

**List of Subjects****46 CFR Part 401**

Administrative practice and procedure, Great Lakes, Navigation (water), Penalties, Reporting and recordkeeping requirements, Seamen.

**46 CFR Part 404**

Great Lakes, Navigation (water), Seamen.

For the reasons discussed in the preamble, the Coast Guard amends 46 CFR part 401 as follows:

**PART 401—GREAT LAKES PILOTAGE REGULATIONS**

- 1. The authority citation for part 401 continues to read as follows:

**Authority:** 46 U.S.C. 2103, 2104(a), 6101, 7701, 8105, 9303, 9304; Department of Homeland Security Delegation No. 0170.1(II)(92.a), (92.d), (92.e), (92.f).

- 2. Amend § 401.405 by revising paragraph (a) to read as follows:

**§ 401.405 Pilotage rates and charges.**

(a) The hourly rate for pilotage service on—

- (1) The St. Lawrence River is \$733;
- (2) Lake Ontario is \$493;
- (3) Lake Erie is \$531;
- (4) The navigable waters from Southeast Shoal to Port Huron, MI is \$603;
- (5) Lakes Huron, Michigan, and Superior is \$306; and
- (6) The St. Mary's River is \$594.

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**PART 404—GREAT LAKES PILOTAGE RATE MAKING**

- 3. The authority citation for part 404 continues to read as follows:

**Authority:** 46 U.S.C. 2103, 2104(a), 9303, 9304; Department of Homeland Security Delegation No. 0170.1(II)(92.a), (92.f).

**§ 404.2 [Amended]**

- 4. Amend § 404.2 by removing paragraph (b)(6).

**§ 404.104 [Amended]**

- 5. Amend § 404.104 in paragraph (c) by removing the reference “§ 404.103(d)” and adding in its place “§ 404.103”.

Dated: May 6, 2019.

**John P. Nadeau,**

*Admiral, U.S. Coast Guard, Assistant Commandant for Prevention Policy.*

[FR Doc. 2019-09657 Filed 5-9-19; 8:45 am]

BILLING CODE 9110-04-P

**DEPARTMENT OF COMMERCE****National Oceanic and Atmospheric Administration****50 CFR Part 660**

[Docket No. 181218999-9402-02]

RIN 0648-BI67

**Magnuson-Stevens Act Provisions; Fisheries off West Coast States; Pacific Coast Groundfish Fishery; Annual Specifications and Management Measures for the 2019 Tribal and Non-Tribal Fisheries for Pacific Whiting, and Requirement To Consider Chinook Salmon Bycatch Before Reapportioning Tribal Whiting**

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

**ACTION:** Final rule.

**SUMMARY:** NMFS issues this final rule for the 2019 Pacific whiting fishery under the authority of the Pacific Coast Groundfish Fishery Management Plan, the Magnuson-Stevens Fishery Conservation and Management Act, and the Pacific Whiting Act of 2006. This final rule announces the 2019 U.S. Total Allowable Catch of 441,433 metric tons (mt) of Pacific whiting, establishes a tribal allocation of 77,251 mt, establishes a set-aside for research and bycatch of 1,500 mt, and announces the allocations of Pacific whiting to the non-tribal fishery for 2019. This final rule also amends the provisions regarding reapportionment of the treaty tribes' whiting allocation to the non-treaty sectors to require that NMFS consider the level of Chinook salmon bycatch before reapportioning whiting. This rule is necessary to manage the Pacific whiting stock to Optimal Yield, ensure that the Pacific Coast Groundfish Fishery Management Plan is implemented in a manner consistent with treaty rights of four treaty tribes to fish for Pacific whiting in their “usual and accustomed grounds and stations” in common with non-tribal citizens, and to protect salmon stocks listed under the Endangered Species Act. The catch limits in this rule are intended to ensure the long-term sustainability of the Pacific whiting stock.

**DATES:** Effective May 10, 2019.

**FOR FURTHER INFORMATION CONTACT:** Miako Ushio (West Coast Region, NMFS), phone: 206-526-4644, and email: [Miako.Ushio@noaa.gov](mailto:Miako.Ushio@noaa.gov).

**SUPPLEMENTARY INFORMATION:**

**Electronic Access**

This final rule is accessible via the internet at the Office of the Federal Register website at <https://www.federalregister.gov>. Background information and documents are available at the NMFS West Coast Region website at <http://www.westcoast.fisheries.noaa.gov/fisheries/management/whiting/pacific-whiting.html> and at the Pacific Fishery Management Council (Council)'s website at <http://www.pcouncil.org/>.

The final environmental impact statement regarding Harvest Specifications and Management Measures for 2015–2016 and Biennial Periods Thereafter, and the Final Environmental Assessment for Pacific Coast Groundfish Fishery 2019–20 Harvest Specifications, Yelloweye Rebuilding Plan Revisions, and Management Measures, are available on the NMFS West Coast Region website at: [www.westcoast.fisheries.noaa.gov/publications/nepa/groundfish/groundfish\\_nepa\\_documents.html](http://www.westcoast.fisheries.noaa.gov/publications/nepa/groundfish/groundfish_nepa_documents.html).

**Background**

This final rule announces the total allowable catch (TAC) for Pacific whiting, which was determined under the terms of the Agreement with Canada on Pacific Hake/Whiting (Agreement) and the Pacific Whiting Act of 2006 (Whiting Act). The Agreement and the Whiting Act establish bilateral bodies to implement the terms of the Agreement. The bilateral bodies include: The Joint Management Committee (JMC), which recommends the annual catch level for Pacific whiting; the Joint Technical Committee (JTC), which conducts the Pacific whiting stock assessment; the Scientific Review Group (SRG), which reviews the stock assessment; and the Advisory Panel (AP), which provides stakeholder input to the JMC.

The Agreement establishes a default harvest policy of F-40 percent, which means a fishing mortality rate that would reduce the biomass to 40 percent of the estimated unfished level. The Agreement also allocates 73.88 percent of the TAC to the United States and 26.12 percent of the TAC to Canada. The JMC is primarily responsible for developing a TAC recommendation to the United States and Canada. The Secretary of Commerce, in consultation with the Secretary of State, has the authority to accept or reject this recommendation.

*2019 Pacific Whiting Stock Assessment and Scientific Review*

The JTC completed a stock assessment for Pacific whiting in February 2019.

This assessment is available at [http://www.westcoast.fisheries.noaa.gov/fisheries/management/whiting/pacific\\_whiting\\_treaty.html](http://www.westcoast.fisheries.noaa.gov/fisheries/management/whiting/pacific_whiting_treaty.html). The assessment presents a model that depends primarily upon an acoustic survey biomass index and catches of the transboundary Pacific whiting stock to estimate the biomass of the current stock. The most recent survey, conducted collaboratively between the Canadian Department of Fisheries and Oceans and NMFS, was completed in 2017.

Pacific whiting spawning stock biomass has been relatively stable since 2017. The 2019 spawning biomass is estimated to be 1.3 million mt, an estimated 64 percent of unfished levels. The 2010 year class of Pacific whiting was very large, and the 2014 and 2016 year classes are estimated to be above average. The 2010, 2014, and 2016 year classes support the fishery at this time. In terms of relative health of the stock, the joint probability that the stock is both below 40 percent of unfished level and above the Agreement's F-40 percent default harvest rate is estimated to be 10.3 percent. As with past estimates, there is a considerable range of uncertainty associated with this estimate, because the youngest cohorts that make up a large portion of the survey biomass have not been observed for very long.

The JTC provided tables showing catch alternatives for 2019. Using the default F-40 percent harvest rule identified in the Agreement [Paragraph 1 of Article III] results in a coastwide TAC for 2019 of 725,593 mt. The stock assessment indicates that the coastal Pacific whiting stock is not overfished and overfishing is not occurring.

#### *Summary of 2018 Fishery*

Coast-wide fishery Pacific Hake landings averaged 233,645 mt from 1966 to 2018, with a low of 89,930 mt in 1980 and a peak of 440,942 mt in 2017. The coastwide catch in 2018 was the second largest on record at 410,443 mt out of a 597,500 mt adjusted coastwide TAC. Attainment in the U.S. was 71.4 percent of its quota (down 9 percent from 2017); in Canada it was 61.1 percent (up 6 percent from 2017).

In the U.S., the tribal sector was initially allocated 77,251 mt Pacific whiting, of which NMFS reallocated 40,000 mt inseason to non-tribal sectors on September 24, 2018 (83 FR 61569; November 30, 2018). The Makah Tribe was the only participant in the tribal sector, and caught approximately 5,700 mt of Pacific whiting in 2018. The U.S. non-tribal sector's catches compared to their final allocations were: C/P Sector: 116,073 of 136,912 mt; Mothership

67,129 of 96,644 mt; and Shorebased: 131,829 of 169,127 mt.

#### *TAC Recommendation*

The AP and JMC met March 4–5, 2019, in Vancouver, British Columbia in Canada, to develop advice on a 2019 coastwide TAC. The AP provided its 2019 TAC recommendation to the JMC on March 5, 2019. The JMC reviewed the advice of the JTC, the SRG, and the AP, and agreed on a TAC recommendation for transmittal to the United States and Canadian Governments.

