

## DEPARTMENT OF COMMERCE

## National Oceanic and Atmospheric Administration

## 50 CFR Part 648

[Docket No. 040112010-4114-02; I.D. 122203A]

RIN 0648-AN17

**Magnuson-Stevens Fishery Conservation and Management Act Provisions; Fisheries of the Northeastern United States; Northeast (NE) Multispecies Fishery; Amendment 13; Correction**

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

**ACTION:** Final rule; correction.

**SUMMARY:** This document contains a correction to the final rule implementing Amendment 13 to the NE Multispecies Fishery Management Plan (FMP) published on April 27, 2004. Because publication of the Amendment 13 final rule followed publication of the Electronic Dealer Reporting (EDR) final rule, § 648.7 of Amendment 13 unintentionally superseded § 648.7 of the EDR final rule, creating confusion as to which set of regulatory changes were, in fact, being implemented. Therefore, this document corrects the error contained in the Amendment 13 final rule as it relates to § 648.7.

**DATES:** Effective May 1, 2004.

**FOR FURTHER INFORMATION CONTACT:**

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**SUPPLEMENTARY INFORMATION:** NMFS recently published two final rules, EDR (69 FR 13482, March 23, 2004) and Amendment 13 (69 FR 22906, April 27, 2004), both of which implement revised regulatory text for § 648.7. Amendment 13 was under development by the New England Fishery Management Council, in cooperation with NMFS, for several years. It was originally anticipated that publication of the Amendment 13 final rule would precede publication of the implementing regulations for the EDR final rule. The preamble to the Amendment 13 final rule clearly indicates that NMFS would be issuing electronic dealer reporting requirements in a separate, future rulemaking (i.e., the EDR Rule). The Amendment 13 revision to § 648.7 was intended initially only as a place-holder until such time that the

EDR final rule was implemented. However, in order to ensure that the EDR final rule became effective by May 1, 2004, and to accommodate the 30-day delay in effectiveness pursuant to the Administrative Procedure Act, NMFS published the EDR final rule first, on March 23, 2004. NMFS inadvertently failed to remove the place-holder language in the Amendment 13 final rule to reflect the new requirements contained in the EDR final rule at § 648.7. Because of this oversight, and unless corrected, the Amendment 13 implementing regulations will supersede the EDR § 648.7 revised text. Therefore, NMFS corrects the final rule implementing Amendment 13 by removing all reference to § 648.7. This section will be implemented as published in the EDR final rule that published on March 23, 2004 (69 FR 13482).

**Correction****PART 648—[CORRECTED]**

■ The publication on April 27, 2004, at 69 FR 22906, FR Doc. 04-8884 is corrected as follows:

**§ 648.7 [Corrected]**

■ On page 22946, in the second column, first complete paragraph, remove the entire instruction 4, including the amendatory text in instruction 4 and the corresponding regulatory text, and renumber the remaining instructions accordingly.

Dated: April 27, 2004.

**Rebecca Lent,**

*Deputy Assistant Administrator for Regulatory Programs, National Marine Fisheries Service.*

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## DEPARTMENT OF COMMERCE

## National Oceanic and Atmospheric Administration

## 50 CFR Part 660

[Docket No. 031216314-4118-03; I.D. 112803A]

RIN 0648-AR54

**Magnuson-Stevens Fishery Conservation and Management Act Provisions; Fisheries Off West Coast States and in the Western Pacific; Pacific Coast Groundfish Fishery; Annual Specifications; Pacific Whiting**

**AGENCY:** National Marine Fisheries Service (NMFS), National Oceanic and

Atmospheric Administration (NOAA), Commerce.

**ACTION:** Final rule; 2004 groundfish fishery specifications; request for comments.

**SUMMARY:** This final rule establishes the 2004 fishery specifications for 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). This **Federal Register** document also serves to announce that the whiting resource is estimated to be above the target rebuilding biomass and will no longer have an overfished species status, and amends the final rule implementing the specifications and management measures for the 2004 fishing year, which were published March 9, 2004. These specifications include the allowable biological catch (ABC), optimum yield (OY), tribal allocation, and allocations for the non-tribal commercial sectors. The intended effect of this action is to establish allowable harvest levels of whiting based on the best available scientific information. NMFS is specifically seeking comments on changes to the ABC in this final rule. These changes are described below in the section of the preamble titled ABC/OY Recommendations.

**DATES:** Effective April 27, 2004, through December 31, 2004. Comments on the 2004 whiting ABC must be received by June 1, 2004.

**ADDRESSES:** You may submit comments, identified by [031216314-01 and/or 0648-AR54], by any of the following methods:

- *E-mail:*

[GWhiting2004ABC.nwr@noaa.gov](mailto:GWhiting2004ABC.nwr@noaa.gov); identified by [031216314-01 and/or 0648-AR54] in the subject line of the message.

- *Federal eRulemaking Portal:* <http://www.regulations.gov>.

Follow the instructions for submitting comments.

- *Fax:* 206-526-6736.

- *Mail:* D. Robert Lohn,

Administrator, Northwest Region (Regional Administrator), NMFS, 7600 Sand Point Way, NE., Seattle, WA 98115-0070; Robert Lohn, Administrator.

Copies of the final environmental impact statement (FEIS) for this action are available from Donald McIsaac, Executive Director, Pacific Fishery Management Council (Council), 7700 NE Ambassador Place, Portland, OR 97220, phone: 503-820-2280. These documents are also available online at

the Council's Web site at <http://www.pcouncil.org>. Copies of additional reports referred to in this document may also be obtained from the Council. Copies of the Record of Decision (ROD), final regulatory flexibility analysis (FRFA), and the Small Entity Compliance Guide are available from D. Robert Lohn, Northwest Regional Administrator, NMFS, 7600 Sand Point Way, NE., Seattle, WA 98115-0070.

**FOR FURTHER INFORMATION CONTACT:** Becky Renko or Yvonne deReynier (Northwest Region, NMFS) 206-526-6150; or Svein Fougner (Southwest Region, NMFS) 310-980-4040.

**SUPPLEMENTARY INFORMATION:**

**Electronic Access**

This final rule is accessible via the Internet at the Office of the Federal Register's Web site at <http://www.gpoaccess.gov/fr/index.html>. Background information and documents are available at the NMFS Northwest Region Web site at <http://www.nwr.noaa.gov/sustfish/gdfsh01.htm>.

**Background**

The Pacific Coast Groundfish Fishery Management Plan (FMP) requires that fishery specifications be evaluated biennially or annually and revised as necessary, that OYs be specified for groundfish species or species groups that need protection, and that management measures designed to achieve the OYs be published in the **Federal Register**. Specifications include ABCs and harvest levels (OYs, harvest guidelines, allocations, or quotas). In anticipation of a new whiting stock assessment that would be available in early 2004 and given the small amount of whiting typically landed under trip limits prior to the April 1 start of the primary season, the Council chose to delay its final whiting recommendation until its March 2004 meeting.

A proposed rulemaking to implement the 2004 specifications and management measures for the Pacific Coast groundfish fishery was published on January 8, 2004 (69 FR 1380). NMFS requested public comment on the proposed rule through February 8, 2004. During that comment period, NMFS received four letters of comment that were addressed in the preamble of the final rule published on March 9, 2004 (69 FR 11064). One comment, comment 9, which is not being repeated in the preamble discussion for this action, addressed the process for establishing a harvest level for whiting. For additional background information on the fishery, see the preamble of the proposed and

final rules for the 2004 annual specifications and management measures.

