

**DEPARTMENT OF TRANSPORTATION****Federal Railroad Administration****49 CFR Part 234**

[DOCKET No. FRA–2018–0096, Notice No. 3]

RIN 2130–AC72

**State Highway-Rail Grade Crossing Action Plans; Correction**

**AGENCY:** Federal Railroad Administration (FRA), Department of Transportation (DOT).

**ACTION:** Correcting amendment.

**SUMMARY:** On December 14, 2020, FRA published a final rule amending FRA's grade crossing safety standards. In preparing the final rule for publication, an error was made that resulted in a cross-reference to the wrong paragraph. FRA is correcting that inadvertent error.

**DATES:** Effective on February 23, 2021.

**FOR FURTHER INFORMATION CONTACT:** Kathryn Gresham, Attorney Adviser, U.S. Department of Transportation, Federal Railroad Administration, Office of the Chief Counsel (email: [kathryn.gresham@dot.gov](mailto:kathryn.gresham@dot.gov), telephone: 202–493–6063).

**SUPPLEMENTARY INFORMATION:** In § 234.11 of FRA's December 14, 2020, final rule requiring States and the District of Columbia to develop and implement highway-rail grade crossing action plans, paragraph (d) erroneously referenced paragraph (d)(2) for a list of 10 States required to submit their updated highway-rail grade crossing action plans and implementation reports electronically through FRA's website in Portable Document Format (PDF). 85 FR 80648, 80660. The referenced list is actually contained in paragraph (c)(3) of § 234.11; there is no paragraph (d)(2) in § 234.11. Therefore, FRA is issuing this correction amending paragraph § 234.11(d) to refer to the actual regulatory provision (§ 234.11(c)(3)) that contains the list of 10 States required to submit their updated highway-rail grade crossing action plans and implementation reports to FRA. FRA is proceeding directly to a final rule as it finds public notice and comment to be unnecessary per the "good cause" exemption in 5 U.S.C. 553(b)(3)(B) for this clearly inadvertent error.

**List of Subjects in 49 CFR Part 234**

Highway safety, Penalties, Railroad safety, Reporting and recordkeeping requirements, State and local governments.

**The Final Rule**

For the reasons discussed in the preamble, FRA amends part 234 of chapter II, subtitle B of title 49, Code of Federal Regulations, with the following correcting amendment:

**PART 234—GRADE CROSSING SAFETY**

■ 1. The authority citation for part 234 continues to read as follows:

**Authority:** 49 U.S.C. 20103, 20107, 20152, 20160, 21301, 21304, 21311; Sec. 11401, Div. A, Pub. L. 114–94, 129 Stat. 1679 (49 U.S.C. 22501 note); and 49 CFR 1.89.

■ 2. In § 234.11, revise paragraph (d) to read as follows:

**§ 234.11 State highway-rail grade crossing action plans.**

\* \* \* \* \*

(d) *Electronic submission of updated Action Plan and implementation report.* Each of the 10 States listed in paragraph (c)(3) of this section shall submit its updated highway-rail grade crossing action plan and implementation report electronically through FRA's website in PDF form.

\* \* \* \* \*

Issued in Washington, DC.

**Brett A. Jortland,**

*Acting Chief Counsel.*

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**BILLING CODE 4910–06–P**

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

[Docket No. 210205–0012]

RIN 0648–BJ50

**Magnuson-Stevens Act Provisions; Fisheries Off West Coast States; Pacific Coast Groundfish Fishery; Salmon Bycatch Minimization**

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

**ACTION:** Final rule.

**SUMMARY:** This rule implements salmon bycatch minimization measures to minimize incidental take of Endangered Species Act-listed salmon by vessels in the Pacific Coast groundfish fishery. The rule establishes additional management tools to minimize incidental Chinook and coho salmon bycatch to keep fishery sectors within guidelines,

establishes rules to allow industry to access the Chinook salmon bycatch reserve, and creates Chinook salmon bycatch closure thresholds for the trawl fishery. This rule fulfills the terms and conditions of a 2017 National Marine Fisheries Service Biological Opinion. This rule is intended to promote the goals and objectives of the Magnuson-Stevens Fishery Conservation and Management Act, the Pacific Coast Groundfish Fishery Management Plan, and other applicable laws, including the Endangered Species Act.

**DATES:** This final rule is effective March 25, 2021.

**ADDRESSES:** This rule is accessible via the Office of the Federal Register website at <https://www.federalregister.gov/>. Background information and documents, including a Biological Opinion and a Regulatory Impact Review (RIR)/Initial Regulatory Flexibility Analysis (IRFA) (Analysis), which addresses the statutory requirements of the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act), Executive Order 12866, and the Regulatory Flexibility Act (RFA), are available at the NMFS West Coast Region website at <https://www.fisheries.noaa.gov/region/west-coast> and at the Pacific Fishery Management Council's (Council) website at <http://www.pcouncil.org>.

Written comments regarding the burden-hour estimates or other aspects of the collection-of-information requirements contained in this final rule may be submitted to Barry A. Thom, Regional Administrator, West Coast Region, NMFS, 7600 Sand Point Way NE, Seattle, WA 98115–0070. Attn: Brian Hooper, and to [www.reginfo.gov/public/do/PRAMain](mailto:www.reginfo.gov/public/do/PRAMain).

**FOR FURTHER INFORMATION CONTACT:** Brian Hooper, phone: (206) 526–6117, or email: [brian.hooper@noaa.gov](mailto:brian.hooper@noaa.gov).

**SUPPLEMENTARY INFORMATION:****Background**

The purpose of this final rule is to minimize interactions between Endangered Species Act (ESA)-listed salmon species and Pacific Coast groundfish fishing gear. On the West Coast, vessels fishing under the Pacific Coast Groundfish Fishery Management Plan (FMP) use gear types (e.g. midwater and bottom trawl, fixed gear, and hook-and-line) that interact with listed Evolutionary Significant Units (ESUs) of coho and Chinook salmon. The seasonality and geographic extent, including fishing depth and north/south distribution of the different target strategies and gear types, result in

different effects on different ESUs of these salmonids.

On December 11, 2017, NMFS issued a Biological Opinion on the impact of the NMFS authorization of the groundfish fishery on ESA-listed salmonids (see **ADDRESSES** for electronic access information). The Incidental Take Statement (ITS) in the Biological Opinion sets forth terms and conditions. Compliance with those terms and conditions provides an exemption to the prohibition on take of listed species in Section 9 of the ESA. The components of the Biological Opinion are summarized in the proposed rule for 2019–20 Pacific Coast groundfish harvest specifications and management measures (83 FR 47416; September 19, 2018). NMFS and the Council implemented a number of ITS terms and conditions in the final rule for 2019–20 Pacific Coast groundfish harvest specifications and management measures (83 FR 63970; December 12, 2018).

To address the remaining terms and conditions (2.b and 3.a), the Council developed new incidental salmon bycatch minimization tools to allow for timely inseason management of salmon bycatch (term and condition 2.b). The Council also developed regulations regarding the Chinook salmon bycatch reserve and its use (term and condition 3.a).

The Council evaluated the Biological Opinion and analyzed an action to amend the regulations implementing the FMP to address ESA-listed salmon bycatch in the fishery at its November 2018, April 2019, September 2019, and November 2019 meetings. The Council recommended a preferred alternative at its September 2019 meeting and took final action in November 2019. The Council deemed the proposed regulations consistent with and necessary to implement this action in a June 2, 2020, letter from Council Chairman Phil Anderson to NMFS Regional Administrator Barry Thom. NMFS amends the regulations for the Pacific Coast groundfish fishery at 50 CFR part 660 through this final rule to incorporate the Council's recommendation and implement the terms and conditions set forth in the 2017 NMFS Biological Opinion. Additional discussion of the background and rationale for the Council's development of changes to the regulations is included in the proposed rule for this action (85 FR 66519; October 20, 2020) and is not repeated here. Detailed information, including the supporting documentation the Council considered while developing these recommendations, is available at

the Council's website, <http://www.pccouncil.org>.

### **Description of Existing Salmon Bycatch Management in the Pacific Coast Groundfish Fishery**

For purpose of analysis in the Biological Opinion, NMFS divided the groundfish fishery into two groups or "sectors" for the purposes of estimating and analyzing ESA-listed salmon bycatch. This rule will refer to these groups as the whiting sector and non-whiting sector. The whiting sector includes the Pacific Coast treaty Indian vessels that target whiting, as well as non-tribal vessels in the mothership (MS) Coop Program, Catcher/processor (C/P) Coop Program, and Pacific whiting Shorebased individual fishing quota (IFQ) fishery that target whiting. In this rule, the MS Coop Program, the C/P Coop Program and the Pacific whiting IFQ fishery are referred to as "components" of the whiting sector. The non-whiting sector includes the Pacific Coast treaty Indian vessels that target Pacific coast groundfish species other than whiting, as well as non-tribal vessels in the Shoreside trawl, fixed gear, and recreational fisheries that are not accounted for in pre-season salmon modeling. The recreational fisheries not accounted for in pre-season salmon modeling are those occurring outside of the open salmon seasons and the Oregon longleader fishery.

NMFS currently manages Chinook salmon bycatch to guidelines of 11,000 fish for the whiting sector, and 5,500 fish for the non-whiting sector. Fishery sectors may access a 3,500 Chinook salmon bycatch "reserve" upon reaching their Chinook bycatch guideline. NMFS automatically closes all groundfish fisheries once the guidelines plus the reserve are reached (*i.e.*, a total of 20,000 Chinook salmon are caught as bycatch). For accounting purposes, Chinook salmon bycatch accrues to either the whiting sector or non-whiting sector. NMFS monitors Chinook salmon bycatch inseason and will (1) close the whiting sector if that sector catches its guideline limit and the full reserve amount, (2) close the non-whiting sector if that sector catches its guideline limit and the full reserve amount, or (3) close either the whiting or non-whiting sector if either sector reaches its guideline limit when the other sector has already taken the reserve amount (83 FR 63970; December 12, 2018).