The Agreement directs the JMC to base the catch limit recommendation on the default harvest rate unless scientific evidence demonstrates that a different rate is necessary to sustain the offshore Pacific whiting resource. After consideration of the 2019 stock assessment and other relevant scientific information, the JMC did not use the default harvest rate, and instead agreed on a more conservative approach, using the same catch limit as 2017 and 2018. Choosing a TAC well below the default level of F-40 percent was supported by a desire to minimize mortality of the 2016 year class, the scale of which is uncertain. This TAC advice was also based in part on an estimate from Canadian and U.S. industry members that the 2019 total coastwide harvest will be more similar to the 2017 level, approximately 440,000 mt, rather than the amount harvested in 2018, 410,000 mt. The JMC did not choose an even lower TAC, because of the presence of the strong 2010 and 2014 year classes. In the unlikely event the 2019 coastwide harvest reaches 500,000 mt, the beginning of year relative spawning biomass in 2020 is projected to be 61 percent of unfished biomass, which is well above target levels. The recommended TAC is projected to prevent overfishing and maintain the stock above overfished levels, but allows each Party and each fishing sector to maximize their harvesting opportunity to the extent of their relative respective capacities and interests.

The recommendation for an unadjusted 2019 U.S. TAC of 384,053 mt, plus 57,380 mt carryover of uncaught quota from 2018 results in an adjusted U.S. TAC of 441,433 mt for 2019 (73.88 percent of the coastwide TAC). This recommendation is consistent with the best available scientific information, provisions of the Agreement, and the Whiting Act. The recommendation was transmitted via letter to the United States and Canadian Governments on March 5, 2019. NMFS, under delegation of authority from the

Secretary of Commerce, approved the adjusted TAC recommendation of 441,433 mt for U.S. fisheries on April 3, 2019.

#### *Tribal Fishery Allocation*

This final rule establishes the tribal allocation of Pacific whiting for 2019. NMFS issued a proposed rule regarding this allocation on March 15, 2019 (84 FR 9471). Since 1996, NMFS has been allocating a portion of the U.S. TAC of Pacific whiting to the tribal fishery. Regulations for the Pacific Coast Groundfish Fishery Management Plan specify that the tribal allocation is subtracted from the total U.S. Pacific whiting TAC. The tribal Pacific whiting fishery is managed separately from the non-tribal Pacific whiting fishery, and is not governed by limited entry or open access regulations or allocations.

The proposed rule described the tribal allocation as 17.5 percent of the U.S. TAC, and projected a range of potential tribal allocations for 2019 based on a range of U.S. TACs over the last 10 years (plus or minus 25 percent to capture variability in stock abundance). As described in the proposed rule, the resulting range of potential tribal allocations was 17,842 to 96,563 mt. Applying the approach described in the proposed rule, NMFS is establishing the 2019 tribal allocation of 77,251 mt (17.5 percent of the U.S. TAC) in this final rule. In 2009, NMFS, the states of Washington and Oregon, and the tribes with treaty rights to harvest whiting started a process to determine the long-term tribal allocation for Pacific whiting; however, no long-term allocation has been determined. While new scientific information or discussions with the relevant parties may impact that decision, the best available scientific information to date suggests that 77,251 mt is within the likely range of potential treaty right amounts.

As with prior tribal Pacific whiting allocations, this final rule is not intended to establish precedent for future Pacific whiting seasons, or for the determination of the total amount of whiting to which the Tribes are entitled under their treaty right. Rather, this rule adopts an interim allocation. The long-term tribal treaty amount will be based on further development of scientific information and additional coordination and discussion with and among the coastal tribes and the states of Washington and Oregon.

#### *Harvest Guidelines and Allocations*

In addition to the tribal allocation described in the proposed rule published on March 15, 2019 (84 FR

9471), this final rule establishes the fishery harvest guideline (HG), called the non-tribal allocation. NMFS did not include the HG in the tribal whiting proposed rule, for reasons related to timing and process. The HG had not yet been determined at the time the proposed rule was published. A recommendation on the coastwide and U.S. TAC for Pacific whiting for 2019, under the terms of the Agreement with Canada was approved by NMFS, under delegation of authority from the Secretary of Commerce, on April 3, 2019.

Although this was not part of the proposed rule, the environmental assessment for the 2019–2020 harvest specifications rule (see Electronic Access) analyzed a range of TAC alternatives for 2019, and the final 2019 TAC falls within this analyzed range. In addition, via the 2019–2020 harvest specifications rulemaking process, the public had an opportunity to comment on the 2019–2020 TACs for whiting, just as they did for all species in the groundfish FMP. NMFS follows this process because, unlike for all other groundfish species, the TAC for whiting is decided in a highly abbreviated annual process from February through April of every year, and the normal rulemaking process would not allow for the fishery to open with the new TAC on the annual season opening date of May 15. The 2019 fishery HG for Pacific whiting is 362,682 mt. This amount was determined by deducting the 77,251 mt tribal allocation and the 1,500 mt allocation for scientific research catch and fishing mortality in non-groundfish fisheries from the total U.S. TAC of 441,433 mt. The Council recommends the research and bycatch set-aside on an annual basis, based on estimates of scientific research catch and estimated bycatch mortality in non-groundfish fisheries.

The regulations further allocate the fishery HG among the three non-tribal sectors of the Pacific whiting fishery: The catcher/processor (C/P) Coop Program, the Mothership (MS) Coop Program, and the Shorebased Individual Fishing Quota (IFQ) Program. The C/P Coop Program is allocated 34 percent (123,312 mt for 2019), the MS Coop Program is allocated 24 percent (87,044 mt for 2019), and the Shorebased IFQ Program is allocated 42 percent (152,326.5 mt for 2019). The fishery south of 42° N lat. may not take more than 7,616 mt (5 percent of the Shorebased IFQ Program allocation) prior to May 15, the start of the primary Pacific whiting season north of 42° N lat.

TABLE 1—2019 PACIFIC WHITING ALLOCATIONS

Sector	2019 Pacific whiting allocation (mt)
Tribal .....	77,251
Catcher/Processor (C/P) Coop Program .....	123,312
Mothership (MS) Coop Program .....	87,044
Shorebased IFQ Program ....	152,326.5

*Consideration of Chinook Salmon Bycatch Before Reapportioning Tribal Whiting*

On December 11, 2017, NMFS completed an ESA Section 7(a)(2) biological opinion on the effects of the Pacific Coast Groundfish Fishery Management Plan on listed salmonids. Term and Condition 2c of the Biological Opinion states: “No later than May 15th, 2019, NMFS will amend the provisions regarding reapportionment of the treaty tribes’ whiting allocation to the non-treaty sectors to require that NMFS consider the level of Chinook bycatch when determining whether to reapportion whiting.”

This final rule amends the Pacific Coast Groundfish fishery regulations to require this consideration, and to identify what factors will be considered when determining whether to reapportion whiting. The purpose of this action is twofold. Reapportioning whiting that would not otherwise be used allows the non-tribal whiting fishery to continue fishing, thereby potentially impacting Chinook salmon, which occurs as bycatch in that fishery. The first purpose of the action is to issue regulatory changes that will minimize impacts to Chinook salmon from the whiting fishery. The second purpose is to protect the treaty rights of the tribes by preventing a reapportionment of Pacific whiting that could cause the entire whiting fishery, both tribal and non-tribal, to close via automatic action measures outlined at § 660.60(d)(1)(v), thereby limiting the tribal whiting fishery’s opportunity to harvest their allocation.

*Comments and Responses*

On March 15, 2019, NMFS issued a proposed rule for the allocation and management of the 2018 tribal Pacific whiting fishery, and implementation of regulations requiring consideration of Chinook salmon bycatch before reapportioning tribal whiting (84 FR 9471). The comment period on the proposed rule closed on April 1, 2019. NMFS received three unique comment

letters during the comment period on the proposed rule: One letter from Heather Mann, Executive Director of Midwater Trawlers Cooperative and Brent Paine, Executive Director of United Catcher Boats; one letter from Kristen McQuaw, Manager of Shoreside Whiting Cooperative; and one from Daniel Waldeck, Executive Director of Pacific Whiting Conservation Cooperative (representing American Seafoods, Glacier Fish Co. and Trident Seafoods). All three letters were from organizations representing participants in the non-tribal whiting fishery and contained substantive comments. NMFS addresses the summarized comments below. No changes from the proposed rule were made based on comments NMFS received.

*Comment 1:* A commenter requested NMFS remove the language in the proposed rule that requires NMFS consider Chinook salmon take numbers and bycatch rates in the Pacific Whiting fishery prior to making a reapportionment. The rationale given was that whiting sectors are already mindful of Chinook bycatch, harvesters and processors have implemented significant voluntary measures in recent years to avoid interacting with Chinook. Commenters mentioned that the recently completed Biological Opinion and associated measures includes a new ‘hard cap’ on Chinook salmon for whiting participants’, referring to regulations that close the Pacific whiting fishery after a certain number of Chinook salmon have been caught.

