Evidencing System to a postal patron that uses a Postage Evidencing System, and communications with respect to the status of such authorization.

(3) Disclosure to a meter manufacturer of the identity of any meter required to be removed from service by that meter manufacturer, and any related customer data, as the result of revocation of an authorization to use a Postage Evidencing System, questioned accurate registration of that meter, or de-certification by the Postal Service of any particular class or model of postage meter.

(4) Tracking the movement of meters between a meter manufacturer and its customers and communications to a meter manufacturer (but not to any third party other than the customer) concerning such movement. The term, meter manufacturer, includes a meter manufacturer's dealers and agents.

(5) To transmit general information to all Postage Evidencing System customers concerning rate and rate category changes implemented or proposed for implementation by the Postal Service.

(6) To advertise Postal Service services relating to the acceptance, processing and delivery of, or postage payment for, metered mail.

(7) To allow the Postal Service to communicate with Postal Service customers on products, services and other information otherwise available to Postal Service customers through traditional retail outlets.

(8) Any internal use by Postal Service personnel, including identification and monitoring activities relating to Postage Evidencing Systems, provided that such use does not result in the disclosure of applicant information to any third party or will not enable any third party to use applicant information for its own purposes; except that the applicant information may be disclosed to other governmental agencies for law enforcement purposes as provided by law.

(9) Identification of authorized Postage Evidencing System providers or announcement of the de-authorization of an authorized provider, or provision of currently available public information, where an authorized provider is identified.

(10) To promote and encourage the use of Postage Evidencing Systems as a form of postage payment, provided that the same information is provided to all Postage Evidencing System customers and no particular Postage Evidencing System provider will be recommended by the Postal Service.

(11) To contact customers in cases of revenue fraud or revenue security.

(12) Disclosure to a Postage Evidencing System provider of applicant information pertaining to that provider's customers that the Postal Service views as necessary to enable the Postal Service to carry out its duties and purposes.

(13) To transmit to a Postage Evidencing System provider all applicant and system information pertaining to that provider's customers and systems that may be necessary to permit such provider to synchronize its computer databases with information contained in the computer files of the Postal Service.

(14) Subject to the conditions stated herein, to communicate in oral or written form with any or all applicants any information that the Postal Service views as necessary to enable the Postal Service to carry out its duties and purposes under part 501.

§ 501.19 Intellectual property.

Providers submitting Postage Evidencing Systems to the Postal Service for approval are responsible for obtaining all intellectual property licenses that may be required to distribute their product in commerce and to allow the Postal Service to process mail bearing the indicia produced by the Postage Evidencing System. To the extent approval is granted and the Postage Evidencing System is capable of being used in commerce, the provider shall indemnify the Postal Service for use of such intellectual property in both the use of the Postage Evidencing System and the processing of mail bearing indicia produced by the Postage Evidencing System.

Neva R. Watson,

Attorney, Legislative.

[FR Doc. 06–5675 Filed 6–26–06; 8:45 am]

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DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 660

[Docket No.060609159–01; I.D. 060606A]

RIN 0648–AU12

Fisheries Off West Coast States; Pacific Coast Groundfish Fishery; Amendment 18

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

ACTION: Proposed rule; request for comments.

SUMMARY: NMFS issues this proposed rule to implement Amendment 18 to the Pacific Coast Groundfish Fishery Management Plan (FMP). Amendment 18 is intended to respond to a court order by setting the Pacific Fishery Management Council's (Council's) bycatch minimization policies and requirements into the FMP. This rule would implement new standardized bycatch reporting methodology and bycatch minimization requirements for groundfish fisheries off the U.S. West Coast.

DATES: Comments on this proposed rule must be received on or before August 8, 2006.

ADDRESSES: Amendment 18 is available on the Council's website at: *http//www.nwr.noaa.gov/Groundfish-Halibut/Groundfish-Fishery Management/NEPA-Documents/Progammatic-EIS.cfm*.