NMFS previously established two tools to manage Chinook and coho salmon bycatch in the groundfish fishery through prior rulemakings. These two tools are a Bycatch Reduction

Area (BRA) for midwater trawl vessels at the 200-fathom (fm) (366-meter (m)) depth contour (83 FR 63970, December 12, 2018), and Block Area Closures (BACs) for bottom trawl vessels from shore to the 250-fm (457-m) depth contour (84 FR 63966, November 19, 2019) off Oregon and California. The Council may recommend NMFS implement BRAs and BACs to minimize salmon bycatch through routine management measures, as described in the FMP and regulation at 50 CFR 660.60(c). Additional discussion of existing salmon bycatch management in the groundfish fishery is included in the proposed rule (85 FR 66519; October 20, 2020) and is not repeated here.

### **Additional Management Tools To Minimize ESA-Listed Salmon Bycatch**

This final rule implements additional management tools beyond BRAs and existing BACs, making these tools available to minimize incidental Chinook and coho salmon bycatch to keep fishery sectors within guidelines. These additional tools include: (1) BACs for midwater trawl fisheries; (2) an extension of BACs seaward of the 250-fm (457-m) depth contour for bottom trawl fisheries; and (3) a selective flatfish trawl (SFFT) gear requirement for bottom trawl vessels. These additional management tools apply only to non-tribal fisheries. NMFS expects the tribal fishery managers may implement area management measures to minimize salmon bycatch, as necessary.

When deciding whether to recommend BACs or SFFT gear requirements for NMFS to implement, consistent with the FMP, the Council will consider environmental impacts, including economic impacts, and public comment via the Council process. Depending on the circumstances, NMFS may implement BACs or SFFT gear requirements for a defined period of time, for example, a few months or the remainder of the fishing year, or maintain the closure for an indefinite period of time, for example, until reopened by a subsequent action. NMFS may implement one or more BACs or BACs with SFFT gear requirements, and the size of the BACs or BACs with SFFT gear requirements can vary. A **Federal Register** document will announce the geographic boundaries (described with coordinates in codified regulations) of one or more BACs or BACs with SFFT gear requirements, the effective dates, applicable gear/fishery restrictions, as well as the purpose and rationale. NMFS will also disseminate this information on BACs or BACs with SFFT gear requirements through public

notices and posting on the West Coast Region website (see **ADDRESSES** for electronic access information).

#### *Block Area Closures for Midwater Trawl Fisheries*

This final rule makes BACs available as a routine management measure to minimize salmon bycatch in the limited entry midwater trawl fisheries in the whiting and non-whiting sectors and prevent bycatch from exceeding the guidelines. BACs are size variable spatial closures bounded by latitude lines, defined at 50 CFR 660.11, and depth contour approximations defined at 50 CFR 660.71 through 660.74 ((10 fm (18-m) through 250 fm (457-m)), and § 660.76 (700 fm (1,280-m))). Amendment 28 to the FMP (84 FR 63966; November 19, 2019) established BACs for bottom trawl fisheries. This final rule will prohibit midwater trawl fishing within the BAC boundaries. BACs could be implemented or modified in the Exclusive Economic Zone (EEZ) off Oregon and California for vessels using midwater trawl gear. BACs may be implemented in the EEZ off Washington shoreward of the boundary line approximating the 250-fm (457-m) depth contour for vessels using midwater trawl gear. The Council decided to not include extending the available BAC boundary for vessels fishing with midwater trawl gear beyond 250-fm (457-m) off Washington as part of its recommendation due to the limited operation of midwater trawl vessels in that area.

The BAC tool will allow the Council to recommend and NMFS to implement size variable area closures as a routine management measure to address specific areas of high salmon bycatch rather than large fixed closure areas (e.g., BRA). BACs will allow the midwater trawl fishery to remain open in areas outside of the BACs.

This final rule does not implement specific individual BACs. BACs cannot be used to close an area to any type of fishing other than groundfish bottom or midwater trawling. This rule allows NMFS to close or reopen BACs preseason (e.g., before the start of the fishing year or before the May 15 start of the primary season for Pacific whiting fishery) or inseason. The approach is consistent with existing “routine inseason” frameworks already in the FMP and regulations. If good cause exists under the Administrative Procedure Act to waive notice and comment, a single **Federal Register** document will announce routine inseason BACs approved by NMFS.

#### *Extension of Block Area Closures for Bottom Trawl Fisheries*

This final rule allows NMFS to take routine inseason action to implement BACs seaward of the boundary line approximating the 250-fm (457-m) depth contour to the existing boundary line approximating the 700-fm (1,280-m) Essential Fish Habitat Conservation Area closure for bottom trawl fisheries. The boundary line approximating the 700-fm (1,280-m) depth contour is described at 50 CFR 660.76. This extension of BACs only applies south of 46°16'00" N latitude (in the EEZ off Oregon and California). This final rule allows NMFS to implement and modify BACs, as a routine management measure, in open areas beyond the 250-fm (457-m) boundary in order to minimize incidental salmon bycatch. While salmon bycatch rates are generally low in depths greater than 250-fm (457-m) for trawl fisheries (Section 2.15 of the Analysis—see **ADDRESSES**), salmon distribution is known to extend into those depths. Therefore, the Council recommended, and NMFS is implementing, this extension so as to not constrain management of salmon bycatch in the bottom trawl fishery to the boundary line approximating the 250-fm (457-m) depth contour as the seaward boundary for a BAC. This final rule does not implement individual BACs for bottom trawl fisheries.

#### *Selective Flatfish Trawl Requirement for Bottom Trawl Fisheries*

The use of SFFT gear is expected to reduce bycatch of Chinook salmon (85 FR 66519; October 20, 2020). This final rule makes an SFFT gear requirement available as a routine management measure to address ESA-listed salmon bycatch in the groundfish bottom trawl fisheries. The requirement to fish with SFFT gear could be used in conjunction with a BAC. In other words, if the Council were to recommend and NMFS were to implement a BAC for bottom trawl, it could allow bottom trawl vessels to continue fishing in the BAC if vessels used SFFT gear. The Council recommended, and NMFS is implementing, this action because it provides flexibility for those vessels with SFFT gear.

This final rule does not implement individual SFFT gear requirements. The Council could recommend SFFT gear requirements in the future. This rule allows NMFS to implement SFFT requirements preseason or inseason. If consistent with the FMP, Magnuson-Stevens Act, and other applicable law, NMFS may approve and implement a

Council recommended SFFT gear requirement through a routine management measure, as described in the FMP and regulation at 50 CFR 660.60(c).

This final rule makes changes to the declaration report to allow NMFS Office of Law Enforcement (OLE) to sufficiently monitor and enforce SFFT gear requirements. In the list of potential gear type or sector/monitoring type declarations found at 50 CFR 660.13(d)(4)(iv)(A), NMFS added a declaration for “Limited entry selective flatfish trawl, shorebased IFQ” and modified the existing “Limited entry bottom trawl, shorebased IFQ, not including demersal trawl” declaration to clarify that selective flatfish trawl gear is not included (i.e., “Limited entry bottom trawl, shorebased IFQ, not including demersal trawl or selective flatfish trawl”).

#### **Rules for Access to the Chinook Salmon Reserve**

This final rule establishes the rules or circumstances in which the whiting and non-whiting sectors can access the Chinook salmon bycatch reserve. As described in the Biological Opinion, access to the reserve for additional Chinook salmon bycatch above the sector’s guideline is not guaranteed. The Council recommended that a sector may only access the reserve if NMFS has implemented a management measure to minimize Chinook salmon bycatch in that sector prior to it reaching its Chinook salmon bycatch guideline. The Council recommended, and NMFS is implementing, rules for accessing the reserve that hold the whiting and non-whiting sectors accountable for minimizing bycatch.

The Council recommended, and NMFS is implementing, that the non-whiting sector may only access the reserve if NMFS has implemented a routine management measure (i.e. BRA, BAC, or a SFFT gear requirement) to minimize Chinook salmon bycatch in the non-whiting sector prior to it reaching its Chinook salmon bycatch guideline. This requirement may be satisfied where NMFS has implemented a BAC for bottom trawl or midwater trawl fisheries, or an SFFT gear requirement for bottom trawl fisheries.

In contrast to the non-whiting sector, the Council recommended, and NMFS is implementing, that each component of the whiting sector (i.e. the MS Cooperative Program, C/P Cooperative Program, and the Pacific whiting Shorebased IFQ fishery) may access the reserve only if NMFS has implemented a management measure to minimize Chinook salmon bycatch for that

component. This requirement may be satisfied through the implementation of a BRA, BAC, or Salmon Mitigation Plan (SMP) for the applicable component. Those vessels with an approved SMP will have access to the reserve without further action by NMFS. The Council recommended, and NMFS is implementing, that vessels not party to an SMP may access the reserve only if NMFS has implemented a routine management measure (e.g., BRA or BAC) to minimize Chinook salmon bycatch for those vessels.

As part of the rules for access to the reserve, the Council recommended, and NMFS is implementing, automatic fishery closure thresholds. The Council may recommend a routine management measure (e.g., BRA, BAC, or SFFT gear requirement) to minimize Chinook

salmon bycatch in the groundfish fishery. If NMFS has not implemented a routine management measure to minimize Chinook salmon bycatch in the non-whiting sector, the non-whiting sector will close once the sector exceeds its Chinook salmon bycatch guideline of 5,500 Chinook salmon. NMFS will automatically close the MS Coop Program, C/P Coop Program, and the Pacific whiting IFQ fishery if NMFS has not implemented a routine management measure to minimize Chinook salmon bycatch (i.e. BRAs or BACs) for that specific component of the whiting sector prior to the whiting sector exceeding its Chinook salmon bycatch guideline of 11,000 Chinook salmon. Those vessels with an approved SMP will be exempt from the 11,000 Chinook salmon bycatch guideline closure

threshold condition that requires NMFS to close a specific component of the whiting sector if NMFS has not implemented a routine management measure to minimize Chinook salmon bycatch. Therefore, these vessels will have access to the reserve without further action by NMFS. If the whiting sector has caught 11,000 Chinook salmon, NMFS will close the entire whiting sector, including those with an approved SMP, if the non-whiting sector has caught its 5,500 Chinook salmon bycatch guideline and 3,500 Chinook salmon from the bycatch reserve. Table 1 summarizes the automatic fishery closure thresholds that NMFS is implementing as part of the reserve access rules.

