

individual letters soliciting the expert opinions of four qualified specialists selected from the academic and scientific community. The charge to the peer reviewers and the peer review report have been placed in the administrative record and posted on the agency's peer review agenda. In meeting the OMB Peer Review Bulletin requirements, we have also satisfied the requirements of the 1994 joint U.S. Fish and Wildlife Service/NMFS peer review policy (59 FR 34270; July 1, 1994).

Classification

National Environmental Policy Act (NEPA)

The 1982 amendments to the ESA, in section 4(b)(1)(A), restrict the information that may be considered when assessing species for listing to the best scientific and commercial data available. Based on this limitation of criteria for a listing decision and the opinion in *Pacific Legal Foundation v. Andrus*, 657 F. 2d 829 (6th Cir. 1981), we have concluded that NEPA does not apply to ESA listing actions. (See NOAA Administrative Order 216–6.)

Executive Order 12866, Regulatory Flexibility Act, and Paperwork Reduction Act

As noted in the Conference Report on the 1982 amendments to the ESA, economic impacts cannot be considered when assessing the status of a species. Therefore, the economic analysis requirements of the Regulatory Flexibility Act are not applicable to the listing process. In addition, this proposed rule is exempt from review under Executive Order 12866. This proposed rule does not contain a collection of information requirement for the purposes of the Paperwork Reduction Act.

Executive Order 13132, Federalism

E.O. 13132 requires agencies to take into account any federalism impacts of regulations under development. It includes specific consultation directives for situations where a regulation will preempt state law, or impose substantial direct compliance costs on state and local governments (unless required by statute). Neither of these circumstances is applicable to this proposed rule.

List of Subjects in 50 CFR Part 224

Endangered and threatened species.

Dated: April 27, 2021.

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 224 is proposed to be amended as follows:

PART 224—ENDANGERED MARINE AND ANADROMOUS SPECIES

■ 1. The authority citation for part 224 continues to read as follows:

Authority: 16 U.S.C. 1531–1543 and 16 U.S.C. 1361 *et seq.*

§ 224.101 [Amended]

■ 2. In § 224.101, in the table in paragraph (h), under the subheading “Corals”, remove the entry for “Coral, [no common name] (*Siderastrea glynni*)”.

[FR Doc. 2021–09090 Filed 5–3–21; 8:45 am]

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DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 660

[Docket No. 210423–0088]

RIN 0648–BK25

Magnuson-Stevens Act Provisions; Fisheries off West Coast States; Pacific Coast Groundfish Fishery; 2021 Harvest Specifications for Pacific Whiting, and 2021 Pacific Whiting Tribal Allocation

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

ACTION: Revised proposed rule; reopening of public comment.

SUMMARY: NMFS issues the revised proposed rule for the 2021 Pacific whiting fishery under the authority of the Pacific Coast Groundfish Fishery Management Plan, the Magnuson-Stevens Fishery Conservation and Management Act, the Pacific Whiting Act of 2006 (Whiting Act), and other applicable laws. NMFS issued a proposed rule on February 16, 2021 that proposed the 2021 Pacific whiting tribal allocation and set-asides for research and incidental mortality. NMFS is issuing a revised proposed rule to include additional actions due to the lack of a bilateral agreement on the 2021 Pacific whiting coastwide total allowable catch (TAC) by the

Governments of Canada and the United States. This revised proposed rule includes the 2021 coastwide TAC and U.S. TAC for Pacific whiting as determined by NMFS under the Whiting Act, the non-tribal sector allocations, and the tribal allocation and set-asides included in the original proposed rule. The proposed measures are intended to help prevent overfishing, achieve optimum yield, and ensure that management measures are based on the best scientific information available.

DATES: Comments on this proposed rule must be received no later than May 19, 2021.

ADDRESSES: You may submit comments on this document, identified by NOAA–NMFS–2021–0002 by any of the following methods:

- **Electronic Submission:** Submit all electronic public comments via the Federal e-Rulemaking Portal. Go to <https://www.regulations.gov> and enter NOAA–NMFS–2021–0002 in the Search box. Click on the “Comment” icon, complete the required fields, and enter or attach your comments.

- **Mail:** Barry Thom, c/o Stacey Miller, Sustainable Fisheries Division, West Coast Region, NMFS, 1201 NE Lloyd Blvd., Suite 1100, Portland, OR 97232.

Instructions: Comments sent by any other method, to any other address or individual, or received after the end of the comment period, may not be considered by NMFS. All comments received are part of the public record and will generally be posted for public viewing on www.regulations.gov without change. All personal identifying information (*e.g.*, name, address, etc.), confidential business information, or otherwise sensitive information submitted voluntarily by the sender will be publicly accessible. NMFS will accept anonymous comments (enter “N/A” in the required fields if you wish to remain anonymous).

Electronic Access

This proposed 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 website at <https://www.fisheries.noaa.gov> and at the Pacific Fishery Management Council's website at <http://www.pcouncil.org/>.

FOR FURTHER INFORMATION CONTACT: Stacey Miller, phone: 503–231–6290, and email: Stacey.Miller@noaa.gov.

SUPPLEMENTARY INFORMATION:

Background

This rule proposes establishing the 2021 Pacific whiting harvest specifications, including the adjusted coastwide TAC of 500,000 mt and the adjusted U.S. TAC of 369,400 mt, and 2021 tribal allocations. NMFS issued a proposed rule on February 16, 2021 (86 FR 9473) that proposed allocating 17.5 percent of the U.S. TAC of Pacific whiting for 2021 to Pacific Coast Indian tribes that have a treaty right to harvest groundfish, and implement set-asides (750 mt) for Pacific whiting for research and incidental mortality in other fisheries. We requested public comment on these proposed actions through March 18, 2021 but received no public comments during the comment period. NMFS is issuing a revised proposed rule for these two actions as well as several additional actions related to the Pacific whiting fishery due to the lack of a bilateral agreement on the 2021 Pacific whiting coastwide TAC under the Agreement between the Government of the United States of America and the Government of Canada on Pacific Hake/Whiting of 2003 (Agreement). The Agreement's Joint Management Committee (JMC) met on March 15–17, 2021 but was not able to reach agreement on a coastwide TAC, which resulted in the JMC not recommending a coastwide TAC by March 25th, as required by the Agreement. If the JMC does not recommend a TAC, the Whiting Act directs NMFS (as delegated by the Secretary of Commerce) to establish a coastwide and U.S. TAC for Pacific whiting. This revised proposed rule would establish the 2021 coastwide and U.S. TAC for Pacific whiting based on the criteria identified in the Whiting Act and establish the Pacific whiting non-tribal sector allocations. This revised proposed rule also includes the 2021 tribal allocation and research set aside, which were described in the original proposed rule published February 16, 2021 (86 FR 9473). The allocations for Pacific whiting would be effective until December 31, 2021.

Pacific Whiting Agreement and Whiting Act

The transboundary stock of Pacific whiting is managed through the Agreement, which establishes bilateral bodies to implement the terms of the Agreement. The bilateral bodies include: The 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 spawning biomass to 40 percent of the estimated unfished level. The Agreement also allocates 73.88 percent of the Pacific whiting total allowable catch (TAC) to the United States and 26.12 percent of the TAC to Canada.

Based on recommendations from the Agreement's JTC, SRG, and AP, the JMC recommends the coastwide Pacific whiting TAC by March 25th of each year, which is subsequently approved by NMFS, under the delegation of authority from the Secretary of Commerce. In years when the JMC does make a TAC recommendation to the parties, NMFS (under the delegation of authority from the Secretary of Commerce) approves the U.S. TAC with concurrence from the Department of State. The U.S. TAC is then allocated into tribal and non-tribal sectors.