You may submit comments, identified by I.D. number 060606A by any of the following methods:

- E-mail: *Amendment18.nwr@noaa.gov*. Include the I.D. number 060606A in the subject line of the message.
- Federal eRulemaking Portal: *http://www.regulations.gov*. Follow the instructions for submitting comments.
- Fax: 206–526–6736, Attn: Yvonne deReynier.
- Mail: D. Robert Lohn, Administrator, Northwest Region, NMFS, Attn: Yvonne deReynier, 7600 Sand Point Way NE, Seattle, WA 98115–0070.

FOR FURTHER INFORMATION CONTACT: Yvonne deReynier (Northwest Region, NMFS), phone: 206–526–6140; fax: 206–526–6736; and e-mail: *yvonne.dereynier@noaa.gov*.

SUPPLEMENTARY INFORMATION:

Electronic Access

This **Federal Register** document is also accessible via the internet at the website of the Office of the **Federal Register**: *www.gpoaccess.gov/fr/index.html*.

NMFS is proposing this rule to implement Amendment 18 to the FMP, which is intended to set the Council's bycatch minimization polices and requirements into the FMP. Amendment 18 is intended to respond to court orders in *Pacific Marine Conservation Council* v. *Evans*, 200 F.Supp.2d 1194 (N.D. Calif. 2002) [hereinafter *PMCC* v. *Evans*]. The regulations to implement Amendment 18 would: require that groundfish fishery management measures take into account the co-

occurrence ratios of overfished species with more abundant target stocks; require vessels that participate in the open access groundfish fisheries to carry observers if directed by NMFS; authorize the use of depth-based closed areas as a routine management measure for protecting and rebuilding overfished stocks, preventing the overfishing of any groundfish species, minimizing the incidental harvest of any protected or prohibited non-groundfish species, controlling effort to extend the fishing season, minimizing the disruption of traditional commercial fishing and marketing patterns, spreading the available recreational catch over a large number of anglers, discouraging target fishing while allowing small incidental catches to be landed, and allowing small fisheries to operate outside the normal season; and, update the boundary definitions of the Klamath and Columbia River Salmon Conservation Zones and Eureka nearshore area to use latitude and longitude coordinates in a style similar to that of the Groundfish Conservation Areas (GCAs). This proposed rule is based on the recommendations of the Council, under the authority of the FMP and the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act). The background and rationale for the Council's recommendations are summarized below. Further detail appears in the Pacific Coast Groundfish Fishery Bycatch Mitigation EIS (69 FR 57277, September 24, 2004; available online at *http://www.nwr.noaa.gov/Groundfish-Halibut/Groundfish-Fishery-Management/NEPA-Documents/Programmatic-EIS.cfm).*

Background

The Magnuson-Stevens Act requires that fishery management plans ''establish a standardized reporting methodology to assess the amount and type of bycatch occurring in the fishery, and include conservation and management measures that, to the extent practicable and in the following priority - (A) minimize bycatch; and (B) minimize the mortality of bycatch which cannot be avoided.'' 16 U.S.C. 1853(a)(11). The Magnuson-Stevens Act defines the term bycatch to mean ''fish which are harvested in a fishery, but which are not sold or kept for personal use, and includes economic discards and regulatory discards. Such term does not include fish released alive under a recreational catch and release fishery management program.'' 16 U.S.C. 1802(2).

Amendment 13 to the FMP, approved in December 2000, was intended to comply with Magnuson-Stevens Act requirements on bycatch monitoring and minimization. However, in *PMCC* v. *Evans*, the court found that Amendment 13 did not adequately address the required provisions of the Magnuson-Stevens Act and the National Environmental Policy Act (NEPA). Specifically, the court found that: (1) Amendment 13 failed to establish adequate bycatch assessment methodology; (2) NMFS did not comply with its duty under the Magnuson-Stevens Act to minimize bycatch and bycatch mortality; (3) NMFS did not take a ''hard look'' at the environmental consequences of Amendment 13, in violation of NEPA; and (4) the Environmental Assessment did not consider a reasonable range of alternatives and environmental consequences, in violation of NEPA.