**Stock Status**

In general, whiting is a very productive species with highly variable recruitment (the biomass of fish that mature and enter the fishery each year) patterns and a relatively short life span when compared to other overfished groundfish species. In 1987, the whiting biomass was at a historical high level due to an exceptionally large number of fish that 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 whiting stock stabilized between 1995 and 1997, but then declined to its lowest level in 2001.

In 2002, a whiting stock assessment was prepared. It estimated the female spawning biomass to be less than 20 percent of the unfished biomass. As a result of the 2002 assessment, the whiting stock was believed to be below the overfished threshold in 2001 and was, therefore, declared overfished on April 15, 2002 (67 FR 18117). Since 2001, the whiting stock has increased substantially as a strong 1999 year class has matured and entered the spawning population.

In 2003, whiting was managed under the 40-10 harvest policy, which appeared to be adequate to achieve rebuilding. The 40-10 policy is intended to prevent species or stocks from becoming overfished. If the stock biomass is larger than the biomass needed to produce MSY, the OY may be set equal to or less than ABC. For further discussion see the preamble of the proposed rule for the 2003 specifications and management measures (68 FR 949, January 7, 2003). An age-structured assessment model was used to prepare a new coastwide stock assessment in 2004. This model was similar to the model used in the previous stock assessment in 2002. New data in this stock assessment included updated catch through 2003, recruitment indices from the juvenile survey in 2003, and the results of the 2003 U.S./Canada acoustic survey. The stock assessment was examined by a joint U.S./Canada Pacific Hake (Whiting) Stock Assessment Review (STAR) panel in early February of 2004.

The STAR panel considered the stock assessment to be complete and suitable for use by the Council and its advisory bodies for ABC projections. However, the amount of whiting that the hydroacoustic survey was able to

measure relative to the total whiting in the surveyed area (survey catchability coefficient or q) was identified as a major source of uncertainty in the stock assessment. Therefore, two sets of ABC/OY projections, with different assumptions about the survey catchability, were brought forward for decision making. This range of projections was intended to represent a plausible range of the stock's status. The more optimistic or less risk averse model run assumed that q equaled 0.6, while the less optimistic or more risk averse model run assumed that q equaled 1.0. A catchability coefficient of 1.0 is the value that has been used in the previous assessments. The Council's Scientific and Statistical Committee (SSC) also reviewed the assessment.

As a result of the new whiting stock assessment, the estimated abundance of whiting has increased substantially since the last assessment. However, the pattern of stock growth is very similar to what has been estimated in past assessments. The stock was estimated to be 47 percent of its unfished biomass in 2003 (2.7 million mt of age 3+ fish) when a survey catchability coefficient of 1.0 was applied and at 51 percent (4.2 million mt of age 3+ fish) of its unfished biomass in 2003 when a survey catchability coefficient of 0.6 was applied. Under both scenarios, the whiting biomass in 2003 is estimated to be above the target rebuilding biomass. However, in the absence of a large year class after 1999, the stock is projected to decline again.

Whiting was declared overfished on April 15, 2002 (67 FR 18117) as a result of the 2002 stock assessment which estimated that the female spawning biomass was less than 20 percent of the unfished biomass. In retrospect, the abundance of the whiting stock in 2001, as estimated from the current stock assessment, is now believed to have been at 27 percent of its unfished biomass in 2001 when a survey catchability coefficient of 1.0 is applied, and at 31 percent of its unfished biomass in 2001 when a survey catchability coefficient of 0.6 was applied.

With the publication of this document, NMFS is announcing that the whiting stock is estimated to be above the target rebuilding biomass in 2003 and will no longer be considered an overfished stock. Consequently, the adoption of a whiting rebuilding plan under Amendment 16-4 to the FMP, scheduled to be completed by November 2004, may no longer be necessary.

During 2003, while whiting was under NMFS's overfished designation,

an order was entered in *Natural Resources Defense Council v. Evans*, 290 F. Supp. 2d 1051, 1057 (N.D. Calif. 2003), requiring NMFS to approve or adopt a rebuilding plan for whiting by November 30, 2004 pursuant to 16 U.S.C. 1854(c) of the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act). NMFS will move the Court to amend its order on the grounds that a rebuilding plan for whiting is no longer necessary because the stock is no longer in an overfished status.

#### U.S.-Canada Whiting Negotiations

Since 1977, the U.S. and Canada have periodically held negotiations to address whiting fishery management issues, particularly catch sharing between the two countries. Through 2003, the U.S. fisheries have been managed to take 80 percent of the OY, while the Canadian fisheries have been managed to take 30 percent of the U.S.-Canada coastwide harvest. In the fall of 2002, after the whiting stock had been declared overfished, international negotiations were resumed.

In February 2003, U.S.-Canada negotiations reached a tentative agreement detailing the conservation, research, and catch sharing of whiting. A new process for conducting stock assessments and managing whiting was developed and is described in a treaty which was signed by both countries on November 21, 2003. This treaty is currently awaiting ratification by the U.S. Senate and passage of implementing legislation by the U.S. Congress. Treaty provisions include the use of a default harvest rate of  $F_{40\%}$  with a 40/10 adjustment. A rate of  $F_{40\%}$  can be explained as that which reduces spawning potential per female to 40 percent of what it would have been under natural conditions (if there were no mortality due to fishing). The treaty's catch sharing plan provides 73.88 percent of the total catch OY to the U.S. fisheries and 26.12 percent to the Canadian fisheries. Although the international agreement and implementing legislation are not expected to be effective until 2005, the negotiators recommended that each country informally implement the agreed upon treaty provisions, to the extent possible, beginning in 2004.

#### ABC/OY Recommendations

At its September 2003 meeting, the Council considered a range of ABCs and OYs that were consistent with historical values and expected to encompass results of the upcoming 2004 assessment. The four ABC and OY options considered by the Council were:

An ABC of 94,000 mt with an OY of 74,100 mt, which represents 50 percent of the 2003 ABC and OY; an ABC of 188,000 mt with an OY of 148,200 mt, which was the 2003 ABC and OY; an ABC of 282,000 mt with an OY of 222,300 mt, which is 50 percent greater than the 2003 ABC and OY; and an ABC of 325,000 mt with an OY of 250,000 mt, which was an intermediate value recommended by the Council.

The Council recommended a preferred OY of 250,000 mt to accommodate any biomass increase that could result from the 2004 stock assessment, while recognizing that incidental catch of widow rockfish could constrain harvest levels of whiting. Widow rockfish, an overfished species, is often caught with whiting. Because the 2004 widow rockfish OY is very low to allow for rebuilding, estimates of incidental widow rockfish catch in the whiting fishery suggested that widow OY might be exceeded if the whiting OY were not constrained. It was announced throughout the specification process that the ABC and OY for whiting would be implemented in a separate final rule from the rest of the groundfish specifications.

