribe, and that the list be provided to each tribe on the list.

Response: NMFS believes the idea of providing the list of nominees to the affected Indian tribes is worth further consideration and intends to consult further with the tribes regarding a process by which all of the affected Indian tribes might have an opportunity to comment on the list of nominees. NMFS notes, however, that the tribes have the ability to consult among themselves primarily through the Inter-Tribal fish commissions (Northwest Indian Fish Commission and CRITFC) at the time that nominations are initially solicited. Thus, the tribes from each area initially could coordinate the nomination of a single individual without the need for coordination through NMFS. While NMFS believes this is a suggestion worth exploring for the long term, its consideration should not hold up the promulgation of a final

rule governing the appointment for the upcoming term while NMFS further explores this proposal. Consequently, NMFS is adopting the process as proposed in the proposed rule but will formally consult with each Indian tribe with federally recognized fishing rights, from which nominations were initially solicited, regarding the consultation process proposed by the Quileute and CRITFC. If, after consultation with all of the tribes, NMFS determines that a different process should be adopted for the future, NMFS will amend this regulation. Regardless of what process is selected for consulting with the tribes, NMFS cannot adopt a rule whereby the Secretary would be bound by a vote among the tribes, as suggested by the Quileute comments. Such a rule would eliminate the Secretary's discretion in making appointments and the Secretary's ability to take into account the statutory criteria discussed above in response to comment 2. The Secretary will, however, take into account the breadth of support from other tribes when selecting the tribal Council member.

Comment 4: The Quileute, the Hoh, and CRITFC all suggested that the regulations should provide for regional ''alternates'' or ''designees.'' The designees would be allowed to occupy the Council seat and vote on matters primarily affecting the region that they represent. The Quinault agreed this was a good idea, but acknowledged the statute probably does not permit this.

Response: The Magnuson-Stevens Act includes as voting members of Council the state director or designee and the NMFS Regional Director or designee. For all other council members, the statute does not authorize voting by designees. Without statutory authorization NMFS cannot provide the ability for ''designees'' to vote.

Comment 5: The Quileute Tribe commented that prior service by a tribal member who has served three consecutive terms on the Council, in a position where the tribal member was nominated by a State Governor to fill one of the State Council seats, should disqualify the individual for appointment to the Tribal Council seat. The Quinault Indian Nation commented that the three-term prohibition applies to three terms in the same Council seat and that the proposed rule correctly interprets the SFA.

Response: NMFS agrees with the Quinault Indian Nation comment. In the proposed rule NMFS states that prior service will not disqualify a nominee proposed by a tribal government from serving in the newly-created tribal seat. Thus, the three-term consecutive limit prohibition applies to service time in the new Council seat that Congress established specifically to represent tribal governments. Prior service in a state governor-nominated Council seat does not disqualify a tribal government's nominee for the newly established tribal Council seat.

Classification

Since this rule is procedural or interpretative in its entirety, under 5 U.S.C. 553(d) it is not subject to a 30-day delay in effectiveness date.

This final rule has been determined to be not significant for purposes of E.O. 12866.

Because prior notice and opportunity for public comment is not required for this rule by 5 U.S.C. 553 or by any other law, under 5 U.S.C. 603(a) and 604(a) this rule is not subject to the analytical requirements of the Regulatory Flexibility Act.

This rule contains a collection-of-information requirement subject to the Paperwork Reduction Act (PRA). The reporting burden for Indian tribal government nominations for the Council appointments is estimated to average 120 hours per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection-of-information.

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 PRA, unless that collection-of-information displays a currently valid OMB control number. The collection of this information has been approved by the OMB under Control Number 0648–0314. Send comments on the collection of information aspects of this rule to the NMFS Northwest or Southwest Regional Administrators (see **ADDRESSES**) or to OMB at the Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, DC 20503 (Attention: NOAA Desk Officer).

List of Subjects in 50 CFR Part 600

Administrative practice and procedure, Fisheries, Fishing, Intergovernmental relations.

Dated: September 4, 1997.

David L. Evans,

Deputy Assistant Administrator for Fisheries, National Marine Fisheries Service.

For the reasons set out in the preamble, 50 CFR part 600 is amended as follows:

PART 600—MAGNUSON ACT PROVISIONS

1. The authority citation for part 600 continues to read as follows:

Authority: 5 U.S.C. 561 and 16 U.S.C. 1801 *et seq.*

2. In § 600.215, the introductory text is removed, paragraphs (a) through (g) are redesignated as paragraphs (a)(1) through (a)(7) respectively, paragraphs (c)(1) through (c)(6) are redesignated as paragraphs (a)(3)(i) through (a)(3)(vi) respectively, paragraphs (f)(1) and (f)(2) are redesignated (a)(6)(i) and (a)(6)(ii) respectively, paragraphs (g)(1) through (g)(6) are redesignated (a)(7)(i) through (a)(7)(vi) respectively, and paragraphs (a) introductory text and (b) are added to read as follows:

§ 600.215 Appointments.