*Response:* NMFS acknowledges the voluntary measures the Pacific whiting fishery has implemented in recent years to avoid interacting with Chinook salmon, and the continued efforts of the fishery to manage bycatch. Low Chinook salmon bycatch resulting from implementation of voluntary and mandatory measures will be considered prior to reapportionment. NMFS also acknowledges that this is one of several complementary measures that have been put into place as the result of the Biological Opinion, to minimize the impact of the amount or extent of incidental take of ESA-listed Chinook salmon. The terms and conditions of the Biological Opinion are, in part, designed to minimize Chinook salmon interactions with Pacific whiting fishery. Terms and conditions of an ESA biological opinion are non-discretionary, meaning NMFS is obligated under ESA to implement this measure.

The ‘hard cap’ this comment refers to is a provision implemented (83 FR 63970; December 12, 2018) to give NMFS automatic authority to close

either or both of the whiting and non-whiting sector fisheries if: (1) Either sector catches its guideline limit and the reserve amount; or (2) either sector reaches its guideline limit when the other sector has already taken the reserve amount. The guideline limit for the whiting sector (including tribal and non-tribal vessels in the mothership, catcher/processor (C/P), and Shoreside whiting fleets) is 11,000 Chinook salmon. The guideline limit for the non-whiting sector (including tribal and non-tribal vessels in the Shoreside trawl, fixed gear, and recreational fleets) is 5,500 Chinook salmon. The reserve amount of Chinook is 3,500 fish. The 'hard cap' measure ensures that certain levels of Chinook salmon bycatch are not exceeded. The measure addressed in this final rule has the added purpose of ensuring that non-tribal catch of Pacific whiting that was originally allocated to the Tribal sector does not cause closure of the entire Pacific whiting fishery (tribal and non-tribal sectors), thereby prevent the tribal sector's fishery. Therefore, NMFS is retaining this language in the regulations implementing this final rule.

*Comment 2:* Three commenters stated that reapportionment is necessary to meet National Standard 1 and achieve optimum yield (OY).

*Response:* The purpose of the tribal allocation is to facilitate the tribes exercising their treaty right to harvest fish in their usual and accustomed fishing areas in U.S. waters, and NMFS must take the necessary steps to ensure that this opportunity is available to those tribes. 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, including Pacific whiting, in the Pacific Ocean, and concluded that, 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 fishing areas. These treaty rights are implemented by the Secretary following the procedures outlined in 50 CFR 660.60. The tribal allocation is specific to the tribes, who manage and would optimally harvest all of their allocation. The Council, through the Council process, manages allocations to the non-tribal sectors of the Pacific whiting fishery to achieve optimal yield, in accordance with the National Standards of the Magnuson-Stevens Fishery Conservation and Management Act.

*Comment 3:* Commenters suggested that NMFS provide for reapportionment of tribal whiting to specific non-tribal sectors.

*Response:* This management suggestion is outside of the scope of the measure discussed in the proposed rule but could be achieved through the Council process. In this final rule, revisions to the reapportionment provisions are limited to implementing the non-discretionary terms and conditions of the recently completed ESA Section 7(a)(2) Biological Opinion. NMFS notes that distributing reapportioned tribal whiting to specific non-tribal sectors based on concerns about Chinook salmon bycatch is currently possible, and was done in 2014 (February 10, 2015; 80 FR 7390), based on recommendation by the Council. In that reapportionment action, NMFS distributed reapportioned fish to the MS and C/P sectors but not to the Shorebased IFQ sector, based on voluntary bycatch reduction measures that were taken by the MS and C/P sectors in conjunction with projected higher bycatch rates in the Shorebased IFQ sector, and the fact that the Shorebased IFQ sector had not yet attained their existing allocation.

*Comment 4:* Commenters said the proposed action leads to uncertainty in the non-tribal fishery about the timing and amount of reapportionment during a given year, which makes it difficult to manage factors such as bycatch and vessel maintenance. One commenter expressed that "if NMFS poorly manages the tribal allocation by not using the reapportionment process to effectively balance the needs of the tribal and non-tribal fisheries it will cause economic harm within the non-tribal whiting fishery. For example, delaying reapportionment past September 15th hinders the ability of the non-tribal sectors to plan and schedule fishing operations that are necessary to optimally achieve our allocations."

*Response:* With this final rule, NMFS issues allocations to the non-tribal participants of the Pacific whiting fishery, and allocations to the tribal participants of the fishery. These amounts are certain for participants in the fishery. It is not the goal of the action, nor would it be appropriate, for NMFS to provide certainty that non-tribal participants will derive benefit from the tribal allocation.

NMFS does not anticipate that this rule will change the timing of reapportionment, because there is no additional data collection or analysis requirement (see response to Comment 9 for a discussion regarding this consideration). NMFS will make every effort to ensure that consideration of Chinook bycatch does not hinder timely reapportionment. Specifically, NMFS

continuously tracks information required for considering Chinook bycatch prior to reapportionment as part of managing Chinook bycatch inseason. This information is available in accordance with other components of the ESA Biological Opinion. Therefore, the most up-to-date Chinook bycatch information will be available when NMFS is ready to make the reapportionment decision.

Revisions to the timing of the reapportionment is beyond the scope of the action discussed in the proposed rule. Current regulations, however, do provide NMFS with flexibility in the timing of reapportionment and allow for reapportionment to occur prior to September 15. Based on a review of reapportionment actions in 2012–2018, it does not appear that the timing of the reapportionment impacted operational decisions during that time period. For reference, in 2012 the non-tribal sector caught 24,142 mt more than its initial allocation, of 28,000 mt reapportioned on October 4. In 2013, after a 30,000 mt reallocation on September 18 (sixteen days earlier than in 2012), the non-tribal fishery caught 24,146 mt more than its initial allocation. The sixteen-day earlier reapportionment yielded 4 mt more catch (valued at \$1,210 in real dollars). In 2014, a 25,000 mt initial reapportionment on September 12 resulted in only 4,564 mt attained over the initial non-tribal allocation. As discussed in greater detail in response to Comment 12, from 2015–2018, the non-tribal fishery as a whole did not catch its initial allocation, which implies that the timing of reallocations did not likely impact operational decisions during that period. Timing of reapportionments is further addressed below, in response to comment 8.

*Comment 5:* Commenters expressed views that the proposed action seems punitive to the non-tribal participants in general, and to specific sectors with low Chinook salmon bycatch.

*Response:* In this final rule, revisions to the reapportionment provisions are limited to implementing the non-discretionary terms and conditions of the recently completed ESA Section 7(a)(2) Biological Opinion. Regulations governing reapportionment give the Secretary discretion, but do not impose an obligation, to reapportion Pacific whiting from the tribal sector of the Pacific whiting fishery to non-tribal sectors. While the non-tribal sectors may receive additional economic benefits via reapportionments from the tribal allocation, it is not punitive to either consider Chinook bycatch before making the reapportionment, or keep allocations in their original sectors. See

the response to Comment 3 for a discussion on distributing reapportioned tribal whiting to specific non-tribal sectors.

*Comment 6:* Commenters mentioned that the reapportionment is of economic benefit to harvesters.

*Response:* NMFS agrees that reapportionment is of economic benefit to recipients of additional whiting allocation. This is reflected in the regulatory Impact Review-Initial Regulatory Flexibility Analysis (RIR-IRFA) and Final Regulatory Flexibility Analysis (FRFA).

*Comment 7:* One commenter expressed concern that the proposed rule made reference to possible impacts to the tribal whiting fishery due to Chinook salmon bycatch taken in the non-tribal fishery, but did not mention anything about Chinook bycatch impacts to the non-tribal fisheries by the tribal fishery.

*Response:* The impacts to the tribal fishery referenced are specifically associated with the Chinook salmon bycatch that occurs when the non-tribal fishery fishes for Pacific whiting originally allocated to the tribal fishery. Because there is no mechanism to reapportion in the other direction, (from non-tribal sectors to the tribal sector) the second scenario mentioned in the comment (tribal sector causing impacts while fishing for Pacific whiting originally allocated to the non-tribal sectors) cannot happen under current regulations.

*Comment 8:* A commenter stated: “Dependent on the interannual variability in the stocks, fishing later in the year can, although not always, increase the probability of encountering salmon. For this reason, the current timeframe for which tribal treaty whiting is reallocated is already later in the year than preferred.” Accordingly, the commenter requested that reapportionment occur earlier in the year, by August 1st.

*Response:* The timing of reapportionment in the whiting fishery is outside the scope of action described in the proposed rule, and is addressed further in response to comment 4, above. NMFS is responsible for consulting with the tribes to ensure that reapportionments, should they occur, will not limit tribal harvest opportunities. As explained in the RIR-IRFA, the timing of reapportionment in regulations was intended to allow for the tribal fishery to proceed to a point where it could likely be determined whether the full allocation would be used, while reallocating in time to allow the non-treaty sectors to catch the reallocated fish prior to the onset of

winter weather conditions. In some years, the participating tribes may determine prior to September 15 that they will not use a portion of the tribal allocation.