The 2021 JMC negotiations were held from March 15–17, 2021. These negotiations typically focus on two factors to derive a coastwide TAC: Agreement on a sustainable level of realized catch using stock assessment projections and other relevant scientific advice, and estimating the likely utilization rate, which is the proportion of the TAC harvested by the various sectors of the U.S. and Canadian fisheries based on historical rates and knowledge of existing conditions. Full utilization of the TAC (100 percent) is not practicable, due to myriad of regulatory and operational constraints. These constraints are long-identified factors that affect utilization rates and setting the coastwide TAC at a higher level allows the fisheries to achieve the realized catch target. During the March 2021 JMC meeting, the JMC agreed on a realized catch target of 380,000 mt but did not reach an agreement on a utilization rate, and therefore did not come to a bilateral agreement on the coastwide TAC. This is the second consecutive year that the JMC did not reach an agreement on a coastwide TAC.

The Agreement does not specify a procedure for when the JMC does not agree on a coastwide TAC, however, the Whiting Act directs the Secretary of Commerce to establish the TAC for Pacific whiting when the JMC does not agree on a coastwide TAC. The Act states that NMFS (as delegated by the Secretary of Commerce) should establish the coastwide Pacific whiting TAC, taking into account recommendations from the JMC, JTC, SRG, AP, and the Pacific Fishery

Management Council (Council). The Act requires NMFS to base the coastwide TAC decision on the best scientific information available, and use the default harvest rate unless scientific information indicates a different rate is necessary to sustain the Pacific whiting resource. The Act also requires NMFS to establish the U.S. share of the TAC based on the U.S./Canada percentage split and adjustments specified in the Agreement.

2021 Stock Assessment and Scientific Review

The JTC completed a stock assessment for Pacific whiting in February 2021. This assessment is available at <https://www.fisheries.noaa.gov/resource/document/2021-pacific-hake-whiting-stock-assessment>. The assessment was reviewed by the SRG during a four-day meeting held online. The SRG report is available at <https://www.fisheries.noaa.gov/resource/document/2021-pacific-hake-whiting-scientific-review-group-report>. The SRG considered the 2021 assessment report and appendices to represent the best scientific information available for Pacific hake/whiting.

The 2021 assessment model uses the same structure as the 2020 stock assessment model. The model is fit to an acoustic survey index of abundance, annual commercial catches of the transboundary Pacific whiting stock, and age composition data from an acoustic survey and commercial fisheries. Age-composition data provide information to estimate relative year class strength. Updates to the data in the 2021 assessment include: Fishery catch and age-composition data from 2020, weight-at-age data for 2020, and minor changes to pre-2020 data. There was not an acoustic survey planned for 2020 and therefore no new survey data were included in the 2021 model. Additionally, no new age data were available from the Canadian freezer-trawler feet in 2020 due to the ongoing pandemic.

The Pacific whiting biomass is a highly cyclical and highly productive stock. Since the 1960s, it is estimated to have ranged from well below to above unfished levels. Compared to other groundfish stocks, the Pacific whiting stock has high recruitment variability, with low average recruitment levels and occasional large year-classes that often comprise much of the biomass. At the start of 2021, the Pacific whiting stock continues to be supported by multiple above average cohorts, including the 2010, 2014, 2016, and 2017 year classes which comprise 14 percent, 25 percent, 24 percent and 17 percent, respectively

of the stock biomass. The 2010 year class is estimated to be the second highest recruitment in the assessment time series; the 2014 and 2016 year classes are estimated to be above average in strength; and the 2012 and 2017 year classes are about average. The assessment estimates small year classes in 2011, 2013, 2015, and 2018. There is very little information in the data to estimate the size of the 2019 year class and there is no information in the data to estimate the sizes of the 2020 and 2021 year classes.

The Pacific whiting relative spawning biomass was near unfished levels (97.9 percent of unfished) in 2017 and has been declining since that time as the 2010 and 2014 year classes are ageing and mortality surpasses increased production, combined with record high catches. At the start of 2021, the relative spawning stock biomass is still well above the biomass level associated with the default harvest rate (40 percent of unfished level), and is estimated to be 0.981 million mt, or 59 percent of unfished levels. The stock is considered at a healthy level, and the joint probability that the relative spawning stock biomass is both below 40 percent of unfished level and that fishing mortality is above the relative fishing intensity of the Agreement's F-40 percent default harvest rate is estimated to be 1.7 percent.

2021 Pacific Whiting Coastwide TAC Evaluation and Recommendation

In determining the coastwide TAC, NMFS considered information and recommendations from the Agreement's JMC, JTC, SRG, and AP, and the Council. The stock assessment from the JTC and the SRG peer review are the best scientific information available for determining the coastwide Pacific whiting TAC. NMFS heard testimony from the AP and JMC at the JMC's March 2021 meeting. NMFS has reached out to the Council and will consider any recommendations provided by the Council.

NMFS considered a range of coastwide TAC alternatives including the coastwide TAC resulting from the default harvest rate (565,191 mt) and the coastwide TACs that were discussed during the AP and JMC March 2021 meeting. This includes the U.S. delegation's initial (500,000 mt) and final positions (475,000 mt) and the Canadian delegation's initial (422,000 mt) and final positions (465,000 mt). However, we excluded the Canadian delegation's proposed TACs from further consideration because according to the stock assessment they are not necessary to support a sustainable

Pacific whiting resource. Members of the JMC and AP also identified that these TACs would have a disproportionately negative economic impact on the U.S. fishing fleet compared to the Canadian fishing fleet.

NMFS therefore evaluated coastwide TACs ranging from 475,000 mt to 565,191 mt in developing our proposed coastwide TAC of 500,000 mt. The stock assessment supports the lower TACs within this range and would provide adequate opportunity for both Canadian and U.S. fleets, while sustainably managing the Pacific whiting resource.

Biological Impacts of Potential Whiting TAC Levels

The Act directs NMFS to use the default harvest rate set out in the Agreement unless NMFS determines that a different rate is necessary to sustain the offshore whiting resource. The Agreement specifies a default harvest rate of "F-40 percent" which is the fishing mortality rate that would reduce the relative spawning stock biomass, calculated on a per recruit basis (a measure of stock reproductive potential) to 40 percent of what it would have been in the absence of fishing mortality, often called B40. Although there is not a default biomass level, the JMC, since implementation of the Agreement, has focused on choosing a TAC designed to prevent the relative spawning stock biomass from falling below B40. NMFS followed the same practice of choosing a TAC designed to prevent the relative spawning stock biomass from falling below this biomass level.

To evaluate the impact of the TACs on relative spawning stock biomass, we applied an estimate of the coastwide Pacific whiting fleet's utilization rate (*i.e.* the proportion of the TAC removed through fishing effort) to the range of TACs we considered. Over the last ten years, neither the U.S. nor the Canadian fishing fleets have caught the entire coastwide TAC (100 percent utilization rate). The ten-year (2010–2019) average utilization rate is 69.8 percent of the coastwide TAC and the average utilization rate for the last 5 years was 70.06 percent of the coastwide TAC. To derive an upper estimate of utilization, NMFS took the average of the five highest utilization rates from 2011–2020, which results in a utilization rate of 75.82 percent of the coastwide TAC. Because of this, NMFS determined it is reasonable to focus on a range of utilization rates from 70 percent to 76 percent, which encompass the average of the last five years (70.06 percent) and the average of the highest 5 utilization rates since 2011 (75.82 percent). These

averages provide a realistic range for projecting the coastwide utilization rates in 2021 and 2022 and are consistent with the 2021 projected utilization rates provided by U.S. members of the AP during the JMC negotiations.

We applied the range of average utilization rates to the range of coastwide TACs to derive the projected harvest level and anticipated impacts to the Pacific whiting spawning stock biomass. The stock assessment indicates that across the range of TACs and utilization rates evaluated, the projected harvest levels result in relative spawning stock biomass levels above B40 percent after one fishing year (47–49 percent of unfished levels) and between 39–44 percent of unfished levels after two years of fishing at the same level.