TABLE 1—SUMMARY OF FISHERY CLOSURE THRESHOLDS FOR RESERVE ACCESS RULES

Close:	If Chinook salmon catch exceeds:	And:
Whiting sector .....	11,000 fish in the whiting sector .....	(1) NMFS has not implemented a routine management measure to minimize Chinook salmon bycatch OR (2) The non-whiting sector has caught its 5,500 Chinook salmon bycatch guideline and 3,500 Chinook salmon from the bycatch reserve.
Non-whiting sector ..	5,500 fish in the non-whiting sector .....	(1) NMFS has not implemented a routine management measure to minimize Chinook salmon bycatch OR (2) The whiting sector has caught its 11,000 Chinook salmon bycatch guideline and 3,500 Chinook salmon from the bycatch reserve.

Salmon Mitigation Plans for Pacific Whiting Sector

This final rule allows a Pacific whiting sector cooperative or group of vessels to develop a SMP for NMFS approval. The SMP is a voluntary agreement by a cooperative or group of vessels in the Pacific whiting fishery MS Coop Program, C/P Coop Program, or Pacific whiting Shorebased IFQ fishery to manage Chinook salmon bycatch.

NMFS expects the SMP to promote reductions in Chinook salmon bycatch relative to what would have occurred in the absence of an SMP because the SMP will require bycatch minimization measures for all vessels party to that SMP. Therefore, NMFS approval of an SMP will give those vessels party to the SMP access to the Chinook salmon bycatch reserve. Additionally, vessels that are party to an approved SMP will have access to the reserve regardless of NMFS implementing other inseason measures to minimize bycatch, such as BACs. Vessels that are party to an approved SMP may fish into the reserve when the non-whiting sector has not used the full reserve and NMFS has closed the whiting sector on the basis that it has reached 11,000 Chinook bycatch.

Salmon Mitigation Plan Parties

Participants in the Pacific whiting Shorebased IFQ fishery may form groups around common goals such as managing bycatch. MS and C/P vessels receive permits from NMFS to operate as cooperatives. While it does not receive permits from NMFS, the Shorebased Whiting Cooperative also operates around common goals such as bycatch management. Under this final rule, groups of vessels, or cooperatives, may create and submit SMPs to NMFS for approval. Individual vessels are not eligible to submit an SMP for approval. After NMFS approves an SMP, any changes in the membership of vessels party to the SMP, including a vessel leaving an SMP or adding a vessel to an SMP, must be submitted to NMFS for approval through an SMP amendment.

In recommending the SMP measures, the Council provided, and NMFS is implementing, an additional way to allow groups of Pacific whiting vessels to access the reserve. The Council limited SMP submissions to cooperatives or other groups of vessels because of concerns regarding the enforceability of plans from individual whiting vessels. The Council noted that other groups would have the potential to employ a robust management system

similar to that employed by the existing whiting cooperatives. The Council did not recommend a minimum number of vessels in an SMP. In order to improve the clarity of the regulations and ensure the robust management and accountability system envisioned by the Council, NMFS is implementing a three vessel minimum for an approved SMP.

Salmon Mitigation Plan Required Contents

The SMP must detail how those vessels party to the SMP will avoid and minimize Chinook salmon bycatch, including the tools they will employ. The SMP must contain the names and signatures of the owner or representative for each vessel that is party to the SMP. The SMP must include the vessel name and United States Coast Guard (USCG) vessel registration number (as given on USCG Form 1270) or state registration number, if no USCG documentation, of each vessel that is party to the SMP. The SMP must designate a representative to serve as the SMP point of contact with NMFS and the Council, and to submit the SMP proposal, any SMP amendments, and post-season report. The SMP must also contain a compliance agreement in which all parties to the SMP agree to

voluntarily comply with all the provisions of the SMP.

#### *Salmon Mitigation Plan Review and Approval*

Consistent with the dates for MS and C/P cooperative permit and agreement submission, applicants must submit proposed SMPs to NMFS between February 1 and March 31. An SMP will expire on December 31 of the year in which NMFS approved it. Given the timing of this rulemaking, NMFS may offer flexibility by extending the SMP proposal deadline for 2021. NMFS will announce any flexibility in the 2021 SMP submission deadline via public notice.

NMFS will approve a proposed SMP if the proposal contains the required contents and is reasonably expected to reduce Chinook salmon bycatch. NMFS will disapprove a proposed SMP if it does not contain the required contents, or is not reasonably expected to reduce Chinook salmon bycatch. If NMFS makes an initial administrative determination (IAD) to disapprove the proposed SMP, the applicant may appeal. Any appeal under the SMP program will be processed by the NOAA Fisheries National Appeals Office.

After the SMP is approved, the designated SMP representative must submit any changes to the SMP, including any changes in which vessels are party to the SMP, as an amendment to the SMP for approval by NMFS. An amendment to an approved SMP may be submitted to NMFS at any time during the year in which the SMP is valid. NMFS will review the amendment to ensure it contains the required SMP contents. An amendment to an approved SMP will be effective upon written notification of approval by NMFS to the designated SMP representative. If NMFS makes an IAD to disapprove the proposed SMP amendment, the applicant may appeal. Any appeal under the SMP program will be processed by the NOAA Fisheries National Appeals Office.

#### *Inseason SMP Monitoring and Evaluation*

Those vessels party to the SMP will commit to voluntarily comply with the provisions of the SMP. The Council will evaluate Chinook salmon bycatch levels and adherence to SMP provisions by those vessels party to the SMP, as needed, during the inseason review process at Council meetings. In recommending and implementing a routine management measure to minimize Chinook salmon bycatch, the Council and NMFS will specifically state whether the measure will apply to

vessels party to an approved SMP. The Council may choose to exempt vessels party to an approved SMP from any additional salmon bycatch minimization measure recommendation. If the SMP measures are not sufficient in minimizing salmon bycatch, as determined by the Council during inseason review at regular Council meetings, the Council could recommend that NMFS implement additional salmon bycatch minimization measures (*i.e.*, BRAs or BACs) that apply to those vessels party to an approved SMP even if those vessels had access to the reserve through the SMP. For example, NMFS may implement a BAC for all whiting sector vessels, including those with an approved SMP, if the whiting sector were approaching the Chinook salmon bycatch guideline and the Council had determined SMP measures were not sufficiently minimizing salmon bycatch.

By using the existing declarations and procedures, as well as a list of vessels party to an approved SMP, NMFS OLE anticipates it can sufficiently monitor for unauthorized fishing vessels within the boundaries of a BAC that exempts vessels with an approved SMP.

#### *Post-Season Reporting*

The Council also recommended, and NMFS is implementing, an SMP post-season report as a necessary component of the SMP measures. The post-season report will allow NMFS and the Council to monitor and assess Chinook salmon bycatch minimization efforts by vessels party to the SMP. This post-season report, and specifically information on the effectiveness of the bycatch avoidance measures, will also help NMFS comply with term and condition 6.a.iii of the Biological Opinion. This term and condition requires that NMFS produce an annual report summarizing bycatch reduction measures used and their effectiveness.

The designated SMP representative will provide an annual post-season report to the Council and NMFS no later than March 31 of the year following the year in which the SMP was valid. The report will describe the group's use of Chinook salmon bycatch avoidance measures and an evaluation of the effectiveness of those measures. The report will also describe any amendments to the terms of the SMP that NMFS approved during that fishing year and the reasons that the group amended the SMP.

Pacific whiting cooperatives currently produce an annual cooperative report documenting the cooperative's catch, bycatch data, and any other significant activities undertaken by the cooperative during the year. For efficiency, the SMP

post-season report could be combined with this annual cooperative report.

#### **Trawl Fishery Closures in Response to Chinook Salmon Bycatch**

This final rule establishes automatic actions that will close all trawl fisheries if Chinook salmon bycatch exceeds 19,500 fish in the whiting and non-whiting sectors, and will close non-whiting trawl fisheries if Chinook salmon bycatch exceeds 8,500 fish in the non-whiting sector. The closures ensure that 500 Chinook salmon are available for bycatch in fixed gear and select recreational fisheries, so those fisheries can continue to operate in years of high Chinook salmon bycatch in the trawl fishery. For catch accounting purposes, the Chinook salmon bycatch from Pacific Coast treaty Indian fisheries will count towards the applicable whiting or non-whiting sector bycatch guideline. However, Pacific Coast treaty Indian fisheries will not close until the existing 20,000 Chinook salmon total fishery limit is reached.

This final rule does not change any of the existing closure thresholds established in the 2019–2020 Pacific Coast groundfish harvest specifications and management measures (83 FR 63970; December 12, 2018). The closure thresholds (bycatch guideline plus reserve) for the whiting and non-whiting sectors will remain at 14,500 Chinook salmon for the whiting sector and 9,000 Chinook salmon for the non-whiting sector, and a total closure of all groundfish fisheries at 20,000 Chinook salmon. The Council noted the existing fishery closure thresholds and inseason processes would be sufficient to manage to the Chinook salmon bycatch guidelines. However, the Council also recognized the importance of protecting fixed-gear and recreational fisheries from potential closure in years of high non-whiting trawl Chinook salmon bycatch. Therefore, the Council recommended, and NMFS is implementing, closure thresholds for trawl fisheries. Table 2 summarizes the closure thresholds for trawl fisheries implemented as a result of this final rule.

**TABLE 2—SUMMARY OF FISHERY CLOSURES TO IMPLEMENT TRAWL FISHERY THRESHOLDS**

Close:	If Chinook salmon catch exceeds:
Non-whiting trawl fisheries.	8,500 fish in the non-whiting sector.

TABLE 2—SUMMARY OF FISHERY CLOSURES TO IMPLEMENT TRAWL FISHERY THRESHOLDS—Continued

Close:	If Chinook salmon catch exceeds:
All trawl fisheries.	19,500 fish in the whiting and non-whiting sectors.