*Comment 9:* Commenters requested clarity on the metric, guidelines, or inseason analysis NMFS will use to determine reapportionment. One commenter requested detailed criteria describing how Chinook salmon bycatch information will be used to guide the whiting reapportionment process. Another commented that this action increases staff workload to accomplish a task that is already being satisfied with existing management measures, and that the proposed rule will require in-season analysis, increasing the workload of NMFS staff.

*Response:* NMFS will not conduct additional inseason analysis as a result of this modification to the regulations. NMFS already continuously tracks information required for considering Chinook bycatch prior to reapportionment as part of managing Chinook bycatch inseason. Therefore, the most up-to-date Chinook bycatch information will be available when NMFS is ready to make the reapportionment decision. This modification does not increase the data requirement or workload, but rather requires NMFS to review readily available information, the total number of total Chinook salmon taken by the Pacific whiting fishery and rates of Chinook salmon bycatch in each sector, prior to making a decision about annual reapportionment.

*Comment 10:* A commenter stated: “Reapportionment of whiting to non-tribal sectors re-distributes fishing effort from a centralized region in the North to widespread locations along the coastline. Consequently, reapportionment could indirectly provide increased food availability for predators that prey on Northern Chinook stocks. The proposed rule does not acknowledge the conservation benefits that reapportionment provides.”

*Response:* This action changes neither the existing discretion nor the mechanism NMFS has for the reapportionment. The indirect conservation benefits mentioned in the comment may exist, however they are outside the scope of this action.

*Comment 11:* Several commenters addressed economic benefits to communities from reapportioning fish and stated that the action prevents economic benefits from accruing, threatens small business, and that the IRFA fails to consider how the discretion provided to NMFS could

impact small businesses. Commenters calculated the benefit of reapportionments by multiplying ex-vessel price of Pacific whiting by the amount of historic reapportionments.

*Response:* The RIR-IRFA indicates allocation to both the tribal and non-tribal sectors provides benefits, in the form of opportunity, to large and small entities across sectors. In response to comments, NMFS clarifies that the value of this additional opportunity is not equivalent to the ex-vessel price multiplied by the amount of reapportioned fish. The U.S. non-tribal whiting fishery catch exceeded initial allocations in 2012–2014 by utilizing reapportioned fish. In 2012 and 2013, the whiting sectors utilized about 24,000 mt of reapportionments of 30,000 and 45,000 mt, respectively. In 2014, the non-tribal fishery utilized about 5,000 mt of a reapportioned 45,000 mt. At annual average shoreside ex-vessel prices ranging from \$263 to \$352/mt from 2012–2014, the total ex-vessel value of reapportioned fish was \$17 million across the three years.

From 2015 to 2018, higher TACs have been correlated with lower attainment, ranging from 58.1–96.5 percent attainment of initial non-tribal allocations. If TACs remain at or near those levels, these lower attainment trends indicate that reapportioned tribal catch is not expected to provide the non-tribal sector additional opportunity over the initial allocations, as cumulatively, 212,714 of initial allocations remained unharvested (53,000 mt per year, on average). While opportunity of reapportioned harvest is generally distributed along fixed allocation percentages in the FMP that are not being reconsidered in the scope of this rule, reapportioned catch has in recent years provided measurable increased revenue to C/P sector, as this sector generally does attain most or all of its initial allocation. All of the permit owners in the C/P sector self-identified in 2019 permit applications as large entities. The proposed rule and corresponding analyses do not include a reconsideration of the allocations either between tribal and non-tribal sectors, or within the non-tribal sector.

*Comment 12:* A commenter stated: “In the proposed rule, NMFS states that the re-apportionment process prevents adverse economic impacts—‘The reapportioning process allows unharvested tribal allocations of Pacific whiting . . . to be fished by the non-tribal fleets, benefitting both large and small entities. NMFS has prepared an IRFA and is requesting comments on this conclusion.’ However, this statement is not supported by any

information in the proposed rule.” Another commenter stated that they disagreed with the claim that “NMFS believes this proposed rule would not adversely affect small entities”, as no evidence for it is provided in the [IRFA].”

*Response:* NMFS does not claim the reapportionment process prevents adverse economic impacts; rather, the IRFA states “. . . in 2018 NMFS reapportioned 40,000 mt of the original 77,251 mt tribal allocation. This reapportionment was based on conversations with the tribes and the best information available at the time, which indicated that this amount would not limit tribal harvest opportunities for the remainder of the year. . . . This reapportioning process allows unharvested tribal allocations of Pacific whiting to be fished by the non-tribal fleets, benefitting both large and small entities.”

The benefits of the proposed rule considered in the IRFA include the benefits of the tribal allocation to the tribal sector, and of the non-tribal allocation to each of the commercial sectors in the non-tribal sector. In years when the tribal sector does not use its full allocation and there is a reapportionment to the non-tribal sectors, the reapportioned fish offers additional benefits for small and large entities in the non-tribal sectors. In the IRFA, the benefits from the tribal allocation are assumed to accrue to the tribal sector, with the reapportionment flexibility an additional potential benefit to the non-tribal sector, only in years when the tribal sector does not prosecute the entirety of its allocation. In the IRFA, no portion of the benefits from the tribal allocation are assumed to accrue to the non-tribal sector, which would double-count the value of the benefit of this allocation to the tribal sector.

#### **Classification**

The Annual Specifications and Management Measures for the 2019 Tribal and non-Tribal Fisheries for Pacific Whiting, and Consideration of Chinook Salmon Bycatch Before Reapportioning Tribal Pacific Whiting, are issued under the authority of the Magnuson-Stevens Act, and the Whiting Act of 2006. The measures are in accordance with 50 CFR part 660, subparts C through G, the regulations implementing the Pacific Coast Groundfish FMP, and NMFS has determined that this rule is consistent with the national standards of the Magnuson-Stevens Act and other applicable laws.

Pursuant to 5 U.S.C. 553(b)(B) and (d)(3), the NMFS Assistant Administrator finds good cause to waive prior public notice and delay in effectiveness for this final rule, as delaying this rule would be impracticable and contrary to the public interest. The annual harvest specifications for Pacific whiting must be implemented by the start of the primary Pacific whiting season, which begins on May 15, 2019, or the primary Pacific whiting fishery will effectively remain closed.

Every year, NMFS conducts a Pacific whiting stock assessment with participation from U.S. and Canadian scientists. The 2019 stock assessment for Pacific whiting was prepared in February 2019, and included updated total catch, length and age data from the U.S. and Canadian fisheries from 2018, and biomass indices from the 2018 Joint U.S.-Canadian acoustic/midwater trawl surveys. Because of this late availability of the most recent data for the assessment, and the need for time to conduct the treaty process for determining the TAC using the most recent assessment, it would not be possible to allow for notice and comment before the start of the primary Pacific whiting season on May 15.

A delay in implementing the Pacific whiting harvest specifications to allow for notice and comment would be contrary to the public interest because it would require either a shorter primary whiting season or development of a TAC without the most recent data. A shorter season could prevent the tribal and non-tribal fisheries from attaining their 2019 allocations, which would result in unnecessary short-term adverse economic effects for the Pacific whiting fishing vessels and the associated fishing communities. A TAC determined without the most recent data could fail to account for significant fluctuations in the biomass of this relatively short-lived species. To prevent these adverse effects and to allow the Pacific whiting season to commence, it is in the best interest of the public to waive prior notice and comment.

In addition, pursuant to 5 U.S.C. 553(d)(3), the NMFS Assistant Administrator finds good cause to waive the 30-day delay in effectiveness of this final rule. Waiving the 30-day delay in effectiveness will not have a negative impact on any entities, as there are no new compliance requirements or other burdens placed on the fishing community with this rule. Failure to make this final rule effective at the start of the fishing year will undermine the intent of the rule, which is to promote

the optimal utilization and conservation of Pacific whiting. Making this rule effective immediately would also serve the best interests of the public because it will allow for the longest possible Pacific whiting fishing season and therefore the best possible economic outcome for those whose livelihoods depend on this fishery. Because the 30-day delay in effectiveness would potentially cause significant financial harm without providing any corresponding benefits, this final rule is effective upon publication in the **Federal Register**.

The Office of Management and Budget has determined that this final rule is not significant for purposes of Executive Order 12866. This rule is not an Executive Order 13771 regulatory action because this rule is not significant under Executive Order 12866.