Using the same approach as described above, a coastwide TAC set at the default harvest rate (565,191 mt) combined with the 0.70 and 0.76 utilization rates results in projected harvest rates between 395,634 mt–429,545 mt and a projected spawning biomass of 48–47 percent of unfished levels after one year of fishing, and 41–39 percent of unfished levels after two years of fishing. Of the lower TACs considered in the range, a coastwide TAC of 500,000 mt results in projected harvest rates between 350,000 mt–380,000 mt and projected spawning biomass of 49–48 percent of unfished levels after one year of fishing, and 43–42 percent of unfished levels after 2 years of fishing, using the lower (0.70) and higher (0.76) utilization rates respectively. The lowest TAC considered (475,000 mt) combined with the 0.70 and 0.76 utilization rates results in lower projected harvest (332,500 mt–361,000 mt) and projections of relative spawning biomass of 49 percent after one year of fishing, and 44–43 percent of unfished levels after two years of fishing.

Overall, the stock assessment indicates that the relative spawning stock biomass of Pacific whiting has a high probability of being lower at the beginning of 2022 than 2021, ranging from 65 percent probability with no harvest to a 90 percent probability at a catch equal to the default harvest rate. Although a decline in the Pacific whiting stock is probable even in the absence of fishing pressure, the decline does not threaten the sustainability of the resource. At the proposed TAC of 500,000 mt, with a realized catch goal of 380,000 mt (based on a 0.76 utilization rate), the stock assessment indicates there is a 36 percent chance of relative spawning stock biomass falling

below B40 percent in one year. The stock assessment also indicates there is an 11 percent probability of falling below B25 percent, and a 1 percent chance of falling below B10 percent after one year for this realized catch level.

Continuing this harvest level into a second year does have an increased chance of the relative spawning stock biomass falling below B40 percent. Two years of actual harvests at approximately 380,000 mt result in a 47 percent probability of falling below B40 percent, a 23 percent probability of falling below B25 percent, and a 4 percent probability of falling below B10 percent.

In setting last year’s coastwide TAC, (85 FR 36803; June 18, 2020) NMFS selected a TAC that resulted in a biomass level above B40 after 2 years of fishing and took into account economic impacts to U.S. fisheries and coastal communities. NMFS continued with this approach to determine the 2021 coastwide TAC. The 2021 stock assessment estimates that the whiting stock is at a healthy level of 59 percent of unfished biomass. However, the stock is continuing to decline at an increased rate as natural mortality of the 2010 and 2014-year classes exceeds biomass growth. There is also a high level of uncertainty regarding the strength of recent recruitments. Therefore, NMFS determined the best scientific information available indicates that reduction from last year’s coastwide TAC (575,000 mt), and deviation from the Act’s default harvest rate, would support the long-term sustainability of the stock.

Economic Impacts of Potential Pacific Whiting TAC levels

The Pacific whiting fishery is the highest volume fishery on the West Coast of the United States, providing hundreds of jobs. In 2020, total revenue was estimated to be \$21.4 million in the non-tribal shoreside sector and \$21.5 million in the at-sea whiting sector. The total non-tribal ex-vessel revenue in 2020 is estimated to have been about \$42.9 million. Maintaining access to the Pacific whiting resource is important for both direct fishery participants and West Coast fishing communities. During the JMC meeting, members of the JMC and AP also discussed the projected realized catch levels under each proposed TAC scenario and resulting economic impacts on the U.S. whiting fishery.

The starting and ending coastwide TAC proposals from Canada, 422,000 mt and 465,000 mt, represent a 26 percent and 19 percent reduction from the 2020

U.S. determined coastwide TAC, respectively. Reductions of this magnitude would have negative economic impacts on U.S. fisheries and coastal communities. Canada’s proposed TACs reflect their concern with the declining Pacific whiting biomass as the 2010 and 2014 year classes continue to age, as well as uncertainty of the recent recruitment strength because the stock assessment is not able to predict cohort strength until they are detected by the acoustic survey and fishery. However, the stock assessment indicates that the higher TACs proposed by the United States continue to provide a sustainable Pacific whiting resource and result in the relative spawning stock biomass levels above B40 percent after 1 year, and at or above B40 percent after 2 years of fishing.

Because of these factors, NMFS has determined that a measured reduction in the coastwide TAC from last year is appropriately precautionary to achieve the conservation goals, but also recognizes the need to minimize the economic impacts to U.S. fisheries and coastal communities as much as possible.

2021 Pacific Whiting Adjusted TAC Recommendation

The Act requires NMFS to make the necessary adjustments to the TAC specified in the Agreement (Paragraph 5 of Article II). The Agreement (Paragraph 5 of Article II) requires adjustments to the coastwide TAC to account for overages if either U.S. or Canadian catch in the previous year exceeded its individual TAC, or carryovers, if U.S. or Canadian catch was less than its individual TAC in the previous year. Both the United States and Canada harvested less than their individual TACs in 2020, therefore carryover is applied to the 2021 TACs.

Taking into account the percentage shares for each country (26.12 percent for Canada and 73.88 percent for the United States) and the adjustments for uncaught fish (12,617 mt carryover for Canada and 55,080 mt carryover for the United States), as required by the Act, we recommend a final adjusted coastwide TAC of 500,000 mt, with a final adjusted TAC for Canada of 130,600 mt (117,983 mt + 12,617 mt carryover adjustment), and a final adjusted TAC for the United States of 369,400 mt (314,320 mt + 55,080 mt carryover adjustment). This recommendation is consistent with the best scientific information available, provisions of the Agreement, and the Whiting Act.

Tribal Allocations

The regulations at 50 CFR 660.50(d) identify the procedures for implementing the treaty rights that Pacific Coast treaty Indian tribes have to harvest groundfish in their usual and accustomed fishing areas in U.S. waters. Tribes with treaty fishing rights in the area covered by the Pacific Coast Groundfish FMP request allocations, set-asides, or regulations specific to the tribes during the Council’s biennial harvest specifications and management measures process. The regulations state that the Secretary will develop tribal allocations and regulations in consultation with the affected tribe(s) and, insofar as possible, with tribal consensus.

NMFS allocates a portion of the U.S. TAC of Pacific whiting to the tribal fishery, following the process established in 50 CFR 660.50(d). The tribal allocation is subtracted from the U.S. Pacific whiting TAC before allocation to the non-tribal sectors.

Four Washington coastal treaty Indian tribes including the Makah Indian Tribe, Quileute Indian Tribe, Quinault Indian Nation, and the Hoh Indian Tribe (collectively, the “Treaty Tribes”), can participate in the tribal Pacific whiting fishery. Tribal allocations of Pacific whiting have been based on discussions with the Treaty Tribes regarding their intent for those fishing years. The Hoh Tribe has not expressed an interest in participating in the Pacific whiting fishery to date. The Quileute Tribe and Quinault Indian Nation have expressed interest in beginning to participate in the Pacific whiting fishery at a future date. To date, only the Makah Tribe has prosecuted a tribal fishery for Pacific whiting, and has harvested Pacific whiting since 1996 using midwater trawl gear. Table 1 below provides a recent history of U.S. TACs and annual tribal allocation in metric tons (mt).

TABLE 1—U.S. TOTAL ALLOWABLE CATCH AND ANNUAL TRIBAL ALLOCATION IN METRIC TONS (mt)

Year	U.S. TAC ¹ (mt)	Tribal allocation (mt)
2010	193,935	49,939
2011	290,903	66,908
2012	186,037	48,556
2013	269,745	63,205
2014	316,206	55,336
2015	325,072	56,888
2016	367,553	64,322
2017	441,433	77,251
2018	441,433	77,251
2019	441,433	77,251

TABLE 1—U.S. TOTAL ALLOWABLE CATCH AND ANNUAL TRIBAL ALLOCATION IN METRIC TONS (mt)—Continued

Year	U.S. TAC ¹ (mt)	Tribal allocation (mt)
2020	424,810	74,342

¹ Beginning in 2012, the United States started using the term Total Allowable Catch, or TAC, based on the Agreement between the Government of the United States of America and the Government of Canada on Pacific Hake/Whiting. Prior to 2012, the terms Optimal Yield (OY) and Annual Catch Limit (ACL) were used.