#### Summary of Groundfish Fishery Closures in Response to Chinook Salmon Bycatch

Table 3 summarizes the groundfish fishery closures in response to Chinook

salmon bycatch. The closures described in the table do not apply to Pacific Coast treaty Indian fisheries except for the existing threshold closing all groundfish fisheries, including Pacific Coast treaty Indian fisheries, if Chinook salmon bycatch in the groundfish fishery exceeds 20,000 fish. However, for catch accounting purposes, the Chinook salmon bycatch from Pacific Coast treaty Indian fisheries will count towards the applicable whiting or non-whiting sector bycatch guideline. NMFS will close each component of the whiting sector (Pacific whiting IFQ fishery, MS

Coop Program and C/P Coop Program) when Chinook salmon bycatch exceeds 11,000 Chinook salmon if NMFS has not implemented a routine management measure (*i.e.*, BRA or BAC)) to minimize Chinook salmon bycatch for that individual component of the whiting sector. The whiting sector closure at 11,000 Chinook salmon will not apply to those vessels that are parties to an approved SMP, unless the non-whiting sector has caught the entire 3,500 Chinook salmon bycatch reserve.

TABLE 3—SUMMARY OF GROUNDFISH FISHERIES CLOSURES DUE TO CHINOOK SALMON BYCATCH

Implemented with this final rule?	Close:	If Chinook salmon bycatch exceeds:	And:
Yes (reserve access rules) .....	Whiting sector .....	11,000 fish in the whiting sector.	(1) NMFS has not implemented a routine management measure to minimize Chinook salmon bycatch OR (2) The non-whiting sector has caught its 5,500 Chinook salmon bycatch guideline and 3,500 Chinook salmon from the bycatch reserve.
No; previously established (83 FR 63970; December 12, 2018).	Whiting sector .....	14,500 fish in the whiting sector.	The non-whiting sector has not accessed the Chinook salmon bycatch reserve.
Yes (reserve access rules) .....	Non-whiting sector .....	5,500 fish in the non-whiting sector.	(1) NMFS has not implemented a routine management measure to minimize Chinook salmon bycatch OR (2) The whiting sector has caught its 11,000 Chinook salmon guideline and 3,500 Chinook salmon from the bycatch reserve.
Yes (trawl fishery closures) .....	Non-whiting trawl fisheries (midwater trawl and bottom trawl fisheries under the Shorebased IFQ Program).	8,500 fish in the non-whiting sector.	
No; previously established (83 FR 63970; December 12, 2018).	Non-whiting sector .....	9,000 fish in the non-whiting sector.	The whiting sector has not accessed the Chinook salmon bycatch reserve.
Yes (trawl fishery closures) .....	All trawl fisheries (whiting sector and non-whiting trawl fisheries).	19,500 fish in the whiting and non-whiting sector.	
No; previously established (83 FR 63970; December 12, 2018).	All groundfish fisheries	20,000 fish in the whiting and non-whiting sector.	

#### Definition Correction

This final rule makes a minor technical correction related to the definition of “Mothership Coop Program” at § 660.111. An inaccurate amendatory instruction (80 FR 77271, December 14, 2015) resulted in a duplicative definition with an incorrect title. This rule removes the definition for “Mothership Coop Program or MS Coop Program”, and maintains the definition for “Mothership (MS) Coop Program or MS sector” at § 660.111. This change is not substantive, as it removes a redundant definition.

#### Comments and Responses

NMFS solicited public comment on the proposed salmon bycatch

minimization measures (85 FR 66519; October 20, 2020). The comment period ended November 19, 2020. NMFS received seven comment letters: three from industry groups, one from a non-governmental organization, and three from private citizens. One letter noted several small errors or inconsistencies in the preamble to the proposed rule. NMFS has addressed those in a separate section below, Clarifications and Corrections to the Preamble of the Proposed Rule. The comment letters are available in their entirety from NMFS (see ADDRESSES) or at the following web address: <https://www.regulations.gov/docket?D=NOAA-NMFS-2019-0063>.

*Comment 1:* Three private citizens and one non-governmental organization

were supportive of the proposed salmon bycatch minimization measures due to the potential benefits for salmon populations and other species like Southern Resident killer whales.

*Response 1:* NMFS agrees and is implementing the proposed measures with the final rule.

*Comment 2:* The proposed rule lacks information regarding the bycatch guidelines and projections for coho salmon bycatch.

*Response:* The effects of the rule on Chinook and coho salmon overlap. Therefore, NMFS examined these species together in the proposed rule analysis. This rule does not change the coho salmon guidelines. As such, NMFS did not discuss these details in the

proposed rule. NMFS manages coho salmon bycatch to guidelines of 474 fish for the whiting sector, and 560 fish for the non-whiting sector. These guidelines were established in the 2017 NMFS Biological Opinion. For accounting purposes, coho salmon bycatch accrues to either the whiting sector or non-whiting sector. NMFS monitors coho salmon bycatch inseason.

*Comment 3:* NMFS did not mention any significant alternatives to the bycatch minimization measures in the IRFA of the proposed rule.

*Response:* Under the RFA, NMFS is required to consider reasonable regulatory alternatives that would minimize the economic impact on affected small entities. NMFS made this consideration, and as documented in the proposed and final rules, concluded there are no significant alternatives to the final rule that would accomplish the stated objectives in a way that would reduce economic impacts of the final rule on small entities.

*Comment 4:* This rule should put further restrictions on bottom trawling to protect Chinook and coho salmon habitat.

*Response:* This rule fulfills the terms and conditions of a 2017 NMFS Biological Opinion. This rule establishes additional management tools such as extending BACs for bottom trawl fisheries, which may benefit salmonid habitat. Further measures to protect salmonid habitat are beyond the scope of this action.

*Comment 5:* Pacific whiting cooperatives should be allowed to incorporate the SMP into the cooperative agreement, as well as the SMP post-season report into the annual cooperative report.

*Response:* NMFS agrees and will work with the cooperatives to implement this administrative efficiency.

*Comment 6:* Two industry groups expressed support for implementation of the proposed SMP as a mechanism for groups in the whiting sector to access the Chinook salmon reserve.

*Response:* NMFS agrees and is implementing the proposed measures with the final rule.

*Comment 7:* Two industry groups expressed concerns with a provision of the proposed rule that “no vessel may join or leave an SMP after it is approved”. Under the proposed rule, those vessels party to the SMP would be committed to follow the SMP provisions for the year in which it is approved. The industry groups contend this provision is unnecessarily restrictive, would limit flexibility, and potentially hinder fishery performance. First, they argue that whiting cooperatives are currently

allowed under their cooperative agreements and cooperative permits to change vessels participating in the cooperative by submitting an amended cooperative agreement to NMFS. Catcher-processor limited entry trawl permits are also transferable. These flexibilities provide opportunities for fishery participants and cooperatives to optimize participation in the fishery. Second, the industry groups contend unforeseen circumstances might occur requiring a vessel to leave a cooperative or an SMP. This could include a vessel ownership change or cooperative actions against a vessel that is not meeting the requirements of the cooperative. The industry groups recommended that any changes in vessels party to the SMP could occur through an SMP amendment.

*Response:* NMFS specifically sought comment on this provision in the proposed rule. NMFS proposed this provision to: (1) Maximize the potential salmon conservation benefits of an SMP; (2) prevent vessels that did not follow the SMP provisions throughout the year from receiving the benefit of access into the reserve on the basis of the SMP; and (3) ensure NMFS can sufficiently monitor and enforce a BAC from which vessels party to an approved SMP are exempt.

NMFS agrees with the commenter that the provision could hinder flexible salmon bycatch management in the whiting sector. As such, NMFS did not include this provision in this final rule. NMFS agrees an SMP amendment is an appropriate avenue to document and approve membership changes. The SMP amendment process will give NMFS means to track current SMP membership and ensure NMFS can sufficiently monitor and enforce access to a BAC from which vessels party to an approved SMP are exempt.

If vessels were to join an SMP after it was approved (*i.e.*, mid-fishing year) and receive benefits such as access to salmon bycatch reserve or exemption from further bycatch management requirements, it may be inequitable for the vessels that had been following the SMP provisions throughout the year. However, because the SMP group self-selects its members, it would be the group's choice to make membership changes equitable. While maximum salmon bycatch minimization benefits may be realized when vessels follow bycatch minimization requirements in an SMP for a full fishing year, partial year participation will still provide benefits for salmon bycatch minimization purposes.

NMFS agrees with the need for those vessels party to the SMP to self-manage

membership, including the removal of a vessel that is not following the SMP provisions. A vessel leaving an SMP mid-fishing year would not present equity issues, as that vessel would not have automatic access to the reserve once it leaves the SMP. NMFS will be able to track vessels party to the SMP through the SMP amendment process. Per the reserve access rules in this final rule, a salmon bycatch minimization action would need to be implemented prior to a vessel not party to an SMP having access to the reserve. This would provide the conservation benefits for Chinook salmon envisioned by the Council in recommending the reserve access rules.

*Comment 8:* Voluntary, industry-based areas closures will be more timely and effective than BACs to manage salmon bycatch. Voluntary industry closures are based upon near real-time data and are adaptable to meet current conditions on the fishing grounds. In contrast, a BAC would be implemented on a much slower time frame and could be inconsistent with current fishing conditions. Due to this lag, a BAC could close a fishing area where salmon bycatch is no longer occurring.

*Response:* NMFS agrees that industry based area closures may be more timely and effective than BACs. NMFS encourages industry to continue such voluntary measures in order to reduce the need for regulatory area-based closures like BACs. Per the 2017 NMFS Biological Opinion, NMFS must manage the fishery to the bycatch guidelines. The Council recommended, and NMFS agrees, that BACs would be a useful management tool to have available should mandatory salmon bycatch minimization measures be necessary.

*Comment 9:* The extension of BACs deeper than 250 fm is not needed because a long history of fishery data clearly indicates that salmon incidental catch deeper than 250 fm is *de minimis*.

*Response:* Salmon bycatch rates are generally low in depths greater than 250 fm (457 m) for trawl fisheries (Section 2.15 of the Analysis—see **ADDRESSES**). However, salmon distribution is known to extend into those depths. The extension of BACs for bottom trawl fisheries in this final rule would allow NMFS to implement and modify BACs in areas where salmon bycatch may occur in order to keep the fishery sector within bycatch guidelines.

*Comment 10:* NMFS will need to enforce BACs which restrict access for vessels without an approved SMP. In addition to VMS tracking and on the water patrols, NMFS could inform the Pacific whiting cooperatives to alert vessels under their structure that do not



have an approved SMP to cease fishing operations within the BAC. The documentation of which vessels are party to an SMP would guide this effort.