#### *Final Regulatory Flexibility Analysis*

NMFS published a proposed rule on March 15, 2019 (84 FR 9471), for the allocation of the 2019 tribal Pacific whiting fishery and the requirement to consider Chinook salmon bycatch before reapportioning tribal whiting. An IRFA was prepared and summarized in the Classification section of the preamble to the proposed rule. The comment period on the proposed rule ended on April 1, 2019. NMFS received three comment letters on the proposed rule from organizations representing the non-tribal fishery. The Chief Counsel for Advocacy of the SBA did not file any comments on the IRFA or the proposed rule. The description of this action, its purpose, and its legal basis are described in the preamble to the proposed rule and are not repeated here. A final regulatory flexibility analysis (FRFA) was prepared and incorporates the IRFA and response to the public comments, which are summarized in the ‘Comments and Responses’ section of this final rule. NMFS also prepared a Regulatory Impact Review (RIR) for this action. A copy of the RIR/FRFA is available from NMFS (see Electronic Access). A summary of the FRFA, per the requirements of 5 U.S.C. 604 follows.

NMFS considered two alternatives for this action: The “No-Action” and the “Action.” The tribal allocation is based primarily on the requests of the tribes. These requests reflect the level of participation in the fishery that will allow them to exercise their treaty right to fish for Pacific whiting. Under the Action alternative, NMFS sets the tribal allocation percentage at 17.5 percent, as requested by the tribes. This yields a tribal allocation of 77,251 mt for 2019. Consideration of a percentage lower

than the tribal request of 17.5 percent is not appropriate in this instance. As a matter of policy, NMFS has historically supported the harvest levels requested by the tribes. Based on the information available to NMFS, the tribal request is within their tribal treaty rights. A higher percentage would arguably also be within the scope of the treaty right. However, a higher percentage would unnecessarily limit the non-tribal fishery. NMFS also announces the 2019 U.S. Total Allowable Catch (TAC) of 441,433 metric tons of Pacific whiting, establishes a set-aside for research and bycatch of 1,500 mt, and 362,682 mt for the non-tribal fishery for 2019. Under the action alternative, NMFS requires the consideration of the number and bycatch rate by sector of Chinook salmon bycatch before reapportioning tribal whiting, as required by the 2017 ESA Biological Opinion. Consideration of other factors such as timing, location, and genetics of bycatch would not be feasible as an inseason automatic action, which is the mechanism by which these reapportionments occur.

Under the no-action alternative, NMFS would not have made allocations, which would not fulfill NMFS' responsibility to manage the fishery. This alternative was considered, but the regulatory framework provides for a tribal allocation, research and bycatch set-aside, and harvest guideline on an annual basis only. Therefore, the no-action alternative would result in no allocation of Pacific whiting to the tribal sector in 2019, which would be inconsistent with NMFS' responsibility to manage the fishery consistent with the tribes' treaty rights. Given that there is a tribal request for allocation and the Council recommended a research and bycatch set-aside in 2019, this alternative received no further consideration. Under the no-action alternative, NMFS would not consider Chinook salmon bycatch, as required by the Biological Opinion. While the consideration of Chinook bycatch may negatively impact both large and small entities in the event of a high bycatch year, there are no alternatives identified that would be consistent with the applicable ESA requirements that would also minimize any significant economic

impact of the proposed rule on small entities.

*RFA-Determination of a Significant Impact*

This rule is similar to previous rule makings concerning whiting. Against an internationally set TAC, this rule concerns the amount of the US TAC that should be allocated to the tribal fishery, establishes a set-aside for research and bycatch of 1,500 mt, announces Pacific whiting allocations of 77,251 mt to the tribal and 362,683 mt for the non-tribal fishery for 2019, and requires NMFS to consider bycatch of Chinook salmon before reapportioning tribal whiting. The tribal allocation is based primarily on the requests of the tribes. These requests reflect the level of participation in the fishery that will allow them to exercise their treaty right to fish for whiting. Tribes are considered small entities. The reapportioning process allows unharvested tribal allocations of whiting, fished by small entities, to be fished by the non-tribal fleets, benefitting both large and small entities. NMFS has determined this rule will not adversely affect small entities and did not receive any comments in response to the IRFA to alter this conclusion.

*Description of Projected Reporting, Recordkeeping, and Other Compliance Requirements*

There are no reporting or recordkeeping requirements associated with this final rule. No federal rules have been identified that duplicate, overlap, or conflict with this action.

*Small Entity Compliance Guide*

Section 212 of the Small Business Regulatory Enforcement Fairness Act of 1996 states that, for each rule or group of related rules for which an agency is required to prepare a FRFA, the agency shall publish one or more guides to assist small entities in complying with the rule, and shall designate such publications as "small entity compliance guides." The agency shall explain the actions a small entity is required to take to comply with a rule or group of rules. As part of this and the related 2019–2020 Biennial Specifications and Management Measures for the Pacific Coast Groundfish Fishery (83 FR 63970)

rulemaking process, a small entity compliance guide was sent to stakeholders, and copies of the final rule and guides (i.e., information bulletins) are available from NMFS at the following website: [http://www.westcoast.fisheries.noaa.gov/fisheries/management/whiting/pacific\\_whiting.html](http://www.westcoast.fisheries.noaa.gov/fisheries/management/whiting/pacific_whiting.html).

*Consultation and Coordination With Indian Tribal Governments*

Pursuant to Executive Order 13175, this final rule was developed after meaningful collaboration with tribal officials from the area covered by the FMP. Consistent with the Magnuson-Stevens Act at 16 U.S.C. 1852(b)(5), one of the voting members of the Pacific Council is a representative of an Indian tribe with federally recognized fishing rights from the area of the Council's jurisdiction. In addition, NMFS has coordinated specifically with the tribes interested in the whiting fishery regarding the issues addressed by this final rule.

**List of Subjects in 50 CFR Part 660**

Fisheries, Fishing, Indian Fisheries.

Dated: May 7, 2019.

**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 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.*, 16 U.S.C. 773 *et seq.*, and 16 U.S.C. 7001 *et seq.*

■ 2. In § 660.50, revise paragraph (f)(4) to read as follows:

**§ 660.50 Pacific Coast treaty Indian fisheries.**

\* \* \* \* \*

(f) \* \* \*

(4) *Pacific whiting.* The tribal allocation for 2019 is 77,251 mt.

\* \* \* \* \*

3. Tables 1a and 1b to part 660, subpart C, are revised to read as follows:

TABLE 1A TO PART 660, SUBPART C—2019, SPECIFICATIONS OF OFL, ABC, ACL, ACT AND FISHERY HG  
[Weights in metric tons]

Stocks/stock complexes	Area	OFL	ABC	ACL <sup>a/</sup>	Fishery HG <sup>b/</sup>
COWCOD <sup>c</sup> .....	S of 40° 10' N lat .....	74	67	10	8
COWCOD .....	(Conception) .....	61	56	NA	NA
COWCOD .....	(Monterey) .....	13	11	NA	NA
YELLOW EYE ROCKFISH <sup>d</sup> .....	Coastwide .....	82	74	48	42

TABLE 1A TO PART 660, SUBPART C—2019, SPECIFICATIONS OF OFL, ABC, ACL, ACT AND FISHERY HG—Continued  
[Weights in metric tons]

Stocks/stock complexes	Area	OFL	ABC	ACL <sup>a/</sup>	Fishery HG <sup>b/</sup>
Arrowtooth Flounder <sup>e</sup>	Coastwide	18,696	15,574	15,574	13,479
Big Skate <sup>f</sup>	Coastwide	541	494	494	452
Black Rockfish <sup>g</sup>	California (S of 42° N lat.)	344	329	329	328
Black Rockfish <sup>h</sup>	Washington (N of 46° 16' N lat.)	312	298	298	280
Bocaccio <sup>i</sup>	S of 40° 10' N lat	2,194	2,097	2,097	2,051
Cabazon <sup>j</sup>	California (S of 42° N lat.)	154	147	147	147
California Scorpionfish <sup>k</sup>	S of 34° 27' N lat	337	313	313	311
Canary Rockfish <sup>l</sup>	Coastwide	1,517	1,450	1,450	1,383
Chilipepper Rockfish <sup>m</sup>	S of 40° 10' N lat.	2,652	2,536	2,536	2,451
Darkblotched Rockfish <sup>n</sup>	Coastwide	800	765	765	731
Dover Sole <sup>o</sup>	Coastwide	91,102	87,094	50,000	48,404
English Sole <sup>p</sup>	Coastwide	11,052	10,090	10,090	9,874
Lingcod <sup>q</sup>	N of 40° 10' N lat	5,110	4,885	4,871	4,593
Lingcod <sup>r</sup>	S of 40° 10' N lat	1,143	1,093	1,039	1,028
Longnose Skate <sup>s</sup>	Coastwide	2,499	2,389	2,000	1,852
Longspine Thornyhead <sup>t</sup>	N of 34° 27' N lat	4,112	3,425	2,603	2,553
Longspine Thornyhead <sup>u</sup>	S of 34° 27' N lat			822	821
Pacific Cod <sup>v</sup>	Coastwide	3,200	2,221	1,600	1,094
Pacific Whiting <sup>w</sup>	Coastwide	725,593	w/	w/	362,682
Pacific Ocean Perch <sup>x</sup>	N of 40° 10' N lat	4,753	4,340	4,340	4,318
Petrale Sole <sup>y</sup>	Coastwide	3,042	2,908	2,908	2,587
Sablefish <sup>z</sup>	N of 36° N lat	8,489	7,750	5,606	See Table 1c
Sablefish <sup>aa</sup>	S of 36° N lat			1,990	1,986
Shortbelly Rockfish <sup>bb</sup>	Coastwide	6,950	5,789	500	483
Shortspine Thornyhead <sup>cc</sup>	N of 34° 27' N lat	3,089	2,573	1,683	1,618
Shortspine Thornyhead <sup>dd</sup>	S of 34° 27' N lat			890	889
Spiny Dogfish <sup>ee</sup>	Coastwide	2,486	2,071	2,071	1,738
Splitnose Rockfish <sup>ff</sup>	S of 40° 10' N lat	1,831	1,750	1,750	1,733
Starry Flounder <sup>gg</sup>	Coastwide	652	452	452	433
Widow Rockfish <sup>hh</sup>	Coastwide	12,375	11,831	11,831	11,583
Yellowtail Rockfish <sup>ii</sup>	N of 40° 10' N lat	6,568	6,279	6,279	5,234
Black Rockfish/Blue Rockfish/Deacon Rockfish <sup>jj</sup>	Oregon (Between 46° 16' N lat. and 42° N lat.)	677	617	617	616
Cabazon/Kelp Greenling <sup>kk</sup>	Oregon (Between 46° 16' N lat. and 42° N lat.)	230	218	218	218
Cabazon/Kelp Greenling <sup>ll</sup>	Washington (N of 46° 16' N lat.)	13	11	11	11
Nearshore Rockfish <sup>mmm</sup>	N of 40° 10prime; N lat	91	81	81	79
Shelf Rockfish <sup>nn</sup>	N of 40° 10prime; N lat	2,309	2,054	2,054	1,977
Slope Rockfish <sup>oo</sup>	N of 40° 10prime; N lat	1,887	1,746	1,746	1,665
Nearshore Rockfish <sup>pp</sup>	S of 40° 10' N lat	1,300	1,145	1,142	1,138
Shelf Rockfish <sup>qq</sup>	S of 40° 10' N lat	1,919	1,625	1,625	1,546
Slope Rockfish <sup>rr</sup>	S of 40° 10' N lat	856	744	744	724
Other Flatfish <sup>ss</sup>	Coastwide	8,750	6,498	6,498	6,249
Other Fish <sup>tt</sup>	Coastwide	286	239	239	230