In 2009, NMFS, the states of Washington and Oregon, and the Treaty Tribes started a process to determine the long-term tribal allocation for Pacific whiting. However, these groups have not yet determined a long-term allocation. In order to ensure Treaty Tribes continue to receive allocations, this rule proposes the 2021 tribal allocation of Pacific whiting. This allocation is not intended to set precedent for future allocations.

In exchanges between NMFS and the Treaty Tribes during November and December 2020, the Makah Tribe indicated their intent to participate in the tribal Pacific whiting fishery in 2021 and requested 17.5 percent of the U.S. TAC. The Quinault Indian Nation, Quileute Indian Tribe and Hoh Indian Tribe informed NMFS in December 2020 that they will not participate in the 2021 fishery. NMFS will contact the Tribes during the proposed rule comment period to refine the 2021 allocation before allocating the final U.S. TAC between the tribal and non-tribal whiting fisheries. NMFS proposes a tribal allocation that accommodates the tribal request, specifically 17.5 percent of the U.S. TAC. The proposed 2021 adjusted U.S. TAC is 369,400 mt, and therefore the proposed 2021 tribal allocation is 64,645 mt. NMFS has determined that the current scientific information regarding the distribution and abundance of the coastal Pacific whiting stock indicates the 17.5 percent is within the range of the tribal treaty right to Pacific whiting.

Non-Tribal Research and Bycatch Set-Asides

The U.S. non-tribal whiting fishery is managed under the Council’s Pacific Coast Groundfish FMP. Each year, the Council recommends the amount of Pacific whiting to accommodate incidental mortality of Pacific whiting in research activities and non-groundfish fisheries based on estimates

of scientific research catch and estimated bycatch mortality in non-groundfish fisheries. At its November 2020 meeting, the Council recommended an incidental mortality set-aside of 750 mt for 2021. This is a reduction of the amount set-aside for research and incidental mortality from 1,500 mt in 2020. The 750 mt recommendation, however, reflects the recent 3 year average mortality that has declined from 942 mt in 2014–2016 to 216 mt in 2017–2019. This rule proposes the Council’s recommendations.

Non-Tribal Harvest Guidelines and Allocations

In addition to the tribal allocation, this proposed rule establishes the fishery harvest guideline (HG), called the non-tribal allocation. The proposed 2021 fishery HG for Pacific whiting is 304,005 mt. This amount was determined by deducting the 64,645 mt tribal allocation and the 750 mt allocation for scientific research catch and fishing mortality in non-groundfish fisheries from the total adjusted U.S. TAC of 369,400 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 (103,362 mt for 2021), the MS Coop Program is allocated 24 percent (72,961 mt for 2021), and the Shorebased IFQ Program is allocated 42 percent (127,682 mt for 2021). The fishery south of 42° N lat. may not take more than 6,384 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 2—2021 PROPOSED PACIFIC WHITING ALLOCATIONS IN METRIC TONS

Sector	2021 Pacific whiting allocation (mt)
Tribal	64,645
Catcher/Processor (C/P) Coop Program	103,362
Mothership (MS) Coop Program	72,961
Shorebased IFQ Program	127,682

This proposed rule would be implemented under the statutory and regulatory authority of section 304(b) and 305(d) of the Magnuson-Stevens Act, and the Pacific Whiting Act of 2006. With this proposed rule, NMFS, acting on behalf of the Secretary, would ensure that the FMP is implemented in a manner consistent with treaty rights of four Treaty Tribes to fish in their “usual and accustomed grounds and stations” in common with non-tribal citizens. *United States v. Washington*, 384 F. Supp. 313 (W.D. 1974).

Classification

NMFS notes that the public comment period for this proposed rule is 15 days.

Finalizing the Pacific whiting harvest specifications closer to the start of the Pacific whiting fishing season on May 15th provides the industry with more time to plan and execute the fishery and gives them earlier access to the finalized allocations of Pacific whiting. Moreover, the public already had an opportunity to comment under the proposed rule issued on February 16, 2021 on percentage of the U.S. TAC allocated to the Pacific Coast Indian tribes that have a treaty right to harvest groundfish and set-aside research and incidental mortality. NMFS has determined that a 15-day comment period best balances the interest in allowing the public adequate time to comment on the proposed measures while implementing the management measures, including the finalizing Pacific whiting allocations, in a timely manner.

Pursuant to section 304 (b)(1)(A) and 305 (d) of the Magnuson-Stevens Act, the NMFS Assistant Administrator has determined that this proposed rule is consistent with the Pacific Coast Groundfish FMP, other provisions of the Magnuson-Stevens Act, and other applicable law, subject to further consideration after public comment. In making its final determination, NMFS will take into account the complete record, including comments received during the comment period.

Pursuant to Executive Order 13175, this proposed rule was developed after meaningful consultation and collaboration with tribal officials from the area covered by the Pacific Coast Groundfish FMP. Under the Magnuson-Stevens Act at 16 U.S.C. 1852(b)(5), one of the voting members of the Pacific Council must be a representative of an Indian tribe with federally recognized fishing rights from the area of the Council’s jurisdiction. In addition, regulations implementing the Pacific Coast Groundfish FMP establish a procedure by which the tribes with treaty fishing rights in the area covered

by the Pacific Coast Groundfish FMP request allocations or regulations specific to the Tribes, in writing, before the first of the two meetings at which the Council considers groundfish management measures. The regulations at 50 CFR 660.324(d) further state, the Secretary will develop tribal allocations and regulations under this paragraph in consultation with the affected tribe(s) and, insofar as possible, with tribal consensus. The tribal management measures in this proposed rule have been developed following these procedures.

The Office of Management and Budget has determined that this proposed rule is not significant for purposes of Executive Order 12866.

A range of potential total harvest levels for Pacific whiting have been considered under the Final Environmental Impact Statement for Harvest Specifications and Management Measures for 2015–2016 and Biennial Periods thereafter (2015/16 FEIS) and in the Environmental Assessment for Harvest Specifications and Management Measures for 2021–2022 and Biennial Periods Thereafter and is available from NMFS (see **ADDRESSES**). The 2015/16 FEIS examined the harvest specifications and management measures for 2015–16 and 10 year projections for routinely adjusted harvest specifications and management measures. The 10 year projections were produced to evaluate the impacts of the ongoing implementation of harvest specifications and management measures and to evaluate the impacts of the routine adjustments that are the main component of each biennial cycle. The EA for the 2021–22 cycle tiers from the 2015/16 FEIS and focuses on the harvest specifications and management measures that were not within the scope of the 10 year projections in the 2015/16 FEIS.

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

Under the RFA, the term “small entities” includes small businesses, small organizations, and small governmental jurisdictions. The Small Business Administration has established

size criteria for entities involved in the fishing industry that qualify as small businesses. A business involved in fish harvesting is a small business if it is independently owned and operated and not dominant in its field of operation (including its affiliates) and if it has combined annual receipts, not in excess of \$11 million for all its affiliated operations worldwide (see 80 FR 81194, December 29, 2015). A wholesale business servicing the fishing industry is a small business if it employs 100 or fewer persons on a full time, part time, temporary, or other basis, at all its affiliated operations worldwide. A small organization is any nonprofit enterprise that is independently owned and operated and is not dominant in its field. Effective February 26, 2016, a seafood processor is a small business if it is independently owned and operated, not dominant in its field of operation, and employs 750 or fewer persons on a full time, part time, temporary, or other basis, at all its affiliated operations worldwide (See NAICS 311710 at 81 FR 4469; January 26, 2016). For purposes of rulemaking, NMFS is also applying the seafood processor standard to catcher processors because whiting C/Ps earn the majority of the revenue from processed seafood product.

Description and Estimate of the Number of Small Entities to Which the Rule Applies, and Estimate of Economic Impacts by Entity Size and Industry

This proposed rule would establish the coastwide and U.S. TAC and affect how Pacific whiting is allocated to the following sectors/programs: Tribal, Shorebased IFQ Program Trawl Fishery, MS Coop Program Whiting At-sea Trawl Fishery, and C/P Coop Program Whiting At-sea Trawl Fishery. The amount of Pacific whiting allocated to these sectors is based on the U.S. TAC.