Following the court's decision and remand order in PMCC v. Evans, NMFS completed a final EIS on a bycatch mitigation program for the West Coast groundfish fisheries (69 FR 57277, September 24, 2004.) The preferred alternative in that final EIS articulates the Council's bycatch minimization policies and requirements. Once the bycatch minimization program EIS was complete, the Council and NMFS began drafting Amendment 18 to bring the preferred alternative from the EIS into the groundfish FMP. Amendment 18 to the FMP articulates the Council's bycatch minimization approach for the groundfish fisheries and provides comprehensive direction for current and future bycatch minimization efforts within Pacific Coast groundfish management. Amendment 18 largely re-wrote Chapter 6 of the FMP, ''Management Measures,'' to focus on bycatch monitoring and minimization.

Groundfish FMP prior to Amendment 18

Several FMP amendments and numerous Federal regulations subsequent to Amendment 13 have dealt in some way with bycatch, although none has had bycatch as their only focus. Amendment 14 to the FMP implemented a permit stacking program for the limited entry fixed gear sablefish fishery (66 FR 41152, August 7, 2001.) Amendment 14 reduced vessel participation in the limited entry fixed gear primary sablefish fishery by allowing up to three limited entry permits with sablefish endorsements to be stacked on a single fixed gear vessel. Reducing the number of fishery participants indirectly reduces bycatch by reducing the number of vessels potentially responsible for fishing trips and discard events.

Under Amendment 14, vessel owners with stacked permits are eligible to harvest the tier amounts of sablefish associated with each of the permits registered for use with a vessel (66 FR 41152, August 7, 2001.) Landings limits for species other than sablefish are not stackable; this means that although the tier stacking program maintains a fairly consistent level of sablefish fishing effort, it reduces both the number of fishing vessels and the fishing effort on groundfish species other than sablefish. Amendment 14 also converted the fishery from a brief (<15 days per year) derby fishery to a 7-month annual season. Because vessels are no longer fishing in a fast-paced fishery, they have fewer incentives to discard non-sablefish catch in favor of reserving hold space for the targeted sablefish. Since 2001, the limited entry sablefish fleet has consolidated such that of the 164 sablefish endorsed permits, 155 are registered for use with 72 vessels and 9 are not currently registered for use with a particular vessel (as of January 2006.) Amendment 14's implementation has reduced the limited entry fixed gear sablefish fleet to approximately 50 percent of its 2001 size.

In 2003, enactment of Public Law 108–7 provided NMFS with an opportunity to reduce participation in the West Coast groundfish limited entry trawl fleet. Congress funded a vessel and permit buyback program through a $10 million appropriation, plus a $36 million loan to the fleet, which is to be paid back through landings taxes. During 2003, NMFS developed and implemented the buyback program, which removed 91 vessels and their state and Federal permits from West Coast fisheries. Three trawl permits have been subsequently removed from the fishery via permit combination. The limited entry trawl fleet is currently at 180 permits, down from 274 permits prior to the buyback program, a fleet size reduction of 34 percent. Trawl trip limits for the remaining vessels in the fleet are higher than they would have been under the full-sized fleet; higher limits that are better matched to the capacity of participating vessels reduce the frequency of regulation-induced discard.

Amendment 16–1, which dealt primarily with a framework for implementing overfished species rebuilding plans, revised the FMP at section 6.5.1.2 to read in part, ''The Regional Administrator [of NMFS's Northwest Region] will implement an observer program through a Council-approved Federal regulatory framework....'' At § 303(a)(11), the Magnuson-Stevens Act requires that

fishery management plans ''establish a standardized reporting methodology to assess the amount and type of bycatch occurring in the fishery....'' The Amendment 16–1 revision to Section 6.5.1.2 was intended to comply with the Maguson-Stevens Act requirement for inclusion of standardized reporting methodologies in FMPs. NMFS has implemented two major rulemakings for placing observers on West Coast groundfish vessels, one in 2001 to require at-sea observer coverage in the catcher-boat fleet, and a second in 2004 to convert and expand observer coverage in the at-sea processor fleet from voluntary to mandatory.