At its March 2004 meeting in Tacoma, Washington, the Council reviewed the results of the new stock assessment for whiting. The coastwide ABCs considered by the Council were 514,441 mt ( $q=1.0$ ) and 780,758 mt ( $q=0.6$ ). Both ABCs were based on an  $F_{MSY}$  harvest rate of  $F_{40\%}$  which is consistent with the U.S./Canada treaty for whiting.  $F_{MSY}$  is the default harvest rate that the Council uses as a proxy for the fishing mortality rate.

Because the whiting biomass is estimated to be above 40 percent of its unfished biomass, the 40/10 adjustment was not applied. With the stock above the target rebuilding biomass, the OY could be set as high as the ABC. The SSC recommended that the Council use the decision table presented in the whiting stock assessment (Table 13) to evaluate the consequences of alternate OY options on the whiting biomass. This assessment is available from the Council (see ADDRESSES). In addition to the two OYs based on different values for the  $q$ , 0.6 and 1.0, the consequences of a constant harvest rate of 250,000 mt annually for the U.S. was also considered in the decision table.

The Council's groundfish management team (GMT) considered the 2004 OY alternatives in relation to the impacts of incidental catch of overfished species, particularly widow rockfish. In September 2003, when projecting the impacts of the whiting fishery on widow rockfish, the GMT

applied an average bycatch rate for 1998–2002 for each sector. Based on this rate, it was projected that the whiting OY would need to be constrained to 120,000 mt as not to exceed the widow rockfish rebuilding OY.

At the March meeting, the 2003 whiting bycatch data were available. However, the GMT could not reach consensus on the best approach to calculating the widow bycatch projections. The influence of fishers' ability to reduce bycatch rates by changing fishing practices, as compared to the influence on bycatch rates due to the relationship between the two stocks and the frequency of widow rockfish interactions, are not well understood at this time. Therefore, the GMT presented two OYs based on alternative bycatch projections that fixed the widow rockfish take at 220 mt, to the Council. The first whiting OY was 260,343 mt, which was based on a weighted 4-year average with more weight being given to recent years. The second whiting OY was 205,782 mt, and was based on an equally weighted four year average. In addition, the GMT estimated the widow rockfish catch (211 mt) with a fixed OY of 250,000 mt, and with the application of a weighted 4-year average.

Following discussion and public testimony concerning the new 2004 stock assessment, the Council recommended adopting an ABC of 514,441 mt, based on the new assessment with model runs using  $q=1.0$ , and an OY of 250,000 mt. As explained above, the Council initially considered a range of ABCs that were expected to encompass the results of the new stock assessment. However, the 514,441 mt ABC based on the new assessment is greater than the range of ABC alternatives (based on the 2002 stock assessment) that were initially considered by the Council, analyzed in the EIS, and presented in the proposed rule.

Because it is the OY harvest level that determines the effects of the fisheries on the environment and not the ABC, there is no functional difference in environmental impacts between the high ABC of 325,000 mt and the ABC of 514,441 mt. The environmental impacts of the 250,000 mt OY, including impacts on overfished species, resulting from the whiting harvest specification were fully considered within the range of alternatives in the EIS and there are no additional environmental impacts on whiting or bycatch species over those already considered.

As in past years, the whiting fisheries are will be managed with near real-time data to achieve, but not exceed the OY. The Council recognized efforts by

fishery participants to avoid bycatch of overfished species and asked that the industry continue to share information and avoid widow rockfish "hot spots".

#### Economic Impact

The U.S. OY recommended by the Council represents a 68 percent increase from the 2003 whiting OY. When the OY was substantially reduced to allow for rebuilding of the stock, it was not economically feasible for some shoreside or at-sea processors who had historically participated in the fishery to remain in the fishery. The increased OY for 2004 may result in financial improvements and may likely encourage some fishers and processors to return to the fishery. In the short term, the increased OY is expected to have a substantial economic impact on harvesters and processors. It is also expected that the length of the whiting season will increase proportionately with the OY, thereby likely reducing some fishing pressure on already constrained non-whiting fisheries such as flatfish and DTS, in which whiting vessels also participate.

#### Sector Allocations

In 1994, the United States formally recognized that the four Washington coastal treaty Indian tribes (Makah, Quileute, Hoh, and Quinalt) 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 60 CFR 660.324).

The Pacific Coast Indian treaty fishing rights, described at 50 CFR 660.324, allow for the allocation of fish to the tribes through the annual specification and management process. A tribal allocation is subtracted from the species OY before limited entry and open access allocations are derived. The tribal whiting fishery is a separate fishery, and is not governed by the limited entry or open access regulations or allocations. To date only the Makah tribe has participated. It regulates, and in cooperation with NMFS, monitors this

fishery so as not to exceed the tribal allocation.

The sliding scale methodology used to determine the treaty Indian share of whiting is the subject of ongoing litigation. In *United States v. Washington*, Subproceeding 96-2, the Court held that the methodology is consistent with the Magnuson-Stevens Act, and is the best available scientific method to determine the appropriate allocation of whiting to the tribes. See *United States v. Washington*, 143 F.Supp.2d 1218 (W.D. Wash. 2001). This ruling was reaffirmed in July 2002, *Midwater Trawlers Cooperative v. Daley*, C96-1808R (W.D. Wash.) (Order Granting Defendants' Motion to Supplement Record, July 17, 2002), and again in April 2003, *id.*, Order Granting Federal Defendants' and Makah's Motions for Summary Judgment and Denying Plaintiffs' Motions for Summary Judgment, April 15, 2003. The latter ruling has been appealed to the Ninth Circuit, but no decision has been rendered as yet. At this time, NMFS remains under a Court order in Subproceeding 96-2 to continue use of the sliding scale methodology unless the Secretary finds just cause for its alteration or abandonment, the parties agree to a permissible alternative, or further order issues from the Court. Therefore, NMFS is obliged to continue to use the methodology unless one of the events identified by the Court occurs. Since NMFS finds no reason to change the methodology, it has been used to determine the 2004 tribal allocation.

Beginning in 1999, NMFS set the tribal allocation according to an abundance-based sliding scale allocation method, proposed by the Makah Tribe in 1998. See, 64 FR 27928, 27929 (May 29, 1999); 65 FR 221, 247 (January 4, 2000); 66 FR 2338, 2370 (January 11, 2001). Under the sliding scale allocation method, the tribal allocation varies with U.S. whiting OY, ranging from a low of 14 percent (or less) of the U.S. OY when OY levels are above 250,000 mt, to a high of 17.5 percent of the U.S. OY when the OY level is at or below 145,000 mt. For 2004, using the sliding scale allocation

method the tribal allocation will be 32,500 mt. The Makah are the only Washington Coast tribe that requested a whiting allocation for 2004.

The 2004 non-tribal commercial OY for whiting is 215,500 mt. This is calculated by deducting the 32,500 mt tribal allocation and 2,000 mt for research catch and bycatch in non-groundfish fisheries from the 250,000 mt total catch OY. Regulations at 50 CFR 660.323(a)(4) divide the commercial OY into separate allocations for the non-tribal catcher/processor, mothership, and shore-based sectors of the whiting fishery. The catcher/processor sector is comprised of vessels that harvest and process whiting. The mothership sector is comprised of motherships and catcher vessels that harvest whiting for delivery to motherships. Motherships are vessels that process, but do not harvest, whiting. The shoreside sector is comprised of vessels that harvest whiting for delivery to shoreside processors. Each sector receives a portion of the commercial OY, with the catcher/processors getting 34 percent (73,270 mt), motherships getting 24 percent (51,720 mt), and the shore-based sector getting 42 percent (90,510 mt).