<sup>a</sup> Annual catch limits (ACLs), annual catch targets (ACTs) and harvest guidelines (HGs) are specified as total catch values.

<sup>b</sup> Fishery HGs means the HG or quota after subtracting Pacific Coast treaty Indian tribes allocations and projected catch, projected research catch, deductions for fishing mortality in non-groundfish fisheries, and deductions for EFPs from the ACL or ACT.

<sup>c</sup> Cowcod south of 40° 10' N lat. 2 mt is deducted from the ACL to EFP fishing (less than 0.1 mt) and research activity (2 mt), resulting in a fishery HG of 8 mt. Any additional mortality in research activities will be deducted from the ACL. A single ACT of 6 mt is being set for the Conception and Monterey areas combined.

<sup>d</sup> Yelloweye rockfish. The 48 mt ACL is based on the current rebuilding plan with a target year to rebuild of 2029 and an SPR harvest rate of 65 percent. 6.1 mt is deducted from the ACL to accommodate the Tribal fishery (2.3 mt), the incidental open access fishery (0.62 mt), EFP catch (0.24 mt) and research catch (2.92 mt), resulting in a fishery HG of 42 mt. The non-trawl HG is 38.6 mt. The non-nearshore HG is 2.0 mt and the nearshore HG is 6.0 mt. Recreational HGs are: 10 mt (Washington); 8.9 mt (Oregon); and 11.6 mt (California). In addition, there are the following ACTs: Non-nearshore (1.6 mt), nearshore (4.7 mt), Washington recreational (7.8 mt), Oregon recreational (7.0 mt), and California recreational (9.1 mt).

<sup>e</sup> Arrowtooth flounder. 2,094.9 mt is deducted from the ACL to accommodate the Tribal fishery (2,041 mt), the incidental open access fishery (40.8 mt), EFP fishing (0.1 mt), and research catch (13 mt), resulting in a fishery HG of 13,479 mt.

<sup>f</sup> Big skate. 41.9 mt is deducted from the ACL to accommodate the Tribal fishery (15 mt), the incidental open access fishery (21.3 mt), EFP fishing (0.1 mt), and research catch (5.5 mt), resulting in a fishery HG of 452 mt.

<sup>g</sup> Black rockfish (California). 1.3 mt is deducted from the ACL to accommodate EFP fishing (1.0 mt) and incidental open access fishery (0.3 mt), resulting in a fishery HG of 328 mt.

<sup>h</sup> Black rockfish (Washington). 18.1 mt is deducted from the ACL to accommodate the Tribal fishery (18 mt) and research catch (0.1 mt), resulting in a fishery HG of 280 mt.

<sup>i</sup> Bocaccio south of 40° 10'; N lat. The stock is managed with stock-specific harvest specifications south of 40° 10'; N lat. and within the Minor Shelf Rockfish complex north of 40° 10'; N lat. 46.1 mt is deducted from the ACL to accommodate the incidental open access fishery (0.5 mt), EFP catch (40 mt) and research catch (5.6 mt), resulting in a fishery HG of 2,051 mt. The California recreational fishery south of 40° 10'; N lat has an HG of 863.4 mt.

<sup>j</sup> Cabazon (California). 0.3 mt is deducted from the ACL to accommodate the incidental open access fishery, resulting in a fishery HG of 147 mt.

<sup>k</sup> California scorpionfish south of 34° 27' N lat. 2.4 mt is deducted from the ACL to accommodate the incidental open access fishery (2.2 mt) and research catch (0.2 mt), resulting in a fishery HG of 311 mt.



<sup>1</sup>Canary rockfish. 67.1 mt is deducted from the ACL to accommodate the Tribal fishery (50 mt), the incidental open access fishery (1.3 mt), EFP catch (8 mt), and research catch (7.8 mt), resulting in a fishery HG of 1,383 mt. Recreational HGs are: 47.1 mt (Washington); 70.7 mt (Oregon); and 127.3 mt (California).

<sup>m</sup>Chilipepper rockfish south of 40° 10'; N lat. Chilipepper are managed with stock-specific harvest specifications south of 40° 10'N lat. and within the Minor Shelf Rockfish complex north of 40° 10' N lat. 84.9 mt is deducted from the ACL to accommodate the incidental open access fishery (11.5 mt), EFP fishing (60 mt), and research catch (13.4 mt), resulting in a fishery HG of 2,451 mt.

<sup>n</sup>Darkblotched rockfish. 33.8 mt is deducted from the ACL to accommodate the Tribal fishery (0.2 mt), the incidental open access fishery (24.5 mt), EFP catch (0.6 mt), and research catch (8.5 mt) resulting in a fishery HG of 731 mt.

<sup>o</sup>Dover sole. 1,595.6 mt is deducted from the ACL to accommodate the Tribal fishery (1,497 mt), the incidental open access fishery (49.3 mt), EFP fishing (0.1 mt), and research catch (49.2 mt), resulting in a fishery HG of 48,404 mt.

<sup>p</sup>English sole. 216.2 mt is deducted from the ACL to accommodate the Tribal fishery (200 mt), the incidental open access fishery (8.1 mt), EFP fishing (0.1 mt), and research catch (8 mt), resulting in a fishery HG of 9,874 mt.

<sup>q</sup>Lingcod north of 40° 10'; N lat. 278 mt is deducted from the ACL for the Tribal fishery (250 mt), the incidental open access fishery (9.8 mt), EFP catch (1.6 mt) and research catch (16.6 mt), resulting in a fishery HG of 4,593 mt.

<sup>r</sup>Lingcod south of 40° 10'; N lat. 11.3 mt is deducted from the ACL to accommodate the incidental open access fishery (8.1 mt) and research catch (3.2 mt), resulting in a fishery HG of 1,028 mt.

<sup>s</sup>Longnose skate. 148.3 mt is deducted from the ACL to accommodate the Tribal fishery (130 mt), incidental open access fishery (5.7 mt), EFP catch (0.1 mt), and research catch (12.5 mt), resulting in a fishery HG of 1,852 mt.

<sup>t</sup>Longspine thornyhead north of 34° 27' N lat. 50.4 mt is deducted from the ACL to accommodate the Tribal fishery (30 mt), the incidental open access fishery (6.2 mt), and research catch (14.2 mt), resulting in a fishery HG of 2,553 mt.

<sup>u</sup>Longspine thornyhead south of 34° 27' N lat. 1.4 mt is deducted from the ACL to accommodate research catch, resulting in a fishery HG of 821 mt.

<sup>v</sup>Pacific cod. 506.2 mt is deducted from the ACL to accommodate the Tribal fishery (500 mt), research catch (5.5 mt), EFP fishing (0.1 mt), and the incidental open access fishery (0.6 mt), resulting in a fishery HG of 1,094 mt.