*Response:* NMFS agrees that documentation of vessels that are party to an SMP is critical to the enforcement of BACs that allow access for vessels with an SMP. As such, NMFS will require the vessel name and USCG vessel registration number (as given on USCG Form 1270) or state registration number, if no USCG documentation, of each vessel that is party to the SMP be included in the SMP proposal.

*Comment 11:* Two commenters noted the need for strong implementation, monitoring, reporting of salmon bycatch minimization measures, including the SMP. In order to maximize the salmon conservation benefits of an SMP, one commenter noted the need for regular in-season and post-season reporting of salmon bycatch, as well as the implementation of effective SMP bycatch reduction tools.

*Response:* NMFS agrees that strong reporting and monitoring are needed for effective salmon bycatch management. In the SMP post-season report NMFS will require the SMP representative to provide an evaluation of the effectiveness of their avoidance measures in minimizing Chinook salmon bycatch. Salmon bycatch will continue to be monitored by NMFS throughout the fishing year as is required by the 2017 Biological Opinion. Salmon bycatch data is also publically available online in near real-time through the Pacific Fisheries Information Network's Reports Dashboard at <https://reports.psmfc.org/pacfin>. Additionally, the Council reviews salmon bycatch information at each Council meeting and may recommend routine management measures to NMFS, if necessary to keep fishery sectors within the bycatch guidelines. NMFS agrees the bycatch tools in the SMP need effective implementation. NMFS noted in the proposed rule that it expects the SMP to promote reductions in Chinook salmon bycatch relative to what would have occurred in the absence of an SMP because the SMP will require bycatch minimization measures for all vessels party to that SMP. This reduction would occur because the SMP will require bycatch minimization measures for all vessels party to that SMP. In order to clarify how an SMP would be evaluated, consistent with the intent of the Council, NMFS has included in the final rule an additional SMP approval criteria that the SMP must reasonably be expected to reduce Chinook salmon bycatch.

*Comment 12:* One commenter stated the fishery closure authority provisions previously implemented to fulfill requirements of the 2017 NMFS Biological Opinion are not consistent with guidance and direction provided by the Council to the agency in developing the opinion. The commenter noted the Council did not include, nor think necessary, the closure authorities independently developed by NMFS.

*Response:* In this final rule, NMFS is not modifying the automatic fishery closure mechanisms previously implemented through the final rule to implement harvest specifications and management measures for the 2019–2020 biennium (83 FR 63970; December 12, 2018). As such, this comment is outside the scope of this action.

### Changes From the Proposed Rule

In response to public comments received and in order to provide clarity to the new requirements, NMFS is making four changes to the action as proposed previously.

As detailed in the Comments and Responses section, NMFS will require the vessel name and USCG vessel registration number (as given on USCG Form 1270) or state registration number, if no USCG documentation, of each vessel that is party to the SMP be included in the SMP proposal or any SMP amendment. This requirement is needed to sufficiently enforce BACs that allow access for vessels with an SMP. NMFS is also including a requirement that the SMP proposal include a mailing address for the SMP representative. This will allow NMFS to send the SMP representative correspondence through the mail. These requirement do not change the estimated public reporting burden for the submission of an SMP.

As detailed in the Comments and Responses section, NMFS is not including in the final rule a provision of the proposed rule that “no vessel may join or leave an SMP after it is approved”. Under that provision, those vessels party to the SMP would have been committed to follow the SMP provisions for the year in which it is approved. Through this final rule, NMFS will allow vessels to join or leave an SMP after it is approved. The SMP representative must submit any membership changes through the SMP amendment process. This change will provide industry with flexibility to manage salmon bycatch and self-select its members, while still providing the conservation benefits for salmon envisioned by the Council in recommending the reserve access rules. The SMP amendment process will allow NMFS to track current SMP

membership and ensure NMFS can sufficiently monitor and enforce access to a BAC from which vessels with an approved SMP are exempt.

As detailed in the Comments and Responses section, the proposed rule lacked clarity on how the SMP would be evaluated. In order to meet the objective of the SMP to minimize salmon bycatch, consistent with the Council's intent for this action, NMFS has clarified in the final rule that the SMP must reasonably be expected to reduce Chinook salmon bycatch.

### Clarifications and Corrections to the Preamble of the Proposed Rule

The preamble to the proposed rule (85 FR 66519; October 20, 2020) on page 66521 was unclear in describing the “whiting sector” and “non-whiting sector” with respect to Pacific Coast treaty Indian vessels. The final rule revised these descriptions to clarify that vessels that participate in the Pacific Coast treaty Indian groundfish fisheries are not part of the MS, C/P, or IFQ programs.

Table 2 of the preamble to the proposed rule (page 66523) summarized the closure thresholds for reserve access rules. Table 2 incorrectly stated a closure condition for the non-whiting sector. This table, Table 1 of this final rule, has been revised to clarify that the non-whiting sector will close at 5,550 Chinook salmon if the whiting sector has caught its 11,000 Chinook salmon bycatch guideline and 3,500 Chinook salmon from the bycatch reserve.

In the preamble to the proposed rule NMFS incorrectly stated on page 66523 that SFFT gear requirements were an example of a routine management measure to minimize salmon bycatch in the whiting sector. Whiting trawlers do not use SFFT gear. Therefore, this final rule omits reference to SFFT gear requirements for the whiting sector.

The preamble to the proposed rule on page 66523 inadvertently omitted a provision for closing the whiting sector due to Chinook salmon bycatch. The preamble to the proposed rule stated “the entire whiting sector, including those with an approved SMP, would close if the non-whiting sector has caught its 5,500 Chinook salmon bycatch guideline and 3,500 Chinook salmon from the bycatch reserve”. As clarified in the final rule, this fishery closure will only occur if the whiting sector has caught 11,000 Chinook salmon.

### Classification

NMFS is issuing this rule pursuant to section 304(b)(1)(A) and 305(d) of the Magnuson-Stevens Act, which provides



specific authority and procedure for implementing this action. Section 304(b)(1)(A) authorizes NMFS to implement a rule deemed by the Council under section 303(c) to implement regulatory amendments. Pursuant to MSA Section 305(d), this action is necessary to carry out a minor technical correction because of an error in the regulatory text. The NMFS Assistant Administrator has determined that this final rule is consistent with the FMP, other provisions of the Magnuson-Stevens Act, and other applicable law. This final rule has been determined to be not significant for purposes of Executive Order 12866.

NMFS prepared a final regulatory flexibility analysis (FRFA) under section 604 of the RFA, which incorporates the IRFA. A summary of any significant issues raised by the public comments in response to the IRFA, NMFS's responses to those comments, and a summary of the analyses completed to support the action are addressed below. NMFS also prepared a RIR for this action. A copy of the RIR and IRFA is available from NMFS (see **ADDRESSES** for electronic access information), and per the requirements of 5 U.S.C. 604(a), the text of the FRFA follows:

As applicable, section 604 of the RFA requires an agency to prepare a FRFA after being required by that section or any other law to publish a general notice of proposed rulemaking and when an agency promulgates a final rule under 5 U.S.C. 553. The following paragraphs constitute the FRFA for this action.

This FRFA incorporates the IRFA, a summary of any significant issues raised by the public comments, NMFS's responses to those comments, and a summary of the analyses completed to support the action. Analytical requirements for the FRFA are described in the RFA, section 604(a)(1) through (6). FRFAs contain:

1. A statement of the need for, and objectives of, the rule;
2. A statement of the significant issues raised by the public comments in response to the IRFA, a statement of the assessment of the agency of such issues, and a statement of any changes made in the proposed rule as a result of such comments;
3. The response of the agency to any comments filed by the Chief Counsel for Advocacy of the Small Business Administration (SBA) in response to the proposed rule, and a detailed statement of any change made to the proposed rule in the final rule as a result of the comments;
4. A description and an estimate of the number of small entities to which

the rule will apply, or an explanation of why no such estimate is available;

5. A description of the projected reporting, recordkeeping, and other compliance requirements of the rule, including an estimate of the classes of small entities which will be subject to the requirement and the type of professional skills necessary for preparation of the report or record; and

6. A description of the steps the agency has taken to minimize the significant economic impact on small entities consistent with the stated objectives of applicable statutes, including a statement of the factual, policy, and legal reasons for selecting the alternative adopted in the final rule and why each one of the other significant alternatives to the rule considered by the agency which affect the impact on small entities was rejected.

The "universe" of entities to be considered in a FRFA generally includes only those small entities that can reasonably be expected to be directly regulated by the action. If the effects of the rule fall primarily on a distinct segment of the industry, or portion thereof (e.g., user group, gear type, geographic area), that segment will be considered the universe for purposes of this analysis.

In preparing a FRFA, an agency may provide either a quantifiable or numerical description of the effects of a rule (and alternatives to the rule), or more general descriptive statements, if quantification is not practicable or reliable.

#### *Need for and Objective of This Final Rule*

The need for and objective of this final rule is described above in the Background section of the preamble and not repeated here.

#### *Summary of Significant Issues Raised During Public Comment*

NMFS published a proposed rule to implement salmon bycatch minimization measures for the Pacific coast groundfish fishery on October 20, 2020 (85 FR 66519). 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 November 19, 2020. NMFS received seven comment letters on the proposed rule. One comment was received specific to the IRFA. The comment incorrectly asserted NMFS did not consider any significant alternatives to the bycatch minimization measures in the IRFA. As documented in the proposed and final rule, NMFS made

this consideration and concluded there are no significant alternatives. This comment is discussed further in the Comments and Responses section above. This comment did not raise significant issues relative to the measures in the proposed rule. The Chief Counsel for Advocacy of the SBA did not file any comments on the IRFA or the proposed rule.

#### *A Description and an Estimate of the Number of Small Entities to Which the Rule Will Apply*

The RFA (5 U.S.C. 601 *et seq.*) requires government agencies to assess the effects that regulatory alternatives would have on small entities, defined as any business/organization independently owned and operated and not dominant in its field of operation (including its affiliates). A small harvesting business has combined annual receipts of \$11 million or less for all affiliated operations worldwide. A small fish-processing business is one that employs 750 or fewer persons for all affiliated operations worldwide.