All whiting caught in 2004 before the effective date of this action will be counted toward the new OY. As in the past, the specifications include fish caught in state ocean waters (0-3 nautical miles (nm) offshore) as well as fish caught in the EEZ (3-200 nm offshore).

#### NMFS Actions

For the reasons stated here, NMFS is amending the 2004 annual specifications and management measures in the preamble of the final rule (69 FR 11064, March 9, 2004) with the following changes:

1. Tables 1a and 1b (69 FR 11074) are revised to include the Pacific whiting ABC and OYs and to correct footnote x/ to add the term "harvest guideline" to clarify that the black rockfish OY subdivisions between the States of Washington, Oregon and California.

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Species	ACCEPTABLE BIOLOGICAL CATCH (ABC)										OY (Total catch)	Commercial OY (Total Catch) and Harvest guidelines	Allocations total catch			
	Vancouver	Columbia	Eureka	Mont-erey	Concept-ion	ABC	Limited Entry		Open Access							
							Mt	%	Mt	%						
													Mt	%		
<b>ROCKFISH:</b>																
Pacific Ocean Perch j/	980					980					444	117.7	--	--	--	--
Shortbelly k/		13,900				13,900					13,900	13,900	--	--	--	--
Widow l/		3,460				3,460					284	280.4	--	97.0	--	3.0
Canary m/		256				256					47.3	24.2	--	87.7	--	12.3
Chilipepper n/		c/		2,700		2,700					2,000	1,985	1,106	55.7	879	44.3
Bocaccio o/		c/		400		400					250	108.5	--	52.7	--	44.3
Splitnose p/		c/		615		615					461	461	--	--	--	--
Yellowtail q/		4,320		c/		4,320					4,320	4,291	3,935	91.7	356	8.3
Shortspine thornyhead r/ north of 34°27'			1,030			1,030					983	974		99.7	3	0.27
Longspine thornyhead s/ north of 36°		2,461			--	2,461					2,443			--	--	--
south of 36° t/		--			390	390					195	195	--	--	--	--
Cowcod u/		c/		19	--	19					2.4	0	--	--	--	--
		c/		--	5	5					2.4	0	--	--	--	--
Darkblotched v/			240			240					240	122.1		--		--
Yelloweye w/			53			53					22	5.8		--		--
Black x/	540		775		--	1,315					1,315					

Species	ACCEPTABLE BIOLOGICAL CATCH (ABC)										OY (Total catch)	Commercial OY (Total Catch) and Harvest guidelines	Allocations total catch		
	Vancouver	Columbia	Eureka	Mont-erey	Conce p-tion	Total Catch	Limited Entry		Open Access						
							Mt	%	Mt	%					
													Mt	%	
Minor Rockfish North y/	3,680	--		--		3,680	1,979	91.7	179	8.3	2,250	2,128			
Minor Rockfish South z/	--			3,412		3,412	774	55.7	616	44.3	1,968	1,390			
Remaining Rockfish	1,612			854		--	--	--	--	--	--	--	--	--	--
bank aa/	c/			350		350	--	--	--	--	--	--	--	--	--
blackgill bb/	c/			75	268	343	--	--	--	--	--	--	--	--	--
bocaccio - north	318					318	--	--	--	--	--	--	--	--	--
chilipepper-north	32					32	--	--	--	--	--	--	--	--	--
redstripe	576			c/		576	--	--	--	--	--	--	--	--	--
sharpchin	307			45		352	--	--	--	--	--	--	--	--	--
silvergrey	38			c/		38	--	--	--	--	--	--	--	--	--
splitnose	242			c/		242	--	--	--	--	--	--	--	--	--
yellowmouth	99			c/		99	--	--	--	--	--	--	--	--	--
yellowtail-south				116		116	--	--	--	--	--	--	--	--	--
Other rockfish cc/	2,068			2,558		--	--	--	--	--	--	--	--	--	--
OTHER FISH dd/	2,500	7,000	1,200	2,000	2,000	14,700	--	--	--	--	na	--	--	--	--

Table 1b. 2004 OYs for minor rockfish by depth sub-groups (weights in metric tons).

Species	Total Catch ABC	OY (Total Catch)			Harvest Guidelines (total catch)			
		Total Catch OY	Recrea- tional Estimat e	Commercial OY for minor rockfish and HG for depth sub- groups	Limited Entry		Open Access	
					Mt	%	Mt	%
Minor Rockfish North x/	3,680	2,250 x/	78	2,158	1,979	91.7	179	8.3
Nearshore		122 x/	68	40				
Shelf		968	10	958				
Slope		1,160	0	1,160				
Minor Rockfish South y/	3,412	1,968 y/	435	1,390	774	55.7	616	44.3
Nearshore		615 y/	375	97				
Shelf		714	60	654				
Slope		639	0	639				

a/ ABC applies to the U.S. portion of the Vancouver area, except as noted under individual species.

b/ Lingcod was declared overfished on March 3, 1999. A stock assessment, that included parts of Canadian waters, was done in 2000 and updated for 2001. Lingcod was believed to be at 15 percent of its unfished biomass coastwide in 2000, 17 percent in the north and 15 percent in the south. The U.S. portion of the ABC for the Vancouver area was set at 44 percent of the total for that area. The ABC projection for 2004 is 1,385 mt and was calculated using an  $F_{MSY}$  proxy of  $F_{45\%}$ . The total catch OY of 735 mt is based on a rebuilding plan with a 60 percent probability of rebuilding the stock to  $B_{MSY}$  by the year 2009 ( $T_{MAX}$ ). The harvest control rule will be 0.0531 in the north and 0.0610 in the south. The total catch OY is reduced by 473.6 mt for the amount that is estimated to be taken by the recreational fishery, 3 mt for the amount estimated to be taken during research fishing, 2.8 mt for the amount estimated to be taken in non-groundfish fisheries, and 49.8 mt which will be held in a buffer (see the preamble section "OY Management for overfished species" for the discussion of buffers), the resulting commercial harvest guideline of 205.8 mt. The tribes do not have a specific allocation at this time but are expected to take 25.5 mt of the commercial OY.

c/ "Other species", these are neither common nor important to the commercial and recreational fisheries in the areas footnoted. Accordingly, Pacific cod is included in the non-commercial OY of "other fish" and rockfish species are included in either "other rockfish" or "remaining rockfish" for the areas footnoted.

d/ Pacific whiting -The most recent stock assessment was prepared in early 2004, and was estimated to be above 40 percent of its unfished biomass. The U.S. ABC of 514,441 mt is based on the 2004 assessment results with the application of an  $F_{MSY}$  proxy harvest rate of 40%. The U.S. ABC is 73.88 percent of the coastwide ABC. Because the unfished biomass is believed to be above 40 percent the default OY could be set equal the ABC. However, the OY which is being set at 250,000 mt was constrained because of widow rockfish. The total catch OY is further reduced by 32,500 mt for the tribal allocation, 200 mt for the amount estimated to be taken during research fishing, and 1,800 mt for the estimated catch in non-groundfish fisheries, resulting in a commercial OY of 215,500 mt. The commercial OY is allocated between the sectors with 42 percent (90,510 mt) going to the shore-based sector, 34 percent (73,270 mt) going to the catcher/processor sector, and 24 percent (51,720 mt) going to the mothership sector. Discards of whiting are estimated from the observer data and counted towards the OY inseason.