We expect one tribal entity to fish for Pacific whiting in 2021. Tribes are not considered small entities for the purposes of RFA. Impacts to tribes are nevertheless considered in this analysis.

As of January 2021, the Shorebased IFQ Program is composed of 166 Quota Share permits/accounts (134 of which were allocated whiting quota pounds), and 35 first receivers, one of which is designated as whiting-only receivers and 11 that may receive both whiting and non-whiting.

These regulations also directly affect participants in the MS Co-op Program, a general term to describe the limited access program that applies to eligible harvesters and processors in the MS sector of the Pacific whiting at-sea trawl fishery. This program consists of six MS processor permits, and a catcher vessel

fleet currently composed of a single co-op, with 34 Mothership/Catcher Vessel (MS/CV) endorsed permits (with three permits each having two catch history assignments).

These regulations also directly affect the C/P Co-op Program, composed of 10 C/P endorsed permits owned by three companies that have formed a single coop. These co-ops are considered large entities from several perspectives; they have participants that are large entities, and have in total more than 750 employees worldwide including affiliates.

Although there are three non-tribal sectors, many companies participate in two sectors and some participate in all three sectors. As part of the permit application processes for the non-tribal fisheries, based on a review of the Small Business Administration size criteria, permit applicants are asked if they considered themselves a “small” business, and they are asked to provide detailed ownership information. Data on employment worldwide, including affiliates, are not available for these companies, which generally operate in Alaska as well as the West Coast and may have operations in other countries as well. NMFS has limited entry permit holders self-report size status. For 2021, all 10 CP permits reported they are not small businesses, as did 8 mothership catcher vessels. There is substantial, but not complete overlap between permit ownership and vessel ownership so there may be a small number of additional small entity vessel owners who will be impacted by this rule. After accounting for cross participation, multiple Quota Share account holders, and affiliation through ownership, NMFS estimates that there are 103 non-tribal entities directly affected by these proposed regulations, 89 of which are considered “small” businesses.

This rule will allocate Pacific whiting between tribal and non-tribal harvesters (a mixture of small and large businesses). Tribal fisheries consist of a mixture of fishing activities that are similar to the activities that non-tribal fisheries undertake. Tribal harvests may be delivered to both shoreside plants and motherships for processing. These processing facilities also process fish harvested by non-tribal fisheries. The effect of the tribal allocation on non-tribal fisheries will depend on the level of tribal harvests relative to their allocation and the reapportionment process. If the tribes do not harvest their entire allocation, there are opportunities during the year to reapportion unharvested tribal amounts to the non-tribal fleets. For example, in 2020 NMFS reapportioned 40,000 mt of the original

74,342 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. The reapportioning process allows unharvested tribal allocations of Pacific whiting to be fished by the non-tribal fleets, benefitting both large and small entities. The revised Pacific whiting allocations for 2020 following the reapportionment were: Tribal 34,342 mt, C/P Co-op 132,249 mt; MS Co-op 93,352 mt; and Shorebased IFQ Program 163,367 mt.

The prices for Pacific whiting are largely determined by the world market because most of the Pacific whiting harvested in the United States is exported. The U.S. Pacific whiting TAC is highly variable, as have subsequent harvests and ex-vessel revenues. For the years 2016 to 2020, the total Pacific whiting fishery (tribal and non-tribal) averaged harvests of approximately 303,782 mt annually. The 2020 U.S. non-tribal fishery had a Pacific whiting catch of approximately 287,400 mt, and the tribal fishery landed less than 200 mt.

Impacts to the U.S. non-tribal fishery are measured with an estimate of ex-vessel revenue. The NMFS proposed adjusted coastwide TAC of 500,000 mt would result in an adjusted U.S. TAC of 369,400 mt and U.S. non-tribal harvest guideline of 304,005 mt. Using the 2020 weighted-average non-tribal Oregon shoreside price per metric ton (e.g. \$154 per metric ton), the proposed TAC is estimated to result in an ex-vessel revenue of \$46.9 million for the U.S. non-tribal fishing fleet. The low and high range of the coastwide TAC NMFS considered (475,000 mt and 565,191 mt, respectively) is estimated to result in projected ex-vessel revenue range of \$44.5 million to \$53 million, respectively.

Impacts to tribal catcher vessels who elect to participate in the tribal fishery are measured with an estimate of ex-vessel revenue. In lieu of more complete information on tribal deliveries, total ex-vessel revenue is estimated with the 2020 average shoreside ex-vessel price of Pacific whiting, which was \$154 per mt. At that price, the proposed 2020 tribal allocation of 64,645 mt would have an ex-vessel value of \$10 million.

A Description of Any Significant Alternatives to the Proposed Rule That Accomplish the Stated Objectives of Applicable Statutes and That Minimize Any Significant Economic Impact of the Proposed Rule on Small Entities

NMFS considered a “No Action” alternative as well as a range of alternatives for setting the Pacific whiting coastwide TAC. NMFS considered setting the coastwide TAC between 475,000 mt to 565,191 mt. A coastwide TAC at the bottom of the range (475,000 mt) may provide less economic opportunity for 2021 as compared to the TAC proposed in this rule (a coastwide TAC of 500,000 mt). A higher coastwide TAC of 565,191 mt may offer an increased economic opportunity for 2021 as compared to the TAC proposed in this rule. However, the 2021 stock assessment projections indicate this higher catch levels may result in near-term stock biomass declines below target levels. This is contrary to the Whiting Act and Agreement, which requires sustainable management of the Pacific whiting resource. Under the no action alternative, NMFS would not set a coastwide TAC, which would not fulfill NMFS’ responsibility to manage the U.S. fishery. Therefore this alternative received no further consideration.

NMFS considered two alternatives for the Pacific whiting tribal allocation: The “No Action” and the “Proposed Action.” NMFS did not consider a broader range of alternatives to the proposed tribal allocation because the tribal allocation is a percent of the adjusted U.S. TAC and 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 Proposed Action alternative, NMFS proposes to set the tribal allocation percentage at 17.5 percent, as requested by the Tribes. This would yield a tribal allocation of 64,645 mt for 2021. 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.

Under the no action alternative, NMFS would not make an allocation to the tribal sector. This alternative was

considered, but the regulatory framework provides for a tribal allocation on an annual basis only. Therefore, the no action alternative would result in no allocation of Pacific whiting to the tribal sector in 2021, 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 in 2021, this alternative received no further consideration.

Regulatory Flexibility Act Determination of No Significant Impact

NMFS determined this proposed rule would not adversely affect small entities. The reapportioning process allows unharvested tribal allocations of Pacific whiting, fished by small entities, 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. See **ADDRESSES**.

This proposed rule contains no information collection requirements under the Paperwork Reduction Act of 1995.

No Federal rules have been identified that duplicate, overlap, or conflict with this action.

List of Subjects in 50 CFR Part 660

Fisheries, Fishing, Indian Fisheries.

Dated: April 26, 2021.

Samuel D. Rauch, III,
Deputy Assistant Administrator for
Regulatory Programs, National Marine
Fisheries Service.

For the reasons set out in the preamble, 50 CFR part 660 is proposed to be amended as follows:

PART 660—FISHERIES OFF WEST COAST STATES

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

Authority: 16 U.S.C. 1801 *et seq.*, 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 2021 will be 64,645 mt.