For marinas and charter/party boats, a small business is one that has annual receipts not in excess of \$7.5 million. 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 nonprofit organization is determined to be "not dominant in its field of operation" if it is considered small under one of the following SBA size standards: environmental, conservation, or professional organizations are considered small if they have combined annual receipts of \$15 million or less, and other organizations are considered small if they have combined annual receipts of \$7.5 million or less.

The RFA defines small governmental jurisdictions as governments of cities, counties, towns, townships, villages, school districts, or special districts with populations of less than 50,000.

This final rule will directly affect all commercial groundfish vessels and select recreational groundfish vessels. In the C/P sector, all three permit owners (owning the collective 10 permits) self-reported as large entities. For the MS sector, of the 31 MS/Catcher Vessel endorsed permits, 25 permits and their associated vessels are registered as small entities. Nine permits held by seven entities self-reported as large, with one entity owning three permits. In order to fish in the shoreside whiting or midwater trawl sector, a limited entry trawl endorsed permit is required. Of the 164 limited entry trawl endorsed

permits (excluding those with a C/P endorsement), 110 permit owners holding 129 permits classified themselves as small entities. The average small entity owns 1.17 permits with 15 entities owning more than one permit. However, given that between 23 and 26 vessels have participated in the shoreside whiting fishery in the last three years and the same range of vessels in the midwater rockfish fisheries, this is an overestimate of the potential impacted number of small entities. Additionally, it is likely some entities own more than one vessel. From 2016–2018, there were 67–74 bottom trawl vessels.

Since 2016–18, there have been 17 to 23 fixed gear participants in the IFQ fishery, 136 to 144 in the limited entry fixed gear fisheries, and 746 to 769 in the open access fisheries. Of those fixed gear IFQ participants, there have been between 17 and 19 permits used to land groundfish. In 2018, an estimated 13 of these trawl endorsed permits were classified as small entities (based on 2019 declarations). In 2019, 208 of the 239 fixed gear endorsed limited entry permits (required to fish in the primary or limited entry fixed gear sectors) reported as small entities. For the permits that reported as large entities, one entity owned three permits and three owned two permits. All open access vessels are assumed to be small entities, with ex-vessel revenues for all landings averaging \$8,966 in 2018.

For the recreational sector, all charter businesses are designated as small entities. The portion of the recreational fishery that will be affected by this action are those groundfish trips occurring outside of the salmon season. Therefore, the estimates provided here may be an overestimate of the actual number of entities or trips that may be affected depending on when the salmon seasons are set and when a closure could occur. For Washington, there were 55 unique charter vessels that took 20,833 bottomfish trips in 2018. In 2018, there were 48 charter vessels that took an estimated 19,208 angler trips in Oregon. However, this estimate does not include guide boats that do not have an official office. In California, there were approximately 290 vessels targeting bottomfish or lingcod, according to logbook submissions, that took an estimated 504,118 angler trips.

The economic effects of the final rule are described in Section 4.6 of the Analysis (see **ADDRESSES**). The economic effects of the additional management tools to minimize ESA-listed salmon bycatch will depend on the extent and timing of the measure that is implemented. It is likely that

there will be some negative economic impact on small entities with the implementation of a BAC or SFFT gear requirement. Vessels will potentially have to move from closed fishing locations, which may decrease the effectiveness at accessing target species.

Cooperatives or other groups of vessels in the Pacific whiting C/P, MS, and shoreside IFQ sectors may incur additional administrative costs associated with developing and submitting the SMP and the post-season report. Because we estimate the reporting burden to average 10 hours per response for the SMP proposal, and 8 hours per response for the SMP post-season report, we do not expect the reporting requirement to impact profitability of operations for small or large entities.

Economic impacts to small entities affected by the trawl closure thresholds will depend on the time that the automatic closure points were reached. Table 3.15 of the Analysis details the potential estimated losses for fisheries by month. If the trawl sectors were to unexpectedly close the recreational sectors in November, this could be a loss of \$27.4 million in revenue.

There are no direct costs associated with the rules for access to the reserve. However, implementation of any inseason bycatch minimization measures prior to a sector accessing the reserve would have associated economic impacts. For example, if there were unexpected high bycatch in the non-whiting sector, NMFS would have to implement bycatch minimization measures such as a BAC prior to that sector accessing the reserve. The associated impacts would be those described above for the additional bycatch minimization tools.

#### *Recordkeeping, Reporting, and Other Compliance Requirements*

Additional reporting or recordkeeping may be required of the regulated entities under the final action. Cooperatives or other groups of Pacific whiting vessels will have new reporting requirements if they chose to submit an SMP to NMFS for approval. The cooperatives or other groups of vessels with an approved SMP will also be required to submit a post-season report to the Council and NMFS. The final rule adds a declaration to the suite of available declarations to allow NMFS OLE to sufficiently monitor and enforce SFFT gear requirements. This change will have negligible impact on a vessel's reporting burden.

#### *Description of Significant Alternatives to This Final Rule That Minimize Economic Impacts on Small Entities*

There are no significant alternatives to the final rule that would accomplish the stated objectives in a way that would reduce economic impacts of the final rule on small entities. This action allows NMFS to exempt any take of listed species from the prohibitions that would otherwise be imposed by Section 9 of the ESA by complying with the terms and conditions in the 2017 NMFS Biological Opinion, which specify certain measures for the Council and NMFS to develop and implement, or consider to minimize bycatch of ESA-listed Chinook and coho salmon. For that reason, there are no significant alternatives to the action evaluated in this FRFA.

#### *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 rulemaking process, a small entity compliance guide (the guide) was prepared. Copies of this final rule are available from the West Coast Regional Office (see **ADDRESSES**), and the guide will be included in a public notice sent to all members of the groundfish email group. To sign-up for the groundfish email group, input your email address and name and then click on the “sign up” button on the following website: <https://lp.constantcontactpages.com/su/koE8GSV/groundfish>. The guide and this final rule will also be available on the West Coast Region's website (see **ADDRESSES**) and upon request.

#### *Paperwork Reduction Act Collection-of-Information Requirements*

This final rule contains a new collection-of-information requirement subject to review and approval by OMB under the Paperwork Reduction Act (PRA) (OMB Control Number 0648–0794). This rule creates new requirements for the submission of SMPs and post-season reports. The following public reporting burden estimates for the submission of SMPs and post-season reports under this final rule include the time for reviewing instructions, searching existing data

sources, gathering and maintaining the data needed, and completing and reviewing the collection information. Public reporting burden is estimated to average 10 hours per response for the SMP proposal, 3 hours per response for an SMP amendment, 6 hours per response for an administrative appeal of a disapproved SMP, and 8 hours per response for the SMP post-season report.

We invite the general public and other Federal agencies to comment on proposed and continuing information collections, which helps us assess the impact of our information collection requirements and minimize the public's reporting burden. Written comments and recommendations for this information collection should be submitted at the following website: [www.reginfo.gov/public/do/PRAMain](http://www.reginfo.gov/public/do/PRAMain). Find this particular information collection by using the search function and entering the title of the collection, "Pacific Coast Groundfish Salmon Bycatch Minimization".

Notwithstanding any other provision of the law, no person is required to respond to, nor shall any person be subject to a penalty for failure to comply with, a collection of information subject to the requirements of the PRA, unless that collection of information displays a currently valid OMB Control Number.

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

Fisheries, Fishing, Reporting and recordkeeping requirements.

Dated: February 10, 2021.

**Samuel D. Rauch, III,**

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

For the reasons set out in the preamble, NMFS amends 50 CFR part 660 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. Amend § 660.11, in the definition of "Conservation area(s)", by revising the introductory text to paragraph (1) to read as follows:

##### § 660.11 General definitions.

\* \* \* \* \*

*Conservation area(s)* \* \* \*

(1) *Groundfish Conservation Area* or *GCA* means a conservation area created or modified and enforced to control catch of groundfish or protected species. Regulations at § 660.60(c)(3) describe

the various purposes for which NMFS may implement certain types of GCAs through routine management measures. Regulations at § 660.70 further describe and define coordinates for certain GCAs, including: Yelloweye Rockfish Conservation Areas; Cowcod Conservation Areas; waters encircling the Farallon Islands; and waters encircling the Cordell Banks. GCAs also include depth-based closures bounded by lines approximating depth contours, including Bycatch Reduction Areas or BRAs, or bounded by depth contours and lines of latitude, including, Block Area Closures or BACs, and Rockfish Conservation Areas or RCAs, which may be closed to fishing with particular gear types. BRA, BAC, and RCA boundaries may change seasonally according to conservation needs. Regulations at §§ 660.71 through 660.74, and § 660.76 define depth-based closure boundary lines with latitude/longitude coordinates. Regulations at § 660.11 describe commonly used geographic coordinates that define lines of latitude. Fishing prohibitions associated with GCAs are in addition to those associated with other conservation areas.

\* \* \* \* \*

■ 3. Amend § 660.12 by adding paragraph (a)(19) to read as follows:

##### § 660.12 General groundfish prohibitions.

\* \* \* \* \*

(a) \* \* \*

(19) Fish for, or take and retain, any species of groundfish, during salmon bycatch fishery closures described in § 660.60(d)(1)(iv) and (v), or fail to comply with the salmon bycatch management provisions described in § 660.60(i).

\* \* \* \* \*

■ 4. Amend § 660.13 by:

■ a. Revising paragraph (d)(4)(iv)(A)(10);

■ b. Republishing paragraph

(d)(4)(iv)(A)(11);

■ c. Revising paragraphs

(d)(4)(iv)(A)(12) through (30); and

■ d. Adding paragraph (d)(4)(iv)(A)(31).