e/ Sablefish north of  $36^{\circ}$  N lat. - A new sablefish assessment was done in 2001 for the area north of Point Conception ( $34^{\circ}27'N$  lat.) and updated for 2002. Following the assessment update, sablefish north of  $34^{\circ}27'N$  lat. was believed to be between 31 percent and 38 percent of its unfished biomass. The coastwide ABC of 8,487 mt is based on environmentally driven projections with the  $F_{MSY}$  proxy of  $F_{45\%}$ . The ABC for the management area north of  $36^{\circ}$  N lat. is 8,185 mt (96.45 percent of the coastwide ABC). The coastwide OY of 7,786 mt is based on the density-dependent model and the application of the 40-10 harvest policy. The total catch OY for the area north of  $36^{\circ}$  N lat is 7,510 mt and is 96.05 percent of the coastwide OY of 7,786 mt. The total catch OY is reduced by 10 percent (751 mt) for the tribal set aside, 53.0 mt for the amount estimated to be taken as research catch, and 18.5 mt for the amount estimated to be taken in non-groundfish fisheries. The remainder (6,687 mt) is the commercial total catch OY. The open access allocation is 9.4 percent of the commercial OY, resulting in an open access total catch OY of 629 mt. The limited entry total catch OY is 6,059 mt. The limited entry total catch OY is further divided with 58 percent (3,514 mt) allocated to the trawl fishery and 42 percent (2,545 mt)

allocated to the non-trawl fishery. To provide for bycatch in the at-sea whiting fishery 15 mt of the limited entry trawl allocation will be set aside.

f/ Sablefish south of 36° N lat. - The ABC of 302 mt is 3.55 percent of the ABC from the 2002 coastwide assessment update. The total catch OY of 276 mt is 3.55 percent of the OY from the 2002 coastwide assessment update. There are no limited entry or open access allocations in the Conception area at this time.

g/ Dover sole north of 34° 27' N lat. was assessed in 2001 and was believed to be at 29 percent of its unfished biomass. The ABC of 8,510 mt is based on an  $F_{MSY}$  proxy of  $F_{40\%}$ . The total catch OY of 7,440 mt is the three year average OY for 2002-2004 as forecast in the 2001 stock assessment. Because the biomass is estimated to be in the precautionary zone, the 40-10 harvest rate policy was applied to the total catch OY. The OY is reduced by 58 mt for the amount estimated to be taken as research catch, and 2 mt for estimated catch in non-groundfish fisheries resulting in commercial OY of 7,380 mt.

h/ Petrale Sole was believed to be at 42 percent of its unfished biomass following a 1999 assessment. For 2004, the ABC for the Vancouver-Columbia area (1,262 mt) is based on a four year average projection from 2000-2003 with a  $F_{40\%} F_{MSY}$  proxy. Management measures to constrain the harvest of overfished species, have reduced the availability of these stocks to the fishery during the past several years. Because the harvest assumptions (from the most recent assessment) used to forecast future harvest were likely overestimates, carrying the previously used ABCs and OYs forward into 2004 was considered to be conservative and based on the best available data. The ABCs for the Eureka, Monterey, and Conception areas (1,500 mt) are based on historical landings data and continue at the same level as 2003.

i/ Other flatfish are those species that do not have individual ABC/OYs and include butter sole, curlfin sole, flathead sole, Pacific sand dab, rex sole, rock sole, sand sole, and starry flounder. The ABC is based on historical catch levels.

j/ Pacific ocean perch (POP) was declared as overfished on March 3, 1999. A new stock assessment was prepared in 2003 and POP was determined to be at 25 percent of its unfished biomass. The ABC of 980 mt was projected from a new assessment and is based on an  $F_{MSY}$  proxy of  $F_{50\%}$ . The OY of 444 mt is based on a 70 percent probability of rebuilding the stock to  $B_{MSY}$  by the year 2042 ( $T_{MAX}$ ). The harvest control rule will be 0.0257. The OY is reduced by 3 mt for the amount estimated to be taken during research fishing and 323.3 mt which will be placed in a buffer (see the preamble section "OY Management for overfished species" for the discussion of buffers) resulting in a commercial harvest guideline of 117.7 mt.

k/ Shortbelly rockfish remains as an unexploited stock and is difficult to assess quantitatively. The 1989 assessment provided 2 alternative yield calculations of 13,900 mt and 47,000 mt. NMFS surveys have shown poor recruitment in most years since 1989, indicating low recent productivity and a naturally declining population in spite of low fishing pressure. The ABC and OY therefore are set at 13,900 mt, the low end of the range in the assessment.

l/ The widow rockfish stock was declared overfished on January 11, 2001 (66 FR 2338). A new assessment was prepared for widow rockfish in 2003. The spawning stock biomass is believed to be at 22.4 percent of its unfished biomass. The ABC of 3,460 mt is based an  $F_{50\%} F_{MSY}$  proxy. The OY 284 mt is based on a 60.1 percent probability of rebuilding the stock to  $B_{MSY}$  by the year 2042 ( $T_{MAX}$ ). The harvest control rule is 0.0093. The OY is reduced by 2 mt for the amount estimated to be taken as recreational catch, 1.5 mt for the amount estimated to be taken during research fishing, 0.1 mt for the amount estimated to be taken in non-groundfish fisheries resulting in a commercial OY of 280.4 mt. Specific open access/limited entry allocations have been suspended during the rebuilding

period as necessary to meet the overall rebuilding target while allowing harvest of healthy stocks. Tribal vessels are estimated to land about 40 mt of widow rockfish in 2004, but do not have a specific allocation at this time. Set asides for widow rockfish taken in the Pacific whiting fisheries will be announced in 2004 with the whiting specifications.

m/ Canary rockfish was declared overfished on January 4, 2000 (65 FR 221). A new assessment was completed in 2002 for canary rockfish and the stock was believed to be at 8 percent of its unfished biomass coastwide. The coastwide ABC of 256 mt is based on a  $F_{MSY}$  proxy of F50%. The coastwide OY of 47.3 mt is based on the rebuilding plan which has a 60 percent probability of rebuilding the stock to  $B_{MSY}$  by the year 2076 ( $T_{MAX}$ ) and a catch sharing arrangement which has 64.5 percent going to the commercial fisheries and 35.5 percent going to the recreational fishery. The harvest control rule will be 0.0220. The OY is reduced by 15.5 mt for the amount estimated to be taken in the recreational fishery, 1 mt for the amount estimated to be taken during research fishing, 2.1 mt for the amount estimated to be taken in non-groundfish fisheries, and 4.6 mt to be held in a buffer (see the preamble section "OY Management for overfished species" for the discussion of buffers), resulting in a commercial harvest guideline of 24.2 mt. Specific open access/limited entry allocations have been suspended during the rebuilding period as necessary to meet the overall rebuilding target while allowing harvest of healthy stocks. Tribal vessels are estimated to land about 3.6 mt of canary rockfish under the commercial OY, but do not have a specific allocation at this time.