Observers are a uniformly trained group of technicians who collect biological data aboard fishing vessels. They are stationed aboard vessels to gather independent data about the fish that are taken or received by the vessel. Standardized sampling protocol, defined by NMFS to incorporate random sampling theory, is intended to provide statistically reliable data for fleetwide fishery monitoring. The primary duties of an observer include: estimating catch weights; determining catch composition; collecting length and weight measurements, and doing sex determinations. Data collected by observers are compiled for the purpose of estimating overall catches of groundfish; estimating incidental catch of species not allowed to be retained by these vessels; and for assessing stock condition. Observers must meet minimum education and experience requirements and must be trained by NMFS to ensure that they properly apply NMFS's sampling protocol.

In April 2001, NMFS published a final rule to implement a mandatory observer program for the West Coast groundfish fishery (66 FR 20609; April 24, 2001.) NMFS established the West Coast Groundfish Observer Program (WCGOP) in 2001 to collect total catch and discard information from the groundfish fisheries. Vessels are selected for observer coverage under the authority of Federal groundfish observer regulations at 50 CFR 660.314 and in accordance with a coverage sampling plan (See: *http://www.nwfsc.noaa.gov/research/divisions/fram/observer/index.cfm*. NMFS periodically refines this plan in response to changes in vessel numbers and fishing distribution along the coast.

WCGOP focuses a significant proportion of its sampling effort on the limited entry bottom trawl fleet, because the majority of non-whiting groundfish landings are taken by that sector of the groundfish fleet. While many West Coast groundfish species are taken only by trawl gear, trawl gear is less selective than other West Coast groundfish gears, making the potential for bycatch higher with this gear type. During the period January 2004 through April 2005, WCGOP observed 26 percent of catch landed by the bottom trawl fleet (Observer data report, Table 1, *http://www.nwfsc.noaa.gov/research/divisions/fram/observer/datareport/trawl/datareprtsep2005.cfm)*. This level of coverage equals or surpasses observer coverage levels in other observed fisheries nationwide and meets statistical sampling requirements to monitor and manage the fishery.

In addition to managing coastwide observer coverage of catcher boats, WCGOP also manages observer coverage in the at-sea whiting mothership processing and catcher-processor fishery sectors. Participants in the at-sea whiting fleet had been carrying observers voluntarily since 1991, but NMFS made that coverage mandatory in 2004 (69 FR 31751, June 6, 2004). Through that rulemaking, NMFS also increased observer coverage in the at-sea whiting fleet to 200 percent, meaning that each vessel carries two observers. Although the whiting fishery is the largest-volume single species West Coast groundfish fishery, it has relatively low bycatch rates, making proper observer coverage a challenge because such coverage seeks to quantify rare events.

In 2004, Amendments 16–2 and 16–3 implemented overfished species rebuilding programs for eight overfished species: bocaccio, canary rockfish, cowcod, darkblotched rockfish, lingcod, Pacific ocean perch, widow rockfish, and yelloweye rockfish. Rebuilding plans for overfished species endorsed the use of GCAs to reduce the incidental catch of overfished species in times and areas where they are more likely to occur. GCAs are large areas where specific fishing activities are prohibited or restricted and are used to reduce directed or incidental fishing effort on overfished species. NMFS and the Council had begun using closed areas to reduce the incidental catch of overfished species in 2001, with the implementation of two Cowcod Conservation Areas (CCAs) in the Southern California Bight (66 FR 2338, January 11, 2001.) Their implementation led the way to a series of area closures intended to reduce the catch of other overfished species. In September 2002, NMFS introduced its first large-scale, depth based conservation area, the Darkblotched Rockfish Conservation Area. The Darkblotched Rockfish Conservation Area extended from the U.S./Canada border to Cape Mendocino, CA, between boundary lines approximating the 100 fm (183–m) and 250–fm (457–m) depth contours, with trawling prohibited within the conservation area. NMFS and the Council expanded the use of depth-based area closures beginning in January 2003. This expansion took place at the same time that the Council was developing Amendments 16–2 and 16–3, which later incorporated the use of closed areas as important tools for managing fisheries to stay within overfished species rebuilding OYs.