The revisions, republication, and addition read as follows:

##### § 660.13 Recordkeeping and reporting.

\* \* \* \* \*

(d) \* \* \*

(4) \* \* \*

(iv) \* \* \*

(A) \* \* \*

(10) Limited entry bottom trawl, shorebased IFQ, not including demersal trawl or selective flatfish trawl,

(11) Limited entry demersal trawl, shorebased IFQ,

(12) Limited entry selective flatfish trawl, shorebased IFQ,

(13) Non-groundfish trawl gear for pink shrimp,

(14) Non-groundfish trawl gear for ridgeback prawn,

(15) Non-groundfish trawl gear for California halibut,

(16) Non-groundfish trawl gear for sea cucumber,

(17) Open access longline gear for groundfish,

(18) Open access Pacific halibut longline gear,

(19) Open access groundfish trap or pot gear,

(20) Open access Dungeness crab trap or pot gear,

(21) Open access prawn trap or pot gear,

(22) Open access sheephead trap or pot gear,

(23) Open access line gear for groundfish,

(24) Open access HMS line gear,

(25) Open access salmon troll gear,

(26) Open access California Halibut line gear,

(27) Open access Coastal Pelagic Species net gear,

(28) Other gear,

(29) Tribal trawl,

(30) Open access California gillnet complex gear, or

(31) Gear testing.

\* \* \* \* \*

■ 5. Amend § 660.50 by revising paragraph (h) to read as follows:

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

\* \* \* \* \*

(h) *Salmon bycatch*. This fishery may be closed through automatic action at § 660.60(d)(1)(v).

■ 6. Amend § 660.60 by revising paragraphs (c)(3)(i) introductory text, (c)(3)(i)(C), and (d)(1)(iv) and (v) and adding paragraph (i) to read as follows:

##### § 660.60 Specifications and management measures.

\* \* \* \* \*

(c) \* \* \*

(3) \* \* \*

(i) *Depth-based management measures*. Depth-based management measures, particularly closed areas known as Groundfish Conservation Areas, defined in § 660.11, include RCAs, BRAs, and BACs, and may be implemented in any fishery sector that takes groundfish directly or incidentally. Depth-based management measures are set using specific boundary lines that approximate depth contours with latitude/longitude waypoints found at §§ 660.70 through 660.74 and 660.76. Depth-based management measures and closed areas

may be used for the following conservation objectives: To protect and rebuild overfished stocks; to prevent the overfishing of any groundfish species by minimizing the direct or incidental catch of that species; or to minimize the incidental harvest of any protected or prohibited species taken in the groundfish fishery. Depth-based management measures and closed areas may be used for the following economic objectives: To extend the fishing season; for the commercial fisheries, to minimize disruption of traditional

fishing and marketing patterns; for the recreational fisheries, to spread the available catch over a large number of anglers; to discourage target fishing while allowing small incidental catches to be landed; and to allow small fisheries to operate outside the normal season.

(C) *Block Area Closures*. BACs, as defined at § 660.111, may be closed or reopened, in the EEZ off Oregon and California, for vessels using limited entry bottom trawl gear, and in the EEZ

off Washington, Oregon and California for vessels using midwater trawl gear, consistent with the purposes described in this paragraph (c)(3)(i).

\* \* \* \* \*

(d) \* \* \*

(1) \* \* \*

(iv) Close the following groundfish fisheries, not including Pacific Coast treaty Indian fisheries, when conditions for Chinook salmon bycatch described in this table and paragraphs (d)(1)(iv)(A) and (B) of this section are met:

TABLE 1 TO PARAGRAPH (d)(1)(iv)

Close:	If Chinook salmon bycatch, as described in § 660.60(i)(2), exceeds:	And:
Whiting sector (Pacific whiting IFQ fishery, MS Coop Program and/or C/P Coop Program).	11,000 fish in the whiting sector .....	(1) A routine management measure specified at § 660.60(c) has not been implemented as described in § 660.60(i)(1) OR (2) The non-whiting sector has caught its 5,500 Chinook salmon bycatch guideline and 3,500 Chinook salmon from the bycatch reserve.
Whiting sector (Pacific whiting IFQ fishery, MS Coop Program and C/P Coop Program).	14,500 fish in the whiting sector .....	The non-whiting sector has not accessed the Chinook salmon bycatch reserve.
Non-whiting sector (midwater trawl, bottom trawl, and fixed gear fisheries under the Shorebased IFQ Program, limited entry fixed gear fisheries, open access fisheries, and recreational fisheries subject to this provision as set out in § 660.360(d)).	5,500 fish in the non-whiting sector ...	(1) A routine management measure specified at § 660.60(c) has not been implemented as described in § 660.60(i)(1) OR (2) The whiting sector has caught its 11,000 Chinook salmon guideline and 3,500 Chinook salmon from the bycatch reserve.
Non-whiting sector (midwater trawl, bottom trawl, and fixed gear fisheries under the Shorebased IFQ Program, limited entry fixed gear fisheries, open access fisheries, and recreational fisheries subject to this provision as set out in § 660.360(d)).	9,000 fish in the non-whiting sector ...	The whiting sector has not accessed the Chinook salmon bycatch reserve.
Non-whiting trawl fisheries (midwater trawl and bottom trawl fisheries under the Shorebased IFQ Program).	8,500 fish in the non-whiting sector.	
All trawl fisheries (whiting sector and non-whiting trawl fisheries).	19,500 fish in the whiting and non-whiting sector.	

(A) Consistent with § 660.60(i)(2), each component of the whiting sector (Pacific whiting IFQ fishery, MS Coop Program and C/P Coop Program) will be closed when Chinook salmon bycatch exceeds 11,000 Chinook salmon if a routine management measure specified at § 660.60(c) has not been implemented as described in § 660.60(i)(2) for that individual component of the whiting sector.

(B) Consistent with § 660.60(i)(2), the Chinook salmon closure at 11,000 fish does not apply to those whiting sector vessels that are parties to an approved Salmon Mitigation Plan, as specified at § 660.113(e), unless the non-whiting sector has caught the entire 3,500 Chinook salmon bycatch reserve.

(v) Close all groundfish fisheries, including Pacific Coast treaty Indian fisheries, if Chinook salmon bycatch in

the groundfish fishery exceeds 20,000 fish.

\* \* \* \* \*

(i) *Salmon bycatch management*. Salmon bycatch is managed through routine management measures, salmon bycatch guidelines and a Chinook salmon bycatch reserve, and fisheries closures. For purposes of salmon bycatch management, the groundfish fishery is divided into the whiting sector and non-whiting sector and includes bycatch of Chinook salmon and coho salmon from both non-tribal fisheries and Pacific Coast treaty Indian fisheries. The non-whiting sector includes the Pacific Coast treaty Indian vessels that target Pacific coast groundfish species other than whiting, as well as non-tribal vessels that target Pacific coast groundfish species other than whiting in the midwater trawl, bottom trawl, and fixed gear fisheries under the Shorebased IFQ Program,

limited entry fixed gear fisheries, open access fisheries as defined at § 660.11, and recreational fisheries subject to this provision as set out in § 660.360(d). The whiting sector is the Pacific whiting fishery, as defined in § 660.111, and includes the Pacific Coast treaty Indian vessels that target whiting, as well as non-tribal vessels that target whiting participating in the C/P Coop Program, the MS Coop Program, and the Pacific whiting IFQ fishery.

(1) *Routine management measures*. Routine management measures specified at § 660.60(c) may be implemented to minimize Chinook salmon and/or coho salmon bycatch in the groundfish fishery. These measures may include BRAs, BACs, or a selective flatfish trawl gear requirement. These measures would not apply to vessels fishing in Pacific Coast treaty Indian fisheries.

(i) *Non-whiting sector*. Routine management measures to manage salmon bycatch in the non-whiting sector include:

(A) A BAC for bottom trawl or midwater trawl as specified at § 660.60(c)(3)(i).

(B) A BRA for midwater trawl as specified at § 660.60(c)(3)(i).

(C) A selective flatfish trawl gear requirement for bottom trawl.

(ii) *Whiting sector*. Routine management measures to manage salmon bycatch in the whiting sector include:

(A) A BAC as specified at § 660.60(c)(3)(i).

(B) A BRA as specified at § 660.60(c)(3)(i).

(2) *Chinook salmon bycatch guidelines and Chinook salmon bycatch reserve*. The Chinook salmon bycatch guideline for the non-whiting sector is 5,500 fish. The Chinook salmon bycatch guideline for the whiting sector is 11,000 fish. If a sector exceeds its Chinook salmon bycatch guideline, it may access a reserve of 3,500 Chinook salmon reserve provided action has been taken to minimize Chinook salmon bycatch as described in paragraph (i)(2)(i) or (ii) of this section. For bycatch accounting purposes, all Chinook salmon bycatch from the groundfish fishery, including both non-tribal and Pacific Coast treaty Indian fisheries, counts towards the applicable whiting or non-whiting sector bycatch guideline and the reserve.

(i) *Reserve access for the non-whiting sector*. The non-whiting sector may only access the reserve if a measure described in paragraph (i)(1)(i) of this section has been implemented.

(ii) *Reserve access for the whiting sector*. Each component of the whiting sector (Pacific whiting IFQ fishery, MS Coop Program and C/P Coop Program) may only access the reserve if a measure described in paragraph (i)(1)(ii) of this section has been implemented for that component of the whiting fishery. If a measure described in paragraph (i)(1)(ii) of this section has not been implemented for that component of the whiting fishery, vessels within that component that are parties to an approved Salmon Mitigation Plan (SMP), as specified at § 660.113(e), may access the reserve.

(3) *Fisheries closures*. Groundfish fisheries may be closed through automatic action at § 660.60(d)(1)(iv) and (v).

■ 7. Amend § 660.111 by:

■ a. Revising the definition of “Block area closures or BACs”;

■ b. Removing the definition of “Mothership Coop Program or MS Coop Program”; and

■ c. Adding a definition for “Salmon Mitigation Plan (SMP)” in alphabetical order.