n/ Chilipepper rockfish - the ABC (2,700 mt) for the Monterey-Conception area is based on a three year average projection from 1999-2001 with a F50%  $F_{MSY}$  proxy. Because the unfished biomass is believed to be above 40 percent the default OY could be set equal the ABC. However, the OY is set at 2,000 mt to discourage effort on chilipepper, which is taken with bocaccio rockfish. Management measures to constrain the harvest of overfished species, have reduced the availability of these stocks to the fishery during the past several years. Because the harvest assumptions (from the most recent assessment) used to forecast future harvest were likely overestimates, carrying the previously used ABCs and OYs forward into 2004 was considered to be conservative and based on the best available data. The OY is reduced by 15 mt for the amount estimated to be taken in the recreational fishery, resulting in a commercial OY of 1,985 mt. Open access is allocated 44.3 percent (879 mt) of the commercial OY and limited entry is allocated 55.7 percent (1,106 mt) of the commercial OY.

o/ Bocaccio rockfish was declared overfished on March 3, 1999. A new stock assessment and a new rebuilding analysis was prepared for bocaccio rockfish in 2003. The bocaccio rockfish stock is believed to be at 7.4 percent of its unfished biomass. The ABC of 400 mt is based on a F50%  $F_{MSY}$  proxy. The OY of 250 mt is based on the rebuilding analysis and has a >70 percent probability of rebuilding the stock to  $B_{MSY}$  by the year 2032 ( $T_{MAX}$ ). The harvest control rule is 0.041. The OY is reduced by 2.0 mt for the amount estimated to be taken during research fishing and 1.3 mt for the amount estimated to be taken in the non-groundfish fisheries. Of the remaining 246.7 mt, 56 percent (138.2 mt) will be applied to the recreational fishery and 44 percent (108.5 mt) will be applied to the commercial harvest guideline. The recreational fishery is estimated to take 62.8 mt, leaving a buffer (see the preamble section "OY Management for overfished species" for the discussion of buffers) of 75.4 mt and the commercial fishery is estimated to take to take 70.8 mt, leaving a buffer of 37.7 mt.

p/ Splitnose rockfish - The 2001 ABC is 615 mt in the southern area (Monterey-Conception). The 461 mt OY for the southern area reflects a 25 percent precautionary adjustment because of the less rigorous assessment for this stock. In the north, splitnose is included in the minor slope rockfish OY.

q/ Yellowtail rockfish - A new yellowtail rockfish stock assessment was prepared in 2003 for the Vancouver-Columbia-Eureka areas. Yellowtail rockfish is

believed to be at 46 percent of its unfished biomass. The ABC of 4,320 mt is based on the 2003 stock assessment with the  $F_{MSY}$  Proxy of F50%. The OY of 4,320 mt was set equal to the ABC, because the stock is above the precautionary threshold. The OY is reduced by 15 mt for the amount estimated to be taken in the recreational fishery, 8 mt for the amount estimated to be taken during research fishing, and 5.8 mt for the amount taken in non-groundfish fisheries, resulting in a commercial OY of 4,291 mt. The open access allocation (356 mt) is 8.3 percent of the commercial OY. The limited entry allocation (3,935 mt) is 91.7 percent the commercial OY. For anticipated bycatch in the at-sea whiting fishery, 300 mt is subtracted from the limited entry allocation. Tribal vessels are estimated to land about 407 mt of yellowtail rockfish in 2003, but do not have a specific allocation at this time.

r/ Shortspine thornyhead was last assessed in 2001 and the stock was believed to be between 25 and 50 percent of its unfished biomass. The ABC (1,030 mt) for the area north of Pt. Conception (34° 27' N lat.) is based on a F50%  $F_{MSY}$  proxy. The OY of 983 mt is based on the 2001 survey with the application the 40-10 harvest policy. The OY is reduced by 9 mt for the amount estimated to be taken during research fishing, resulting in a commercial OY of 974 mt. Open access is allocated 0.27 percent (3 mt) of the commercial OY and limited entry is allocated 99.73 percent (971 mt) of the commercial OY. There is no ABC or OY for the southern Conception area. Tribal vessels are estimated to land about 3 mt of shortspine thornyhead in 2004, but do not have a specific allocation at this time.

s/ Longspine thornyhead is believed to be above 40 percent of its unfished biomass. The ABC (2,461 mt) in the north (Vancouver-Columbia-Eureka-Monterey) is based on the average of the 3-year individual ABCs at a F50%. The total catch OY (2,461 mt) is set equal to the ABC. The OY is further reduced by 18 mt for the amount estimated to be taken during research fishing, resulting in a commercial OY of 2,443 mt.

t/ Longspine thornyhead - A separate ABC (390 mt) is established for the Conception area and is based on historical catch for the portion of the Conception area north of 34°27' N. lat. (Point Conception). To address uncertainty in the stock assessment due to limited information, the ABC was reduced by 50 percent to obtain the OY, 195 mt. There is no ABC or OY for the southern Conception Area.

u/ Cowcod in the Conception area was assessed in 1999 and was believed to be less than 10 percent of its unfished biomass. Cowcod was declared as overfished on January 4, 2000 (65 FR 221). The ABC in the Conception area (5 mt) is based on the 1999 assessment, while the ABC for the Monterey (19 mt) is based on average landings from 1993-1997. An OY of 4.8 mt (2.4 mt in each area) is based on the rebuilding plan which has a 55 percent probability of rebuilding the stock to  $B_{MSY}$  by the year 2099 ( $T_{MAX}$ ). The harvest control rule is 0.0136. Cowcod retention will not be permitted in 2004. The OY will be used to accommodate discards of cowcod rockfish resulting from incidental take.

v/ Darkblotched rockfish was assessed in 2000 and an assessment update was prepared in 2003. The darkblotched rockfish stock was declared overfished on January 11, 2001 (66 FR 2338). Following the 2003 assessment update, the Darkblotched rockfish stock is believed to be at 11 percent of its unfished biomass. The ABC is projected to be 240 mt and is based on an  $F_{MSY}$  proxy of F50%. The OY of 240 mt is based on the rebuilding analysis and has a >80% probability of rebuilding the stock to  $B_{MSY}$  by the year 2047 ( $T_{MAX}$ ). The harvest control rule will be 0.032. The OY is reduced by 1.6 mt and 116.3 mt to be held in a buffer (see the preamble section "OY Management for overfished species" for the discussion of buffers), resulting in a 122.1 mt commercial harvest guideline. For anticipated bycatch in the at-sea whiting fishery, 6.7 mt is set aside.

w/ Yelloweye rockfish was assessed in 2001 and updated for 2002. On January 11, 2002 yelloweye rockfish was declared overfished (67 FR 1555). In 2002 following the assessment update, yelloweye rockfish was believed to be at 24.1 percent of its unfished biomass coastwide. The 53 mt coastwide ABC is based on an  $F_{MSY}$  proxy of  $F_{50\%}$ . The OY of 22 mt is based on a revised rebuilding analysis (August 2002) with a 50% probability of rebuilding to  $B_{MSY}$  by the year 2050 ( $T_{MID}$ ), which can also be expressed as 92 percent probability of rebuilding to  $B_{MSY}$  by the year 2071 ( $T_{MAX}$ ). The harvest control rule is 0.0139. The OY is reduced by 7.7 mt for the amount estimated to be taken in the recreational fishery, 1.1 mt for the amount estimated to be taken during research fishing, 0.8 mt for the amount taken in non-groundfish fisheries, and 6.6 mt to be held in a buffer (see the preamble section "OY Management for overfished species" for the discussion of buffers), resulting in a commercial harvest guideline of 5.8 mt. Tribal vessels are estimated to land about 2.3 mt of yelloweye rockfish of the commercial OY in 2004, but do not have a specific allocation at this time.