The terms ''Rockfish Conservation Areas'' and ''RCAs'' refer to gear-specific depth-based closures, most of which stretch along the entire length of the U.S. West Coast, bounded by lines approximating the depth contours that have been shown to enclose areas of higher overfished species abundance. RCAs are gear-specific in order to account for the differing effects that different gear types have on overfished species. For example, Pacific ocean perch and darkblotched rockfish have historically been taken almost exclusively with trawl gear, while yelloweye rockfish is more susceptible to hook-and-line gear in recreational and commercial fisheries. Managers developed a suite of RCAs for trawl gear, non-trawl gear, and recreational fisheries to reduce the impacts of different gears on overfished species. RCAs and the closed-polygon CCAs and Yelloweye Rockfish Conservation Area are implemented in permanent Federal regulations at 50 CFR 660.390 - 660.394.

The GCAs reflect the Council's contemporary approach to groundfish management, which largely focuses on rebuilding overfished species through minimizing total catch of those species. Area closures have moved vessels away from many of the traditional rockfish fishing grounds, where the longer-lived and slow-maturing rockfish are more likely to be found. Fishing fleets have reacted differently to these requirements in terms of how and when they fish and the gear that they use. Trawlers in the northern portion of the West Coast have turned their fishing effort more strongly toward the more abundant and faster-maturing flatfish species managed within the groundfish FMP.

The expansion of area closures has also changed fishing behavior in other ways. In 2003, trawlers began working with the State of Oregon to develop parameters for a trawl net that better targets flatfish while excluding rockfish. NMFS issued the State of Oregon an exempted fishing permit (EFP) to test rockfish-excluding nets in 2003–2004, and the Council developed its 2005–2006 management measures for the

trawl sector in part based on the results of this EFP. Trawlers operating inshore of the Trawl RCA and north of 40°10′ N. lat. are required by regulation to use selective flatfish trawl gear, which is configured to reduce bycatch of rockfish while allowing the nets to retain flatfish. Selective flatfish trawl nets have a flattened ovoid trawl mouth opening that is notably wider than it is tall, with headropes that are recessed from the trawl mouth. This combination of a flattened oval shape and a recessed headrope herds flatfish into the trawl net while allowing rockfish to slip up and over the headrope without entering the net. Selective flatfish trawl gear has been shown to have lower rockfish bycatch rates than more traditional trawl net configurations. By preventing the non-target species from even entering the net, the selective flatfish trawl gear reduces both bycatch and bycatch mortality in the trawl fishery.

At the same time that the Council was developing Amendment 18, it was also working on Amendment 19 to the FMP, which designates West Coast groundfish essential fish habitat (EFH) and implements measures to minimize fishing impacts to EFH. Amendment 19, which NMFS approved on March 8, 2006, establishes 51 ecologically important habitat closed areas (FMP section 6.8.5,) including a bottom trawl closure for waters offshore of the 700–fm (1290–m) depth contour (FMP section 6.8.6) to minimize the adverse effects of fishing on West Coast groundfish EFH (71 FR 27408, May 11, 2008.) Like the CCAs, the habitat closed areas are discrete closed polygons. And, like the RCAs, some of the closed areas apply just to bottom trawling, while others apply to all bottom contact gear. Although the Amendment 19 closures are not specifically intended to prevent bycatch, some or all fishing will be eliminated within the habitat closed areas, reducing opportunities to directly or incidentally take species found within the habitat closed areas.