* * * * *

- 3. Revise Table 1a to part 660, subpart C–2021, to read as follows:

TABLE 1a TO PART 660, SUBPART C—2021, SPECIFICATIONS OF OFL, ABC, ACL, ACT AND FISHERY HG (Weights in Metric Tons) CAPITALIZED STOCKS ARE REBUILDING

Stocks	Area	OFL	ABC	ACL ^{a//}	Fishery HG ^{b//}
Yelloweye Rockfish ^{c/}	Coastwide	97	83	50	41.2
Arrowtooth Flounder ^{d/}	Coastwide	13,551	9,933	9,933	7,837.9
Big Skate ^{e/}	Coastwide	1,690	1,477	1,477	1,419.7
Black Rockfish ^{f/}	California (S of 42° N lat.)	379	348	348	345.7
Black Rockfish ^{g/}	Washington (N of 46°16' N lat.)	319	293	293	274.9
Bocaccio ^{h/}	S of 40°10' N lat	1,887	1,748	1,748	1,700.2
Cabazon ^{i/}	California (S of 42° N lat.)	225	210	210	208.7
California Scorpionfish ^{j/}	S of 34°27' N lat	319	291	291	287.1
Canary Rockfish ^{k/}	Coastwide	1,459	1,338	1,338	1,268.6
Chilipepper ^{l/}	S of 40°10' N lat	2,571	2,358	2,358	2,260.3
Cowcod ^{m/}	S of 40°10' N lat	114	84	84	72.8
Cowcod	(Conception)	95	72	NA	NA
Cowcod	(Monterey)	19	11	NA	NA
Darkblotched Rockfish ^{n/}	Coastwide	953	882	882	862.9
Dover Sole ^{o/}	Coastwide	93,547	84,192	50,000	48,402.8
English Sole ^{p/}	Coastwide	11,107	9,175	9,175	8,924.37
Lingcod ^{q/}	N of 40°10' N lat	5,816	5,386	5,369	5,090.6
Lingcod ^{r/}	S of 40°10' N lat	1,255	1,162	1,102	1,089
Longnose Skate ^{s/}	Coastwide	2,086	1,823	1,823	1,571.6
Longspine Thornyhead ^{t/}	N of 34°27' N lat	5,097	3,466	2,634	2,580.3
Longspine Thornyhead ^{u/}	S of 34°27' N lat			832	829.8
Pacific Cod ^{v/}	Coastwide	3,200	1,926	1,600	1,093.9
Pacific Ocean Perch ^{w/}	N of 40°10' N lat	4,497	3,854	3,854	3,829.3
Pacific Whiting ^{x/}	Coastwide	565,191	(x/)	(x/)	304,005
Petrale Sole ^{y/}	Coastwide	4,402	4,115	4,115	3,727.5
Sablefish ^{z/}	N of 36° N lat	9,402	8,791	6,892	See Table 1c
Sablefish ^{aa/}	S of 36° N lat			1,899	1,871.6
Shortspine Thornyhead ^{bb/}	N of 34°27' N lat	3,211	2,183	1,428	1,349.6
Shortspine Thornyhead ^{cc/}	S of 34°27' N lat			756	749.3
Spiny Dogfish ^{dd/}	Coastwide	2,479	1,621	1,621	1,277
Splitnose ^{ee/}	S of 40°10' N lat	1,868	1,666	1,666	1,647.6
Stary Flounder ^{ff/}	Coastwide	652	392	392	343.6
Widow Rockfish ^{gg/}	Coastwide	15,749	14,725	14,725	14,476.7
Yellowtail Rockfish ^{hh/}	N of 40°10' N lat	6,534	6,050	6,050	5,012.5

Stock Complexes

Blue/Deacon/Black Rockfish ^{ii/}	Oregon	676	603	603	600.7
Cabazon/Kelp Greenling ^{ij/}	Oregon	215	198	198	197.8
Cabazon/Kelp Greenling ^{kk/}	Washington	25	20	20	18.0
Nearshore Rockfish North ^{ll/}	N of 40°10' N lat	94	79	79	75.9
Nearshore Rockfish South ^{mm/}	S of 40°10' N lat	1,232	1,016	1,016	1,011.6
Other Fish ^{nn/}	Coastwide	286	223	223	201.7
Other Flatfish ^{oo/}	Coastwide	7,714	4,802	4,802	4,581.1
Shelf Rockfish North ^{pp/}	N of 40°10' N lat	1,888	1,511	1,511	1,438.7
Shelf Rockfish South ^{qq/}	S of 40°10' N lat	1,842	1,439	1,438	1,305.2
Slope Rockfish North ^{rr/}	N of 40°10' N lat	1,862	1,595	1,595	1,529.1
Slope Rockfish South ^{ss/}	S of 40°10' N lat	873	709	709	670.1

^{a/} Annual catch limits (ACLs), annual catch targets (ACTs) and harvest guidelines (HGs) are specified as total catch values.

^{b/} 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.

^{c/} Yelloweye rockfish. The 50 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. 8.85 mt is deducted from the ACL to accommodate the Tribal fishery (5 mt), EFP catch (0.24 mt), research (2.92 mt), and the incidental open access fishery (0.69 mt) resulting in a fishery HG of 41.2 mt. The non-trawl HG is 37.9 mt. The combined non-nearshore/nearshore HG is 7.9 mt. Recreational HGs are: 9.7 mt (Washington); 8.8 mt (Oregon); and 11.4 mt (California). In addition, the non-trawl ACT is 29.5, and the combined non-nearshore/nearshore ACT is 6.2 mt. Recreational ACTs are: 7.5 mt (Washington), 6.9 (Oregon), and 8.9 mt (California).

^{d/} Arrowtooth flounder. 2,095.08 mt is deducted from the ACL to accommodate the Tribal fishery (2,041 mt), EFP fishing (0.1 mt), research (12.98 mt) and incidental open access (41 mt), resulting in a fishery HG of 7,837.9 mt.

^{e/} Big skate. 57.31 mt is deducted from the ACL to accommodate the Tribal fishery (15 mt), EFP fishing (0.1 mt), and research catch (5.49 mt), and incidental open access (36.72 mt), resulting in a fishery HG of 1,419.7 mt.

^{f/} Black rockfish (California). 2.26 mt is deducted from the ACL to accommodate EFP fishing (1.0 mt), research (0.08 mt), and incidental open access (1.18 mt), resulting in a fishery HG of 345.7 mt.

^{g/} 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 274.9 mt.

^{h/} Bocaccio south of 40°10' N lat. 47.82 mt is deducted from the ACL to accommodate EFP catch (40 mt), research (5.6 mt), and incidental open access (2.22 mt), resulting in a fishery HG of 1,700.2 mt. The combined non-nearshore and nearshore HG is 320.2 mt. The California recreational fishery HG is 716.2 mt.

^{i/} Cabazon (California). 1.28 mt is deducted from the ACL to accommodate EFP (1 mt), research (0.02 mt), and incidental open access fishery (0.26 mt), resulting in a fishery HG of 208.7 mt.

^{j/} California scorpionfish south of 34°27' N lat. 3.89 mt is deducted from the ACL to accommodate research (0.18 mt) and the incidental open access fishery (3.71 mt), resulting in a fishery HG of 287.1 mt.

^{kl} Canary rockfish. 69.39 mt is deducted from the ACL to accommodate the Tribal fishery (50 mt), EFP catch (8 mt), and research catch (10.08 mt), and the incidental open access fishery (1.31 mt), resulting in a fishery HG of 1,268.6 mt. The combined nearshore/non-nearshore HG is 126.6 mt. Recreational HGs are: 43.3 mt (Washington); 65.1 mt (Oregon); and 116.7 mt (California).

^{lv} Chilipepper rockfish south of 40°10' N lat. 97.7 mt is deducted from the ACL to accommodate EFP fishing (70 mt), research (14.04 mt), the incidental open access fishery (13.66 mt), resulting in a fishery HG of 2,260.3 mt.

^{mw} Cowcod south of 40°10' N lat. 11.17 mt is deducted from the ACL to accommodate EFP fishing (1.0 mt), research (10 mt), and incidental open access (0.17 mt), resulting in a fishery harvest guideline of 72.8 mt. A single ACT of 50 mt is being set for the Conception and Monterey areas combined.

^{nv} Darkblotched rockfish. 19.06 mt is deducted from the ACL to accommodate the Tribal fishery (0.2 mt), EFP catch (0.6 mt), and research catch (8.46 mt), and the incidental open access fishery (9.8 mt) resulting in a fishery HG of 862.9 mt.