x/ Black rockfish - the ABC of 1,315 mt is the sum of the ABC (775 mt) from the 2003 Columbia and Eureka area assessment plus the ABC (540 mt) for the Vancouver area from the 2000 assessment. Because the two assessments overlap in the area between Cape Falcon and the Columbia river, projections from the 2000 assessment were adjusted downward by 12 percent to account for the overlap. The ABCs were derived using an  $F_{MSY}$  proxy of  $F_{50\%}$ . Because the unfished biomass is believed to be above 40 percent, the the OY was set equal to the ABC. The black rockfish OY is subdivided between the three states and results in the following harvest guidelines: 540 mt will be attributed to the area north of 46°16' N. lat. (Washington/Oregon border), 450 mt will be attributed to the area between 46°16' N. lat. and 42°00' N. lat. (Oregon/California border), and 326 mt will be attributed to the area south of 42°00' N. lat. Of the 326 mt attributed to the area south of 42°00' N. lat., 194 mt of black rockfish will be applied to the area north of 40°10 min N. lat. and 131 mt to the area south of 40°10 min N. lat. Black rockfish was included in the minor rockfish north category until 2004.

y/ Minor rockfish north includes the "remaining rockfish" and "other rockfish" categories in the Vancouver, Columbia, and Eureka areas combined. These species include "remaining rockfish", which generally includes species that have been assessed by less rigorous methods than stock assessments, and "other rockfish", which includes species that do not have quantifiable assessments. The ABC of 3,680 mt is the sum of the individual "remaining rockfish" ABCs plus the "other rockfish" ABCs. The remaining rockfish ABCs continue to be reduced by 25 percent ( $F=0.75M$ ) as a precautionary adjustment. To obtain the total catch OY of 2,250 mt, the remaining rockfish ABCs are further reduced by 25 percent and other rockfish ABCs were reduced by 50 percent. This was a precautionary measure due to limited stock assessment information. The OY is reduced by 78 mt for the amount estimated to be taken in the recreational fishery and 2,158 mt the amount estimated to be taken in the commercial fishery, leaving 14 mt in a buffer. Open access is allocated 8.3 percent (179 mt) of the commercial OY and limited entry is allocated 91.7 percent (1,979 mt) of the commercial OY. Tribal vessels are estimated to land about 14 mt of minor rockfish (10 mt of shelf rockfish, and 4 mt of slope rockfish) in 2004, but do not have a specific allocation at this time.

z/ Minor rockfish south includes the "remaining rockfish" and "other rockfish" categories in the Monterey and Conception areas combined. These species include "remaining rockfish" which generally includes species that have been assessed by less rigorous methods than stock assessment, and "other rockfish" which includes species that do not have quantifiable assessments. The ABC of 3,412 is the sum of the individual "remaining rockfish" ABCs plus the "other rockfish" ABCs. The remaining rockfish ABCs continue to be reduced by 25 percent ( $F=0.75M$ ) as a precautionary adjustment. To obtain total catch OY of 1,968 mt, the remaining rockfish ABCs are further reduced by 25 percent, with the exception of blackgill rockfish, and the other rockfish ABCs were reduced by 50 percent. This was a

precautionary measure due to limited stock assessment information. The OY is reduced by 435 mt for the amount estimated to be taken in the recreational fishery and 1,390 mt the amount estimated to be taken in the commercial fishery, leaving 143 mt in a buffer. Open access is allocated 44.3 percent (616 mt) of the commercial OY and limited entry is allocated 55.7 percent (774 mt) of the commercial OY.

aa/ Bank rockfish -- The ABC is 350 mt which is based on a 2000 assessment for the Monterey and Conception areas. This stock contributes 263 mt towards the minor rockfish OY in the south.

bb/ Blackgill rockfish is believed to be at 51 percent of its unfished biomass. The ABC of 343 mt is the sum of the Conception area ABC of 268 mt, based on the 1998 assessment with an  $F_{MSY}$  proxy of F50%, and the Monterey area ABC of 75 mt. This stock contributes 306 mt towards minor rockfish south (268 mt for the Conception area ABC and 38 mt for the Monterey area). The OY for the Monterey area is the ABC reduced by 50 percent as a precautionary measure because of lack of information.

cc/ "Other rockfish" includes rockfish species listed in 50 CFR 660.302 and California scorpionfish. The ABC is based on the 1996 review of commercial *Sebastes* landings and includes an estimate of recreational landings. These species have never been assessed quantitatively.

dd/ "Other fish" includes sharks, skates, rays, ratfish, morids, grenadiers, and other groundfish species noted above in footnote c/.

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2. Section IV *NMFS Actions*, B. *Limited Entry Fishery*, (3) *Whiting* (69 FR 11114) is revised; and Section V *Washington Coastal Tribal Fisheries*, E. *Pacific Whiting* (69 FR 11121) is revised.

B. *Limited Entry Fishery*

\* \* \* \* \*

(3) *Whiting*. Additional regulations that apply to the whiting fishery are found at 50 CFR 660.306 and at 50 CFR 660.323(a)(3) and (a)(4).

(a) *Allocations*. The non-tribal allocations, based on percentages that are applied to the commercial OY of 215,500 mt in 2004 (see 50 CFR 660.323(a)(4)), are as follows:

(i) Catcher/processor sector—73,270 mt (34 percent);

(ii) Mothership sector—51,720 mt (24 percent);

(iii) Shore-based sector—90,510 mt (42 percent). No more than 5 percent (4,526 mt) of the shore-based whiting allocation may be taken before the shore-based fishery begins north of 42° N. lat. on June 15, 2004.

\* \* \* \* \*

V. *Washington Coastal Tribal Fisheries*

\* \* \* \* \*

E. *Pacific Whiting*. The tribal allocation is 32,500 mt.

**Classification**

The final whiting specifications and management measures for 2004 are issued under the authority of the

Magnuson-Stevens Fishery Conservation and Management Act and are in accordance with 50 CFR parts 660, the regulations implementing the Pacific Coast groundfish FMP.

The Pacific Coast Groundfish FMP requires that fishery specifications be evaluated biennially or annually using the best scientific information available. A stock assessment for whiting was prepared in early 2004, using the most recent survey data. Because of the timing of the resource survey upon which the assessment is based, the stock assessment could not be completed and ready for use in the June-September management cycle when the rest of the groundfish specifications were set. The Council and NMFS decided it was best to delay the adoption of the 2004 ABC and OY in order to use the newest data, rather than use old data from the prior survey. Preliminary indications from catch and survey data were that the biomass had increased in recent years and the ABC and OY recommended for 2004 would be substantially higher than those in 2003. For the most socio-economic benefits to harvesters and communities relying on the harvest of whiting, it was particularly important to delay the ABC and OY adoption in order to use the most recent data. Finally, since the major fishery for whiting does not start until April 1, there was time to delay the adoption of the new ABC and OY, until the new information was available to the Council in March.