<sup>w</sup>Pacific whiting. The coastwide stock assessment was published in 2019 and estimated the spawning stock to be at 64 percent of its unfished biomass. The 2019 OFL of 725,593 mt is based on the 2019 assessment with an F40% FMSY proxy. The 2019 coastwide, unadjusted Total Allowable Catch (TAC) of 519,834 mt is based on the 2019 stock assessment. The U.S. TAC is 73.88 percent of the coastwide unadjusted TAC. Up to 15 percent of each party's unadjusted 2018 TAC (57,380 mt for the U.S.) is added to each party's 2019 unadjusted TAC, resulting in a U.S. adjusted 2019 TAC of 441,433 mt. From the adjusted U.S. TAC, 77,251 mt is deducted to accommodate the Tribal fishery, and 1,500 mt is deducted to accommodate research and bycatch in other fisheries, resulting in a 2019 fishery HG of 362,682 mt. The TAC for Pacific whiting is established under the provisions of the Agreement with Canada on Pacific Hake/Whiting and the Pacific Whiting Act of 2006, 16 U.S.C. 7001–7010, and the international exception applies. Therefore, no ABC or ACL values are provided for Pacific whiting.

<sup>x</sup>Pacific ocean perch north of 40° 10'; N lat. 22.4 mt is deducted from the ACL to accommodate the Tribal fishery (9.2 mt), the incidental open access fishery (10 mt), EFP fishing (0.1 mt), and research catch (3.1 mt) resulting in a fishery HG of 4,318 mt.

<sup>y</sup>Petrale sole. 320.6 mt is deducted from the ACL to accommodate the Tribal fishery (290 mt), the incidental open access fishery (6.4 mt), EFP catch (0.1 mt), and research catch (24.1 mt), resulting in a fishery HG of 2,587 mt.

<sup>z</sup>Sablefish north of 36° N lat. The 40–10 adjustment is applied to the ABC to derive a coastwide ACL value because the stock is in the precautionary zone. This coastwide ACL value is not specified in regulations. The coastwide ACL value is apportioned north and south of 36° N lat., using the 2003–2014 average estimated swept area biomass from the NMFS NWFSC trawl survey, with 73.8 percent apportioned north of 36° N lat. and 26.2 percent apportioned south of 36° N lat. The northern ACL is 5,606 mt and is reduced by 561 mt for the Tribal allocation (10 percent of the ACL north of 36° N lat.). The 561 mt Tribal allocation is reduced by 1.5 percent to account for discard mortality. Detailed sablefish allocations are shown in Table 1c.

<sup>aa</sup>Sablefish south of 36° N lat. The ACL for the area south of 36° N lat. is 1,990 mt (26.2 percent of the calculated coastwide ACL value). 4.2 mt is deducted from the ACL to accommodate the incidental open access fishery (1.8 mt) and research catch (2.4 mt), resulting in a fishery HG of 1,986 mt.

<sup>bb</sup>Shortbelly rockfish. 17.2 mt is deducted from the ACL to accommodate the incidental open access fishery (8.9 mt), EFP catch (0.1 mt), and research catch (8.2 mt), resulting in a fishery HG of 483 mt.

<sup>cc</sup>Shortspine thornyhead north of 34° 27' N lat. 65.3 mt is deducted from the ACL to accommodate the Tribal fishery (50 mt), the incidental open access fishery (4.7 mt), EFP catch (0.1 mt), and research catch (10.5 mt), resulting in a fishery HG of 1,618 mt for the area north of 34° 27' N lat.

<sup>dd</sup>Shortspine thornyhead south of 34° 27' N lat. 1.2 mt is deducted from the ACL to accommodate the incidental open access fishery (0.5 mt) and research catch (0.7 mt), resulting in a fishery HG of 889 mt for the area south of 34° 27' N lat.

<sup>ee</sup>Spiny dogfish. 333 mt is deducted from the ACL to accommodate the Tribal fishery (275 mt), the incidental open access fishery (22.6 mt), EFP catch (1.1 mt), and research catch (34.3 mt), resulting in a fishery HG of 1,738 mt.

<sup>ff</sup>Splitnose rockfish south of 40° 10'; N lat. Splitnose rockfish in the north is managed in the Slope Rockfish complex and with stock-specific harvest specifications south of 40° 10' N lat. 16.6 mt is deducted from the ACL to accommodate the incidental open access fishery (5.8 mt), research catch (9.3 mt) and EFP catch (1.5 mt), resulting in a fishery HG of 1,733 mt.

<sup>gg</sup>Starry flounder. 18.8 mt is deducted from the ACL to accommodate the Tribal fishery (2 mt), EFP catch (0.1 mt), research catch (0.6 mt), and the incidental open access fishery (16.1 mt), resulting in a fishery HG of 433 mt.

<sup>hh</sup>Widow rockfish. 248.4 mt is deducted from the ACL to accommodate the Tribal fishery (200 mt), the incidental open access fishery (3.1 mt), EFP catch (28 mt) and research catch (17.3 mt), resulting in a fishery HG of 11,583 mt.

<sup>ii</sup>Yellowtail rockfish north of 40° 10'; N lat. 1,045.1 mt is deducted from the ACL to accommodate the Tribal fishery (1,000 mt), the incidental open access fishery (4.5 mt), EFP catch (20 mt) and research catch (20.6 mt), resulting in a fishery HG of 5,234 mt.

<sup>jj</sup>Black rockfish/Blue rockfish/Deacon rockfish (Oregon). 1.2 mt is deducted from the ACL to accommodate the incidental open access fishery (0.3 mt) and EFP catch (0.9 mt), resulting in a fishery HG of 616 mt.

<sup>kk</sup>Cabezon/kelp greenling (Oregon). 0.2 mt is deducted from the ACL to accommodate EFP catch, resulting in a fishery HG of 218 mt.

<sup>ll</sup>Cabezon/kelp greenling (Washington). There are no deductions from the ACL so the fishery HG is equal to the ACL of 11 mt.

<sup>mmm</sup>Nearshore Rockfish north of 40° 10'; N lat. 2.8 mt is deducted from the ACL to accommodate the Tribal fishery (1.5 mt), EFP fishing (0.1 mt), research catch (0.3 mt) and the incidental open access fishery (0.9 mt), resulting in a fishery HG of 79 mt.

<sup>nn</sup>Shelf Rockfish north of 40° 10'; N lat. 76.9 mt is deducted from the ACL to accommodate the Tribal fishery (30 mt), the incidental open access fishery (17.7 mt), EFP catch (4.5 mt), and research catch (24.7 mt), resulting in a fishery HG of 1,977 mt.

<sup>oo</sup>Slope Rockfish north of 40° 10'; N lat. 80.8 mt is deducted from the ACL to accommodate the Tribal fishery (36 mt), the incidental open access fishery (21.7 mt), EFP catch (1.5 mt), and research catch (21.6 mt), resulting in a fishery HG of 1,665 mt.

<sup>pp</sup>Nearshore Rockfish south of 40° 10'; N lat. 4.1 mt is deducted from the ACL to accommodate the incidental open access fishery (1.4 mt) and research catch (2.7 mt), resulting in a fishery HG of 1,138 mt.

<sup>qq</sup>Shelf Rockfish south of 40° 10'; N lat. 79.1 mt is deducted from the ACL to accommodate the incidental open access fishery (4.6 mt), EFP catch (60 mt), and research catch (14.5 mt), resulting in a fishery HG of 1,546 mt.

<sup>rr</sup>Slope Rockfish south of 40° 10'; N lat. 20.2 mt is deducted from the ACL to accommodate the incidental open access fishery (16.9 mt), EFP catch (1 mt), and research catch (2.3 mt), resulting in a fishery HG of 724 mt. Blackgill rockfish has a stock-specific HG for the entire groundfish fishery south of 40° 10'; N lat. set equal to the speciesprime; contribution to the 40° 10'; adjusted ACL. Harvest of blackgill rockfish in all groundfish fisheries south of 40° 10'; N lat. counts against this HG of 159 mt.

<sup>ss</sup>Other Flatfish. The Other Flatfish complex is comprised of flatfish species managed in the PCGFMP that are not managed with stock-specific OFLs/ABCs/ACLs. Most of the species in the Other Flatfish complex are unassessed and include: Butter sole, curlfin sole, flathead sole, Pacific sanddab, rock sole, sand sole, and rex sole. 249.5 mt is deducted from the ACL to accommodate the Tribal fishery (60 mt), the incidental open access fishery (161.6 mt), EFP fishing (0.1 mt), and research catch (27.8 mt), resulting in a fishery HG of 6,249 mt.

<sup>tt</sup>Other Fish. The Other Fish complex is comprised of kelp greenling off California and leopard shark coastwide. 8.9 mt is deducted from the ACL to accommodate the incidental open access fishery (8.8 mt) and research catch (0.1 mt), resulting in a fishery HG of 230 mt.