^{ow} Dover sole. 1,597.21 mt is deducted from the ACL to accommodate the Tribal fishery (1,497 mt), EFP fishing (0.1 mt), research (50.84 mt), and incidental open access (49.27 mt), resulting in a fishery HG of 48,402.8 mt.

^{pw} English sole. 250.63 mt is deducted from the ACL to accommodate the Tribal fishery (200 mt), EFP fishing (0.1 mt), research (8.01 mt), and the incidental open access fishery (42.52 mt), resulting in a fishery HG of 8,924.37 mt.

^{qv} Lingcod north of 40°10' N lat. 278.38 mt is deducted from the ACL for the Tribal fishery (250 mt), EFP catch (0.1 mt), research (16.6 mt), and the incidental open access fishery (11.68 mt) resulting in a fishery HG of 5,090.6 mt.

^{rv} Lingcod south of 40°10' N lat. 13 mt is deducted from the ACL to accommodate EFP catch (1.5 mt), research (3.19 mt), and incidental open access fishery (8.31 mt), resulting in a fishery HG of 1,089 mt.

^{sv} Longnose skate. 251.40 mt is deducted from the ACL to accommodate the Tribal fishery (220 mt), EFP catch (0.1 mt), and research catch (12.46 mt), and incidental open access fishery (18.84 mt), resulting in a fishery HG of 1,571.6 mt.

^{tv} Longspine thornyhead north of 34°27' N lat. 53.71 mt is deducted from the ACL to accommodate the Tribal fishery (30 mt), research catch (17.49 mt), and the incidental open access fishery (6.22 mt), resulting in a fishery HG of 2,580.3 mt.

^{uv} Longspine thornyhead south of 34°27' N lat. 2.24 mt is deducted from the ACL to accommodate research catch (1.41 mt) and the incidental open access fishery (0.8 mt), resulting in a fishery HG of 829.6 mt.

^{vw} Pacific cod. 506.1 mt is deducted from the ACL to accommodate the Tribal fishery (500 mt), EFP fishing (0.1 mt), research catch (5.47 mt), and the incidental open access fishery (0.53 mt), resulting in a fishery HG of 1,093.9 mt.

^{xw} Pacific ocean perch north of 40°10' N lat. 24.73 mt is deducted from the ACL to accommodate the Tribal fishery (9.2 mt), EFP fishing (0.1 mt), research catch (5.39 mt), and the incidental open access fishery (10.04 mt), resulting in a fishery HG of 3,829.3 mt.

^{xy} The 2021 OFL of 565,191 mt is based on the 2021 assessment with an F40 percent of FMSY proxy. The proposed 2021 coastwide adjusted Total Allowable Catch (TAC) is 500,000 mt. The U.S. TAC is 73.88 percent of the coastwide TAC. The proposed 2021 adjusted U.S. TAC is 369,400 mt (314,320 mt unadjusted TAC + 55,080 mt carryover adjustment). From the adjusted U.S. TAC, 64,645 mt is deducted to accommodate the Tribal fishery, and 750 mt is deducted to accommodate research and bycatch in other fisheries, resulting in a 2021 fishery HG of 304,005 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.

^{yz} Petrale sole. 387.54 mt is deducted from the ACL to accommodate the Tribal fishery (350 mt), EFP catch (0.1 mt), research (24.14 mt), and the incidental open access fishery (13.3 mt), resulting in a fishery HG of 3,727.5 mt.

^{zz} Sablefish north of 36° N lat. This coastwide ACL value is not specified in regulations. The coastwide ACL value is apportioned north and south of 36° N lat., using a rolling 5-year average estimated swept area biomass from the NMFS NWFSC trawl survey, with 78.4 percent apportioned north of 36° N lat. and 21.6 percent apportioned south of 36° N lat. The northern ACL is 6,892 mt and is reduced by 689.2 mt for the Tribal allocation (10 percent of the ACL north of 36° N lat.). The 689.2 mt Tribal allocation is reduced by 1.7 percent to account for discard mortality. Detailed sablefish allocations are shown in Table 1c.

^{aaa} Sablefish south of 36° N lat. The ACL for the area south of 36° N lat. is 1,899 mt (21.6 percent of the calculated coastwide ACL value). 27.4 mt is deducted from the ACL to accommodate research (2.40 mt) and the incidental open access fishery (25 mt), resulting in a fishery HG of 1,871.6 mt.

^{bbb} Shortspine thornyhead north of 34°27' N lat. 78.4 mt is deducted from the ACL to accommodate the Tribal fishery (50 mt), EFP catch (0.1 mt), and research catch (10.48 mt), and the incidental open access fishery (17.82 mt), resulting in a fishery HG of 1,349.6 mt for the area north of 34°27' N lat.

^{ccc} Shortspine thornyhead south of 34°27' N lat. 6.71 mt is deducted from the ACL to accommodate research catch (0.71 mt) and the incidental open access fishery (6 mt), resulting in a fishery HG of 749.3 mt for the area south of 34°27' N lat.

^{ddd} Spiny dogfish. 344 mt is deducted from the ACL to accommodate the Tribal fishery (275 mt), EFP catch (1.1 mt), research (34.27 mt), and the incidental open access fishery (33.63 mt), resulting in a fishery HG of 1,277 mt.

^{eee} Splitnose rockfish south of 40°10' N lat. 18.42 mt is deducted from the ACL to accommodate EFP catch (1.5 mt), research (11.17 mt), and the incidental open access fishery (5.75 mt), resulting in a fishery HG of 1,647.6 mt.

^{fff} Starry flounder. 48.38 mt is deducted from the ACL to accommodate the Tribal fishery (2 mt), EFP catch (0.1 mt), research (0.57 mt), and the incidental open access fishery (45.71 mt), resulting in a fishery HG of 343.6 mt.

^{ggg} Widow rockfish. 248.32 mt is deducted from the ACL to accommodate the Tribal fishery (200 mt), EFP catch (28 mt), research (17.27 mt), and the incidental open access fishery (3.05 mt), resulting in a fishery HG of 14,476.7 mt.

^{hhh} Yellowtail rockfish north of 40°10' N lat. 1,047.55 mt is deducted from the ACL to accommodate the Tribal fishery (1,000 mt), EFP catch (10 mt), research (20.55 mt), and the incidental open access fishery (7 mt), resulting in a fishery HG of 5,012.5 mt.

ⁱⁱⁱ Black rockfish/Blue rockfish/Deacon rockfish (Oregon). 2.32 mt is deducted from the ACL to accommodate the EFP catch (0.5 mt), research (0.08 mt), and the incidental open access fishery (1.74 mt), resulting in a fishery HG of 600.7 mt.

^{jjj} Cabezon/kelp greenling (Oregon). 0.21 mt is deducted from the ACL to accommodate EFP catch (0.1 mt), research (0.05 mt), and the incidental open access fishery (0.06 mt), resulting in a fishery HG of 197.8 mt.

^{kkk} Cabezon/kelp greenling (Washington). 2 mt is deducted from the ACL to accommodate the Tribal fishery, therefore the fishery HG is 18 mt.

^{lll} Nearshore Rockfish north of 40°10' N lat. 3.08 mt is deducted from the ACL to accommodate the Tribal fishery (1.5 mt), EFP catch (0.5 mt), research (0.47 mt), and the incidental open access fishery (0.61 mt), resulting in a fishery HG of 75.9 mt. State specific HGs are Washington (18.4 mt), Oregon (22.7 mt), and California (37.6 mt).

^{mmm} Nearshore Rockfish south of 40°10' N lat. 4.42 mt is deducted from the ACL to accommodate research catch (2.68 mt) and the incidental open access fishery (2.68 mt), resulting in a fishery HG of 1,011.6 mt.