The proposed rulemaking to implement the 2004 specifications and management measures, published on January 8, 2004 (69 FR 1380), addressed the delayed in adopting the whiting ABC and harvest specifications. NMFS requested public comment on the proposed rule through February 8, 2004. The final rule was published on March 9, 2004 (69 FR 11064). In this rule, NMFS responded to one public comment regarding the process for establishing a harvest level for Pacific whiting by stating that the specification would be adjusted following the Council's March meeting and announced in the **Federal Register** as a final rule. This action has been publicized widely through the Council process.

The proposed and final rules for the 2004 specifications and management measures contained a range of ABCs and OYs for whiting. The specifications announced here are within the scope of the proposed and final rules. Implementing these specifications as soon as possible is necessary because the 2004 whiting fishery is already underway and is operating under the lower 2003 OYs.

For the reasons described above, pursuant to 5 U.S.C. 553(d)(3), the Assistant Administrator for Fisheries, NOAA, finds good cause to waive the 30-day delay in effectiveness, so that this final rule may become effective as soon as possible after the April 1, 2004, fishery start date.

The environmental impacts associated with the Pacific whiting harvest levels being adopted by this action were considered in the final environmental impact statement for the 2004 specification and management measures. Copies of the FEIS and the ROD are available from the Council (*see ADDRESSES*) Because the impacts of this action were already considered in the FEIS, it is categorically excluded under NAO 216-6 and NEPA from both further analysis and the requirements to prepare additional environmental documents.

The Council prepared an Initial Regulatory Flexibility Analysis and NMFS prepared a FRFA for the 2004 harvest specifications and management measures which included the impacts of this action. A summary of the FRFA analysis was published in the final rule on March 9, 2004 (69 FR 11064). A copy of the FRFA is available from NMFS Northwest Region (*see ADDRESSES*)

Pursuant to Executive Order 13175, this final rule was developed after meaningful consultation with tribal officials during the Council process. This final rule has been determined to be not significant for purposes of Executive Order 12866.

Dated: April 27, 2004.

**Rebecca Lent,**

*Deputy Assistant Administrator for Regulatory Programs, National Marine Fisheries Service.*

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**DEPARTMENT OF COMMERCE**

**National Oceanic and Atmospheric Administration**

**50 CFR Part 679**

[Docket No. 030922237-4111-02; I.D. 082503D]

RIN 0648-AQ98

**Fisheries of the Exclusive Economic Zone Off Alaska; Individual Fishing Quota Program; Community Purchase**

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

**ACTION:** Final rule.

**SUMMARY:** NMFS issues a final rule to implement Amendment 66 to the Fishery Management Plan for Groundfish of the Gulf of Alaska (FMP), and an amendment to the Pacific halibut (halibut) commercial fishery regulations for waters in and off of Alaska.

Amendment 66 to the FMP and the regulatory amendment modify the Individual Fishing Quota (IFQ) Program by revising the eligibility criteria to receive halibut and sablefish IFQ and quota share (QS) by transfer to allow eligible communities in the Gulf of Alaska (GOA) to establish non-profit entities to purchase and hold QS for lease to, and use by, community residents as defined by specific elements of the proposed action. This action improves the effectiveness of the IFQ Program by providing additional opportunities for residents of fishery dependent communities and is necessary to promote the objectives of the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act) and the Northern Pacific Halibut Act of 1982 (Halibut Act) with respect to the IFQ fisheries.

**DATES:** Effective June 1, 2004, except for §§ 679.5(l)(8), 679.41(d)(1), (l)(3), and (l)(4), which will be effective after approval of the collection-of-information request submitted to Office of Management and Budget (OMB) under OMB approval number 0648-0272 and notification of the effective date is published in the **Federal Register**.

**ADDRESSES:** Copies of Amendment 66 and the Environmental Assessment/Regulatory Impact Review/Initial Regulatory Flexibility Analysis (EA/RIR/IRFA) prepared for the proposed rule and final Environmental Assessment/Regulatory Impact Review/Final Regulatory Flexibility Analysis (EA/RIR/FRFA) prepared for the final rule may be obtained from the Alaska Region, NMFS, P.O. Box 21668, Juneau, AK 99802-1668, Attn: Lori Durall, (907) 586-7247.

**FOR FURTHER INFORMATION CONTACT:** Glenn Merrill, 907-586-7228 or email at [glenn.merrill@noaa.gov](mailto:glenn.merrill@noaa.gov).

**SUPPLEMENTARY INFORMATION:**

**Background**

The groundfish fisheries in the Exclusive Economic Zone of the GOA are managed under the FMP. The FMP was developed by the North Pacific Fishery Management Council (Council) under the Magnuson-Stevens Act (Pub. L. 94-265, 16 U.S.C. 1801). The FMP was approved by the Secretary of Commerce and became effective in 1978. Fishing for halibut (*Hippoglossus stenolepis*) is managed by the International Pacific Halibut Commission (IPHC) and the Council under the Halibut Act. The IFQ Program, a limited access management system for the fixed gear halibut and

sablefish (*Anoplopoma fimbria*) fisheries off Alaska, was recommended by the Council in 1992 and approved by NMFS in January 1993. Initial implementing rules were published on November 9, 1993 (58 FR 59375). Fishing under the IFQ Program began on March 15, 1995. The IFQ Program limits access to the halibut and sablefish fisheries to those persons holding QS in specific management areas. The IFQ Program for the sablefish fishery is implemented by the FMP and Federal regulations at 50 CFR part 679 under authority of the Magnuson-Stevens Act. The IFQ Program for the halibut fishery is implemented by Federal regulations at 50 CFR part 679 under the authority of the Halibut Act.

The IFQ Program originally was designed to resolve conservation and management problems that are endemic to open access fisheries. The background issues leading to the Council's initial action recommending the adoption of IFQs are described in the preamble to the proposed rule establishing the IFQ Program published December 3, 1992 (57 FR 57130).

A central concern of the Council in developing the IFQ Program was that QS, from which IFQ is derived, would become increasingly held by corporate entities instead of independent fishermen who typically own and operate their own vessels. To prevent this outcome, the Council designed the IFQ Program such that QS could, in most cases, be held only by individuals or natural persons, and not by corporate entities. The Council provided limited exemptions to this basic approach to accommodate existing corporate ownership of vessels at the time of implementation and to recognize the participation by corporately owned freezer vessels. However, the overall intent of the IFQ Program was for catcher vessel QS eventually to be held only by individual fishermen. The IFQ Program is designed to limit corporate holding of QS and increase holdings of QS by individual fishermen as corporate owners divest themselves of QS. This provision is implemented through the QS and IFQ transfer regulations at 50 CFR 679.41.

This final rule revises the existing IFQ Program regulations and policy to explicitly allow a new group of non-profit entities to hold QS on behalf of residents of specific rural communities located adjacent to the coast of the GOA. This change would allow a non-profit corporate entity that meets specific criteria to receive transferred halibut or sablefish QS on behalf of an eligible community and to lease the resulting IFQ to fishermen who are residents of