TABLE 1b TO PART 660, SUBPART C—2019, ALLOCATIONS BY SPECIES OR SPECIES GROUP  
[Weight in metric tons]

Stocks/stock complexes	Area	Fishery HG or ACT <sup>a,b</sup>	Trawl		Non-trawl	
			%	Mt	%	Mt
Arrowtooth flounder .....	Coastwide .....	13,479.1	95	12,805.1	5	674.0
Big skate <sup>a</sup> .....	Coastwide .....	452.1	95	429.5	5	22.6
Bocaccio <sup>a</sup> .....	S of 40°10' N lat .....	2,050.9	39	800.7	61	1,250.2
Canary rockfish <sup>a,d</sup> .....	Coastwide .....	1,382.9	72	999.6	28	383.3
Chilipepper .....	S of 40°10' N lat .....	2,451.1	75	1,838.3	25	612.8
COWCOD <sup>a,b</sup> .....	S of 40°10' N lat .....	6.0	36	2.2	64	3.8
Darkblotched rockfish <sup>c</sup> .....	Coastwide .....	731.2	95	694.6	5	36.6
Dover sole .....	Coastwide .....	48,404.4	95	45,984.2	5	2,420.2
English sole .....	Coastwide .....	9,873.8	95	9,380.1	5	493.7
Lingcod .....	N of 40°10' N lat .....	4,593.0	45	2,066.9	55	2,526.2
Lingcod .....	S of 40°10' N lat .....	1,027.7	45	462.5	55	565.2
Longnose skate <sup>a</sup> .....	Coastwide .....	1,851.7	90	1,666.5	10	185.2
Longspine thornyhead .....	N of 34°27' N lat .....	2,552.6	95	2,425.0	5	127.6
Pacific cod .....	Coastwide .....	1,093.8	95	1,039.1	5	54.7
Pacific whiting <sup>g</sup> .....	Coastwide .....	362,682.0	100	362,682.0	0	0.0
Pacific ocean perch <sup>e</sup> .....	N of 40°10' N lat .....	4,317.6	95	4,101.7	5	215.9
Petrale sole .....	Coastwide .....	2,587.4	95	2,458.0	5	129.4
Sablefish .....	N of 36° N lat .....	NA		See Table 1c		
Sablefish .....	S of 36° N lat .....	1,985.8	42	834.0	58	1,151.8
Shortspine thornyhead .....	N of 34°27' N lat .....	1,617.7	95	1,536.8	5	80.9
Shortspine thornyhead .....	S of 34°27' N lat .....	888.8	NA	50.0	NA	838.8
Splitnose rockfish .....	S of 40°10' N lat .....	1,733.4	95	1,646.7	5	86.7
Starry flounder .....	Coastwide .....	433.2	50	216.6	50	216.6
Widow rockfish <sup>f</sup> .....	Coastwide .....	11,582.6	91	10,540.2	9	1,042.4
YELLOWEYE ROCKFISH ..	Coastwide .....	41.9	8	3.4	92	38.6
Yellowtail rockfish .....	N of 40°10' N lat .....	4,951.9	88	4,357.7	12	594.2
Minor Shelf Rockfish North <sup>a</sup>	N of 40°10' N lat .....	1,977.1	60.2	1,190.2	39.8	786.9
Minor Shelf Rockfish South <sup>a</sup>	S of 40°10' N lat .....	1,545.9	12.2	188.6	87.8	1,357.3
Minor Slope Rockfish North	N of 40°10' N lat .....	1,665.2	81	1,348.8	19	316.4
Minor Slope Rockfish South	S of 40°10' N lat .....	723.8	63	456.0	37	267.8
Other Flatfish .....	Coastwide .....	6,248.5	90	5,623.7	10	624.9

<sup>a</sup> Allocations decided through the biennial specification process.

<sup>b</sup> The cowcod fishery harvest guideline is further reduced to an ACT of 6.0 mt.

<sup>c</sup> Consistent with regulations at § 660.55(c), 9 percent (62.5 mt) of the total trawl allocation for darkblotched rockfish is allocated to the Pacific whiting fishery, as follows: 26.3 mt for the Shorebased IFQ Program, 15.0 mt for the MS sector, and 21.3 mt for the C/P sector. The tonnage calculated here for the Pacific whiting IFQ fishery contributes to the total shorebased trawl allocation, which is found at § 660.140(d)(1)(ii)(D).

<sup>d</sup> 46 mt of the total trawl allocation of canary rockfish is allocated to the MS and C/P sectors, as follows: 30 mt for the MS sector, and 16 mt for the C/P sector.

<sup>e</sup> Consistent with regulations at § 660.55(c), 17 percent (697.3 mt) of the total trawl allocation for Pacific ocean perch is allocated to the Pacific whiting fishery, as follows: 292.9 mt for the Shorebased IFQ Program, 167.4 mt for the MS sector, and 237.1 mt for the C/P sector. The tonnage calculated here for the Pacific whiting IFQ fishery contributes to the total shorebased trawl allocation, which is found at § 660.140(d)(1)(ii)(D).

<sup>f</sup> Consistent with regulations at § 660.55(c), 10 percent (1,054 mt) of the total trawl allocation for widow rockfish is allocated to the whiting fisheries, as follows: 442.7 mt for the shorebased IFQ fishery, 253 mt for the mothership fishery, and 358.4 mt for the catcher/processor fishery. The tonnage calculated here for the whiting portion of the shorebased IFQ fishery contributes to the total shorebased trawl allocation, which is found at § 660.140(d)(1)(ii)(D).

<sup>g</sup> Consistent with regulations at § 660.55(i)(2), the commercial harvest guideline for Pacific whiting is allocated as follows: 34 percent (123,312 mt) for the C/P Coop Program; 24 percent (87,044 mt) for the MS Coop Program; and 42 percent (152,326.5 mt) for the Shorebased IFQ Program. No more than 5 percent of the Shorebased IFQ Program allocation (7,616 mt) may be taken and retained south of 42° N lat before the start of the primary Pacific whiting season north of 42° N lat.

■ 4. In § 660.140, revise paragraph (d)(1)(ii)(D) to read as follows:

**§ 660.140 Shorebased IFQ Program.**

- \* \* \* \* \*
- (d) \* \* \*
- (1) \* \* \*

(ii) \* \* \*

(D) For the trawl fishery, NMFS will issue QP based on the following shorebased trawl allocations:

TABLE 1 TO PARAGRAPH (d)(1)(ii)(D)

IFQ species	Area	2019 Shorebased trawl allocation (mt)	2020 Shorebased trawl allocation (mt)
Arrowtooth flounder .....	Coastwide .....	12,735.1	10,052.3
Bocaccio .....	South of 40°10' N lat .....	800.7	767.1
Canary rockfish .....	Coastwide .....	953.6	894.3

TABLE 1 TO PARAGRAPH (d)(1)(ii)(D)—Continued

IFQ species	Area	2019 Shorebased trawl allocation (mt)	2020 Shorebased trawl allocation (mt)
Chilipepper .....	South of 40°10' N lat .....	1,838.3	1,743.8
COWCOD .....	South of 40°10' N lat .....	2.2	2.2
Darkblotched rockfish .....	Coastwide .....	658.4	703.4
Dover sole .....	Coastwide .....	45,979.2	45,979.2
English sole .....	Coastwide .....	9,375.1	9,417.9
Lingcod .....	North of 40°10' N lat .....	2,051.9	1,903.4
Lingcod .....	South of 40°10' N lat .....	462.5	386.0
Longspine thornyhead .....	North of 34°27' N lat .....	2,420.0	2,293.6
Minor Shelf Rockfish complex .....	North of 40°10' N lat .....	1,155.2	1,151.6
Minor Shelf Rockfish complex .....	South of 40°10' N lat .....	188.6	188.6
Minor Slope Rockfish complex .....	North of 40°10' N lat .....	1,248.8	1,237.5
Minor Slope Rockfish complex .....	South of 40°10' N lat .....	456.0	455.4
Other Flatfish complex .....	Coastwide .....	5,603.7	5,192.4
Pacific cod .....	Coastwide .....	1,034.1	1,034.1
Pacific ocean perch .....	North of 40°10' N lat .....	3,697.3	3,602.2
Pacific whiting .....	Coastwide .....	152,326.5	TBD
Petrale sole .....	Coastwide .....	2,453.0	2,393.2
Sablefish .....	North of 36° N lat .....	2,581.3	2,636.8
Sablefish .....	South of 36° N lat .....	834.0	851.7
Shortspine thornyhead .....	North of 34°27' N lat .....	1,506.8	1,493.5
Shortspine thornyhead .....	South of 34°27' N lat .....	50.0	50.0
Splitnose rockfish .....	South of 40°10' N lat .....	1,646.7	1,628.7
Starry flounder .....	Coastwide .....	211.6	211.6
Widow rockfish .....	Coastwide .....	9,928.8	9,387.1
YELLOWEYE ROCKFISH .....	Coastwide .....	3.4	3.4
Yellowtail rockfish .....	North of 40°10' N lat .....	4,305.8	4,048.0

\* \* \* \* \*

[FR Doc. 2019-09661 Filed 5-9-19; 8:45 am]

BILLING CODE 3510-22-P