The revision and addition read as follows:

**§ 660.111 Trawl fishery—definitions.**

\* \* \* \* \*

*Block area closures* or *BACs* are a type of groundfish conservation area, defined at § 660.11, bounded on the north and south by commonly used geographic coordinates, defined at § 660.11, and on the east and west by the EEZ, and boundary lines approximating depth contours, defined with latitude and longitude coordinates at §§ 660.71 through 660.74 (10 fm through 250 fm), and § 660.76 (700 fm). BACs may be implemented or modified as routine management measures, per regulations at § 660.60(c). BACs may be implemented in the EEZ off Oregon and California for vessels using limited entry bottom trawl and/or midwater trawl gear. BACs may be implemented in the EEZ off Washington shoreward of the boundary line approximating the 250-fm depth contour for midwater trawl vessels. BACs may close areas to specific trawl gear types (e.g. closed for midwater trawl, bottom trawl, or bottom trawl unless using selective flatfish trawl) and/or specific programs within the trawl fishery (e.g. Pacific whiting fishery or MS Coop Program). BACs may vary in their geographic boundaries and duration. Their geographic boundaries, applicable gear type(s) and/or specific trawl fishery program, and effective dates will be announced in the **Federal Register**. BACs may have a specific termination date as described in the **Federal Register**, or may be in effect until modified. BACs that are in effect until modified by Council recommendation and subsequent NMFS action are set out in Tables 1 (North) and 1 (South) of this subpart.

\* \* \* \* \*

*Salmon Mitigation Plan (SMP)* means a voluntary agreement amongst a group of at least three vessels in the MS Coop Program, C/P Coop Program, or Pacific whiting IFQ fishery to manage Chinook salmon bycatch, approved by NMFS under § 660.113(e). Vessels fishing under an approved SMP would have access to the Chinook salmon bycatch reserve as described in § 660.60(i)(2). Routine management measures to minimize Chinook salmon bycatch as described in § 660.60(i) may be

implemented for vessels that are parties to an approved SMP.

\* \* \* \* \*

■ 8. Amend § 660.113 by adding paragraph (e) to read as follows:

**§ 660.113 Trawl fishery—recordkeeping and reporting.**

\* \* \* \* \*

(e) *Salmon Mitigation Plan (SMP)*. NMFS may approve a SMP for a group of at least three vessels in the MS Coop Program, C/P Coop Program, or Pacific whiting IFQ fishery. NMFS may approve an SMP for more than one group in a given year.

(1) *Applicability of further measures to manage salmon bycatch*. Routine management measures to minimize Chinook salmon bycatch as described in § 660.60(i) may be implemented for vessels with an approved SMP.

(2) *SMP contents*. The SMP must contain, at a minimum, the following—

(i) *SMP name*. The name of the SMP.

(ii) *Vessels party to the SMP*. The vessel name and USCG vessel registration number (as given on USCG Form 1270) or state registration number, if no USCG documentation, of each vessel that is party to the SMP. A minimum of three vessels must be party to the SMP.

(iii) *Compliance agreement*. A written statement that all parties to the SMP agree to voluntarily comply with all provisions of the SMP.

(iv) *Signatures of those party to SMP*. The names and signatures of the owner or representative for each vessel that is party to the SMP.

(v) *Designated SMP representative*. The name, telephone number, mailing address, and email address of a person appointed by those party to the SMP who is responsible for:

(A) Serving as the SMP contact person between NMFS and the Council;

(B) Submitting the SMP proposal and any SMP amendments; and

(C) Submitting the SMP postseason report to the Council and NMFS.

(vi) *Plan*. A description of:

(A) How parties to the SMP will adequately monitor and account for the catch of Chinook salmon.

(B) How parties to the SMP will avoid and minimize Chinook salmon bycatch, including a description of tools parties will employ. Tools may include, but would not be limited to, information sharing, area closures, movement rules, salmon excluder use, and internal bycatch guidelines.

(C) How the SMP is expected to promote reductions in Chinook salmon bycatch relative to what would have occurred in absence of the SMP.

(3) *Deadline for proposed SMP*. A proposed SMP must be submitted

between February 1 and March 31 of the year in which it intends to be in effect to NMFS at: NMFS, West Coast Region, ATTN: Fisheries Permit Office, Bldg. 1, 7600 Sand Point Way NE, Seattle, WA 98115. In 2021, NMFS may consider proposals received after March 31. In 2021, NMFS will announce any changes to the SMP submission deadline via public notice. In 2022 and beyond, NMFS will not consider any proposals received after March 31.

(4) *Duration.* Once approved, the SMP expires on December 31 of the year in which it was approved. An SMP may not expire mid-year. No party may join or leave an SMP once it is approved, except as allowed in paragraph (e)(5)(iii) of this section.

(5) *NMFS review of a proposed SMP—(i) Approval.* The Assistant Regional Administrator will provide written notification of approval to the designated SMP representative if the SMP meets the following requirements:

(A) Contains the information required in paragraph (e)(2) of this section;

(B) Is submitted in compliance with the requirements of paragraphs (e)(3) and (4) of this section; and

(C) As determined by NMFS, is reasonably expected to reduce Chinook salmon bycatch.

(ii) *SMP identification number.* If approved, NMFS will assign an SMP identification number to the approved SMP.

(iii) *Amendments to an SMP.* After the SMP is approved, the designated SMP representative must submit any changes to the SMP, including any changes in the vessels party to the SMP, as an amendment to the SMP for approval by NMFS. The designated SMP representative may submit amendments to an approved SMP to NMFS at any time during the year in which the SMP is approved. The amendment must include the SMP identification number. An amendment to an approved SMP is effective upon written notification of approval by NMFS to the designated SMP representative. The Assistant Regional Administrator will provide written notification of approval to the designated SMP representative if the SMP as amended meets the following requirements:

(A) Contains the information required in paragraph (e)(2) of this section;

(B) Is submitted in compliance with the requirements of paragraph (e)(4) of this section; and

(C) As determined by NMFS, is reasonably expected to reduce Chinook salmon bycatch.

(iv) *Disapproval—(A) NMFS Disapproval.* NMFS will disapprove a proposed SMP or a proposed

amendment to an SMP for any of the following reasons:

(1) If the proposed SMP fails to meet any of the requirements of paragraphs (e)(2) through (4) of this section,

(2) If a proposed amendment to an SMP would cause the SMP to no longer meet the requirements of paragraphs (e)(2) and (4) of this section, or

(3) If NMFS determines the proposed SMP or SMP amendment is not reasonably expected to reduce Chinook salmon bycatch.

(B) *Initial Administrative Determination (IAD).* If, in NMFS' review of the proposed SMP or amendment, NMFS identifies deficiencies in the proposed SMP that would require disapproval of the proposed SMP or amendment, NMFS will notify the applicant in writing. The applicant will be provided one 30-day period to address, in writing, the deficiencies identified by NMFS. Additional information or a revised SMP received by NMFS after the expiration of the 30-day period specified by NMFS will not be considered for purposes of the review of the proposed SMP or amendment. NMFS will evaluate any additional information submitted by the applicant within the 30-day period. If the Assistant Regional Administrator determines the additional information addresses deficiencies in the proposed SMP or amendment, the Assistant Regional Administrator will approve the proposed SMP or amendment under paragraph (e)(5)(i) or (iii) of this section. However, if, after consideration of the original proposed SMP or amendment, any additional information, or a revised SMP submitted during the 30-day period, NMFS determines the proposed SMP or amendment does not comply with the requirements of paragraph (e)(5)(i) or (iii) of this section, the Assistant Regional Administrator will issue an IAD to the applicant in writing providing the reasons for disapproving the proposed SMP or amendment.

(C) *Administrative Appeals.* An applicant who receives an IAD disapproving a proposed SMP or amendment may appeal. The appeal must be filed in writing within 30 calendar days of when NMFS issues the IAD. The NOAA Fisheries National Appeals Office will process any appeal. The regulations and policy of the National Appeals Office will govern the appeals process. The National Appeals Office regulations are specified at 15 CFR part 906.

(D) *Pending appeal.* While the appeal of an IAD disapproving a proposed SMP or amendment is pending, proposed parties to the SMP subject to the IAD

will not have access to the Chinook salmon bycatch reserve unless a measure described in § 660.60(i)(1)(ii) has been implemented for that component of the whiting fishery.

(6) *SMP postseason report.* The designated SMP representative for an approved SMP must submit a written postseason report to NMFS and the Council for the year in which the SMP was approved.

(i) *Submission deadline.* The SMP postseason report must be received by NMFS and the Council no later than March 31 of the year following that in which the SMP was approved.

(ii) *Information requirements.* The SMP postseason report must contain, at a minimum, the following information:

(A) Name of the SMP and SMP identification number.

(B) A comprehensive description of Chinook salmon bycatch avoidance measures used in the fishing year in which the SMP was approved, including but not limited to, information sharing, area closures, movement rules, salmon excluder use, and internal bycatch guidelines.

(C) An evaluation of the effectiveness of these avoidance measures in minimizing Chinook salmon bycatch.

(D) A description of any amendments to the terms of the SMP that were approved by NMFS during the fishing year in which the SMP was approved and the reasons the amendments to the SMP were made.

■ 9. Amend § 660.130 by revising paragraphs (e) introductory text, (e)(5) introductory text, and (e)(5)(i) and (iii) and adding paragraph (g) to read as follows:

**§ 660.130 Trawl fishery—management measures.**

\* \* \* \* \*

(e) *Groundfish conservation areas (GCAs).* GCAs are closed areas, defined at § 660.11, and using latitude and longitude coordinates specified at §§ 660.70 through 660.74, and § 660.76.

\* \* \* \* \*

(5) *Block area closures or BACs.* BACs, defined at § 660.111, are applicable to vessels with groundfish bottom trawl or midwater trawl gear on board that is not stowed, per the prohibitions in § 660.112(a)(5). When in effect, BACs are areas closed to bottom trawl and/or midwater trawl fishing. A vessel operating, for any purpose other than continuous transiting, in the BAC must have prohibited trawl gear stowed, as defined at § 660.111. Nothing in these Federal regulations supersedes any state regulations that may prohibit trawling shoreward of the fishery management area, defined at § 660.11. Prohibitions at

§ 660.112(a)(5) do not apply under any of the following conditions and when the vessel has a valid declaration for the allowed fishing:

(i) *Trawl gear*. Limited entry midwater trawl gear and bottom trawl gear may be used within the BAC only when it is an

authorized gear type for the area and season, and not prohibited by the BAC.

\* \* \* \* \*

(iii) *Multiple gears*. If a vessel fishes in a BAC with an authorized groundfish trawl gear, it may fish outside the BAC on the same trip using another authorized trawl gear type for that area

and season, provided it makes the appropriate declaration change.

\* \* \* \* \*

(g) *Salmon bycatch*. This fishery may be closed through automatic action at § 660.60(d)(1)(iv) and (v).

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