Groundfish FMP under Amendment 18

As mentioned earlier, Amendment 18 significantly revised Chapter 6 of the FMP, ''Management Measures'' to address the bycatch monitoring and minimization requirements of the Magnuson-Stevens Act. At Section 6.5, Amendment 18 revises the FMP to require the use of a three-part bycatch minimization strategy to meet the Magnuson-Stevens Act's bycatch related mandates: ''(1) gather data through a standardized reporting methodology; (2) use Federal/state/tribal agency partners to assess these data through bycatch models that estimate when, where, and with which gear types bycatch of varying species occurs; and (3) develop management measures that minimize bycatch and bycatch mortality to the extent practicable.'' Although NMFS and the Council have been using this strategy for several years, Amendment 18 formalizes it within the FMP and uses it to institute a comprehensive approach to and requirements for bycatch monitoring and minimization.

In addition to the revisions to Chapter 6, which are discussed below, Amendment 18 revises one of the FMP's goals and five of its objectives to place a greater emphasis on reducing bycatch as part of groundfish fishery management. Amendment 18's changes to the FMP are available on the Council's website at: *http://www.pcouncil.org/groundfish/gffmp/gfal8.html*.

Amendment 18 creates a new section 6.4 in the FMP, ''Standardized Total Catch Reporting Methodology and Compliance Monitoring Program.'' Section 6.4 establishes standard reporting mechanisms that provide the Council with total catch estimates and monitoring methods to verify vessel compliance with regulations intended to minimize bycatch and meet other fishery management goals.

In the West Coast groundfish fishery, bycatch reporting is included as part of total catch (landed catch + discard) reporting. Amendment 18 expands the obligations of the Council and its collaborating agencies to contribute to and improve total catch reporting methodologies for West Coast groundfish fisheries. Under Amendment 18, the FMP would: retain the requirement that the Regional Administrator implement an observer program to collect data used for total catch accounting, authorize the use of electronic monitoring equipment (via cameras and other devices) as appropriate, require the use of observer data in the biennial and inseason fishery management processes, and provide for new information on state monitoring programs for recreational fisheries. Amendment 18 particularly addresses the need to increase catch data collection from vessels that may not target groundfish, but which may take groundfish incidentally at section 6.4.1.1, ''All fishing vessels operating in this management unit, which includes catcher/processors, at-sea processors, and those vessels that directly or incidentally harvest groundfish in waters off Washington, Oregon and California may be required to accommodate an observer and/or electronic-monitoring system for the purpose of collecting scientific data or verifying catch and discard used for scientific data collection....''

Section 6.4 also authorizes the use of electronic monitoring programs ''for appropriate sectors of the fishery.'' Since 2004, NMFS has been working with the three states, with Oregon taking the lead, on an experimental program to test electronic monitoring in the shore-based whiting sector. Electronic monitoring is an integrated assortment of electronic components, usually including video recorders, that can be used at-sea to monitor specific fishing behavior at a lower-cost than human observers. Electronic monitoring programs do not replace observer programs, although they can be used to reduce the cost of observer monitoring in some sectors. The Council is scheduled to consider at its September and November 2006 meeting whether to convert the experimental use of at-sea electronic monitoring in the whiting fishery into a longer-term regulatory requirement.

Section 6.4 also updates the FMP's authorizations for implementing a vessel compliance monitoring and reporting system. At the same time that NMFS and the Council were developing the bycatch mitigation EIS, they were also developing a vessel monitoring system (VMS) program to monitor compliance with fishery closed areas. VMS is a tool that allows enforcement agents to monitor a vessel's speed, direction, and location. VMS transceiver units installed aboard vessels automatically determine the vessel's position and transmit that position to a processing center via a communication satellite. At the processing center, the information is validated and analyzed before being disseminated for various purposes, which may include fisheries management, surveillance and enforcement. Prior to Amendment 18, the FMP had authorized a variety of general reporting requirements, but had not linked those requirements to compliance monitoring. Section 6.4.2 reflects the Council's focus on better linking science, management, and enforcement throughout the groundfish management program.