ⁿⁿⁿ Other Fish. The Other Fish complex is comprised of kelp greenling off California and leopard shark coastwide. 21.34 mt is deducted from the ACL to accommodate EFP catch (0.1 mt), research (6.29 mt), and the incidental open access fishery (14.95 mt), resulting in a fishery HG of 201.7 mt.

^{ooo} 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. 220.89 mt is deducted from the ACL to accommodate the Tribal fishery (60 mt), EFP catch (0.1 mt), research (23.63 mt), and the incidental open access fishery (137.16 mt), resulting in a fishery HG of 4,581.1 mt.

^{ppp} Shelf Rockfish north of 40°10' N lat. 72.44 mt is deducted from the ACL to accommodate the Tribal fishery (30 mt), EFP catch (1.5 mt), research (15.32 mt), and the incidental open access fishery (25.62 mt), resulting in a fishery HG of 1,438.66 mt.

^{qqq} Shelf Rockfish south of 40°10' N lat. 132.77 mt is deducted from the ACL to accommodate EFP catch (50 mt), research catch (15.1 mt), and the incidental open access fishery (67.67 mt) resulting in a fishery HG of 1,305.2 mt.

^{rrr} Slope Rockfish north of 40°10' N lat. 65.89 mt is deducted from the ACL to accommodate the Tribal fishery (36 mt), EFP catch (0.5 mt), and research (10.51 mt), and the incidental open access fishery (18.88 mt), resulting in a fishery HG of 1,529.1 mt.

^{ss/} Slope Rockfish south of 40°10' N lat. 38.94 mt is deducted from the ACL to accommodate EFP catch (1 mt), and research (18.21 mt), and the incidental open access fishery (19.73 mt), resulting in a fishery HG of 670.1 mt. Blackgill rockfish has a stock-specific HG for the entire groundfish fishery south of 40°10' N lat. set equal to the species' contribution to the ACL. Harvest of blackgill rockfish in all groundfish fisheries south of 40°10' N lat. counts against this HG of 176.5 mt.

■ 4. Revise Table 1b to part 660, subpart C, to read as follows:

TABLE 1b TO PART 660, SUBPART C—2021, ALLOCATIONS BY SPECIES OR SPECIES GROUP
[Weight in metric tons]

Stocks/stock complexes	Area	Fishery HG or ACT ^{a/b/}	Trawl		Non-trawl	
			%	Mt	%	Mt
Yelloweye Rockfish ^{a/}	Coastwide	41.2	8	3.3	92	37.9
Arrowtooth flounder	Coastwide	7,837.9	95	7,446	5	391.9
Big skate ^{a/}	Coastwide	1,419.7	95	1,348.7	5	71
Bocaccio ^{a/}	S of 40°10' N lat	1,700.2	39	663.8	60	1,036.4
Canary rockfish ^{a/}	Coastwide	1,268.6	72	917	28	351.6
Chilipepper rockfish	S of 40°10' N lat	2,260.3	75	1,695.2	25	565.1
Cowcod ^{a/}	S of 40°10' N lat	50	36	18	64	32
Darkblotched rockfish	Coastwide	862.9	95	819.8	5	43.1
Dover sole	Coastwide	48,402.8	95	45,982.7	5	2,420.1
English sole	Coastwide	8,924.4	95	8,478.2	5	446.2
Lingcod	N of 40°10' N lat	5,090.6	45	2,290.8	55	2,799.8
Lingcod ^{a/}	S of 40°10' N lat	1,089	40	435.6	60	653.4
Longnose skate ^{a/}	Coastwide	1,571.6	90	1,414.4	10	157.2
Longspine thornyhead	N of 34°27' N lat	2,580.3	95	2,451.3	5	129
Pacific cod	Coastwide	1,093.9	95	1,039.2	5	54.7
Pacific ocean perch	N of 40°10' N lat	3,829.3	95	3,637.8	5	191.5
Pacific whiting ^{c/}	Coastwide	304,005	100	304,005	0	0
Petrale sole ^{a/}	Coastwide	3,727.9		3,697.9		30
Sablefish	N of 36° N lat	NA	See Table 1c			
Sablefish	S of 36° N lat	1,861.6	42	782.3	58	1,080.3
Shortspine thornyhead	N of 34°27' N lat	1,349.6	95	1,282.1	5	67.5
Shortspine thornyhead	S of 34°27' N lat	749.3		50		699.3
Splitnose rockfish	S of 40°10' N lat	1,647.6	95	1,565.2	5	82.4
Starry flounder	Coastwide	343.6	50	171.8	50	171.8
Widow rockfish ^{a/}	Coastwide	14,476.7		14,076.7		400
Yellowtail rockfish	N of 40°10' N lat	5,012.5	88	4,411.0	12	601.5
Other Flatfish	Coastwide	4581.1	90	4,123	10	458.1
Shelf Rockfish ^{a/}	N of 40°10' N lat	1,438.7	60.2	866.1	39.8	572.6
Shelf Rockfish ^{a/}	S of 40°10' N lat	1,305.2	12.2	159.2	87.8	1,146
Slope Rockfish	N of 40°10' N lat	1,529.1	81	1,238.6	19	290.5
Slope Rockfish ^{a/}	S of 40°10' N lat	670.1		526.4		143.7

^{a/} Allocations decided through the biennial specification process.

^{b/} The cowcod fishery harvest guideline is further reduced to an ACT of 50 mt. The non-trawl allocation is further split 50:50 between the commercial and recreational sectors.

^{c/} Consistent with regulations at § 660.55(i)(2), the commercial harvest guideline for Pacific whiting is allocated as follows: 34 percent for the C/P Coop Program; 24 percent for the MS Coop Program; and 42 percent for the Shorebased IFQ Program. No more than 5 percent of the Shorebased IFQ Program allocation may be taken and retained south of 42° N lat. before the start of the primary Pacific whiting season north of 42° N lat.

■ 5. 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	2021 Shorebased trawl allocation (mt)	2022 Shorebased trawl allocation (mt)
Yelloweye Rockfish	Coastwide	3.3	3.4
Arrowtooth flounder	Coastwide	7,376.02	5974.77
Bocaccio	South of 40°10' N lat	663.75	654.38
Canary rockfish	Coastwide	880.96	858.56
Chilipepper	South of 40°10' N lat	1,695.2	1,621
Cowcod	South of 40°10' N lat	18	18

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

IFQ species	Area	2021 Shorebased trawl allocation (mt)	2022 Shorebased trawl allocation (mt)
Darkblotched rockfish	Coastwide	743.39	694.94
Dover sole	Coastwide	45,972.65	45,972.65
English sole	Coastwide	8,478.2	8,407.9
Lingcod	North of 40°10' N lat	2,275.78	2,090.83
Lingcod	South of 40°10' N lat	435.6	463.6
Longspine thornyhead	North of 34°27' N lat	2,451.28	2,278.38
Pacific cod	Coastwide	1,039.21	1,039.21
Pacific halibut (IBQ)	North of 40°10' N lat	69.6	69.6
Pacific ocean perch	North of 40°10' N lat	3,337.74	3,201.94
Pacific whiting	Coastwide	127,682	TBD
Petrale sole	Coastwide	3,692.9	3,237.5
Sablefish	North of 36° N lat	3,139.59	2,985.42
Sablefish	South of 36° N lat	786	748
Shortspine thornyhead	North of 34°27' N lat	1,212.12	1,178.87
Shortspine thornyhead	South of 34°27' N lat	50	50
Splitnose rockfish	South of 40°10' N lat	1,565.20	1,531.00
Starry flounder	Coastwide	171.8	171.8
Widow rockfish	Coastwide	13,600.68	12,663.68
Yellowtail rockfish	North of 40°10' N lat	4,091.13	3,898.4
Other Flatfish complex	Coastwide	4,088.00	4,120.40
Shelf Rockfish complex	North of 40°10' N lat	831.07	794.56
Shelf Rockfish complex	South of 40°10' N lat	159.24	158.02
Slope Rockfish complex	North of 40°10' N lat	938.58	916.71
Slope Rockfish complex	South of 40°10' N lat	526.4	523.9

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