(a) *Members appointed from Governors' lists.* This paragraph applies to council members selected by the Secretary from lists submitted by Governors pursuant to section 302(b)(2)(C) of the Magnuson-Stevens Act.

* * * * *

(b) *Tribal Member.* This paragraph applies to the selection of the Pacific Fishery Management Council's tribal member as required by section 302(b)(5) of the Magnuson-Stevens Act.

(1) The Secretary shall appoint to the Pacific Fishery Management Council one representative of an Indian tribe with federally recognized fishing rights from California, Oregon, Washington, or Idaho from a list of not less than three individuals submitted by the tribal Governments.

(2) The Secretary shall solicit nominations of individuals for the list referred to in paragraph (b)(1) of this section only from those Indian tribes with federally recognized fishing rights from California, Oregon, Washington, or Idaho. The Secretary will consult with the Bureau of Indian Affairs, Department of the Interior, to determine which Indian tribes may submit nominations.

(3) To assist in assessing the qualifications of each nominee, each tribal government must furnish to the NMFS Office of Sustainable Fisheries a current resume, or equivalent, describing the nominee's qualifications with emphasis on knowledge and experience related to the fishery resources affected by recommendations of the Pacific Council. Prior service on the Council in a different capacity will not disqualify nominees proposed by tribal governments.

(4) Nominations must be provided to NMFS by March 15 of the year in which

the term of the current tribal member expires.

(5) The Secretary shall rotate the appointment among the tribes taking into consideration:

(i) The qualifications of the individuals on the list referred to in paragraph (b)(1) of this section.

(ii) The various rights of the Indian tribes involved and judicial cases that set out how those rights are to be exercised.

(iii) The geographic area in which the tribe of the representative is located.

(iv) No tribal representative shall serve more than three consecutive terms in the Indian tribal seat.

(6) Any vacancy occurring prior to the expiration of any term shall be filled in the same manner as described above except that the Secretary may use the list referred to in paragraph (b)(1) of this section from which the vacating member was chosen.

* * * * *

[FR Doc. 97–23940 Filed 9–5–97; 10:40 am]

BILLING CODE 3510–22–F

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 660

[Docket Number; 970903221–7221–01; I.D. 081297C]

RIN 0648–XX89

Fisheries off West Coast States and in the Western Pacific; Precious Corals Fisheries; Technical Amendment

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

ACTION: Correcting amendment.

SUMMARY: This document contains a correction to the regulations implementing the Fishery Management Plan for Precious Corals Fisheries of the Western Pacific Region (FMP) which were published in the **Federal Register** on July 2, 1996. This amendment corrects the coordinates for the location of the Makapuu bed of precious corals appearing under the category of ''Established beds'' in the definition of ''Precious coral permit area''.

DATES: Effective September 10, 1997.

FOR FURTHER INFORMATION CONTACT: Svein Fougner, 562–980–4034; or Alvin Katekaru, 808–973–2985.

SUPPLEMENTARY INFORMATION: In the original FMP the coordinates for the center of the Makapuu bed contained a typographical error. Instead of the longitude being listed as 157° 32.5' W. it was incorrectly listed as 157° 35.5' W. longitude. This error placed the location of the bed approximately three miles away from its actual location.

There has been almost no fishing under the FMP since its implementation, and this error was only recently discovered. This technical amendment corrects the regulations implementing the FMP (August 30, 1983, 48 FR 3923; consolidated by July 2, 1996, 61 FR 34570) to list the coordinates for the center of the Makapuu bed.

Classification

The Assistant Administrator for Fisheries, NOAA (AA), under 5 U.S.C. 553(b)(B) finds that providing prior notice and an opportunity for public comment on this rule is unnecessary, because the rule merely corrects coordinates for the location of a resource, and such notice and opportunity for comment would serve no useful purpose. Similarly, the AA, under 5 U.S.C. 553 (d)(3) finds that delaying the effective date of the correction for 30 days is unnecessary because the location of the bed is fixed.

Because prior notice and opportunity for public comment are not required for this rule by 5 U.S.C. 553, or by any other law, the analytical requirements of the Regulatory Flexibility Act, 5 U.S.C. 601 *et seq.*, are inapplicable. This rule is exempt from review under E.O. 12866.

List of Subjects in 50 CFR Part 660

Fisheries, Fishing, Indians, Reporting and recordkeeping requirements, Administrative practice and procedure, American Samoa, Guam, Hawaiian Natives, Northern Mariana Islands.

Dated: September 4, 1997.

David L. Evans,

Deputy Assistant Administrator for Fisheries,National Marine Fisheries Service.

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

PART 660—FISHERIES OFF WEST COAST STATES AND THE WESTERN PACIFIC

1. The authority citation for part 660 continues to read as follows:

Authority: 16 U.S.C. 1801 et seq.

2. In § 660.12, the category for'' *Established beds* ''under the definition of ''*Precious coral permit area*'' is corrected by revising the coordinates of the point specified therein to read ''21° 18.0' N. lat, 157° 32.5' W. long.''

[FR Doc. 97–23941 Filed 9-9-97; 8:45 am]

BILLING CODE 3510–22–F