Amendment 18 adds a new section 6.5, ''Bycatch Mitigation Program'' that describes the Council's three-part bycatch strategy, sets processes for developing bycatch minimization measures, authorizes the use of a variety of regulatory programs to minimize bycatch where practicable, and particularly requires the use of several management programs and measures. As mentioned earlier, the second part of the strategy to address bycatch requirements is ''use Federal/state/tribal

agency partners to assess these data through bycatch models that estimate when, where, and with which gear types varying species occur.'' Bycatch models are reviewed in the Council process through the Council's Scientific and Statistical Committee. Managing the fishery with these bycatch models has focused the Council's overfished species rebuilding efforts on the co-occurrence ratios between target species and overfished species. In other words, management measures are designed to take into account information about the rates at which healthy stocks interact with depleted stocks, so that there is less fishing effort during times and within areas where healthy stocks are more likely to co-occur with depleted stocks.

WCGOP began collecting non-whiting observer data in August 2001 and data on the bottom trawl fishery began entering the management process with the 2003 groundfish specifications and management measures. The introduction of non-whiting observer data into the management process changed and improved NMFS's estimates of species co-occurrence ratios within commercial catch. Amendment 18 revises the FMP to require the use of co-occurrence ratios in management measures development at Section 6.5.3 of the FMP, ''During the development of the biennial specifications and management measures, and throughout the year when measures are adjusted, the Council will take into account the co-occurrence rates of target stocks with overfished stocks, and will select measures that will minimize, to the extent practicable, bycatch.''

Amendment 18 implements the third part of the FMP's bycatch strategy, ''develop management measures that minimize bycatch and bycatch mortality to the extent practicable,'' by bringing a variety of management measures and requirements into the FMP. Some of these measures are specific requirements to be implemented, while others articulate the Council's future policy direction on bycatch minimization within groundfish management. Section 6.5.1 states, in part, ''The Council manages its groundfish fisheries to allow targeting on more abundant stocks while constraining the total mortality of overfished and precautionary zone stocks. For overfished stocks, measures to constrain total mortality are primarily intended to reduce bycatch of those stocks....'' Section 6.5.1 requires that the Council use catch restrictions (FMP section 6.7,) time and area closures (FMP section 6.8,) gear restrictions (FMP section 6.6,) and other measures to tailor the catch of more abundant stocks so that incidental catch of depleted stocks is avoided. Section 6.5.3 provides implementation guidance for these bycatch minimization programs, which are to be implemented where practicable: full retention programs, sector-specific total catch limit programs, vessel-specific total catch limit programs, and providing catch allocations to or gear flexibility for gear types with lower bycatch rates.

A full retention program is ''a regulatory regime that requires participants in a particular sector of the fishery to retain either all of the fish that they catch or all of some species or species group that they catch....Full retention requirements also encourage affected fishery participants to tailor their fishing activities so that they are less likely to encounter non-target species.'' NMFS's work with the states to experiment with electronic monitoring in the shore-based whiting fishery is also looking at whether it is practicable to manage that fishery as a full retention program.

A sector-specific total catch limit program is ''one in which a fishery sector would have access to a pre-determined amount of a groundfish FMU [fishery management unit] species, stock, or stock complex that would be allowed to be caught by vessels in that sector. Once a total catch limit is attained, all vessels in the sector would have to cease fishing until the end of the limit period, unless the total catch limit is increased by the transfer of additional limit amounts.'' Because the whiting fishery has a more mature observer and monitoring program than the non-whiting fisheries, NMFS has been able to implement sector-specific bycatch limits for overfished species taken incidentally in the Pacific whiting fishery (50 CFR 660.373.) Whiting fishery participants have expressed an interest in dividing those bycatch limits by sector, so that there are sector-specific limits for the shore-based sector, the catcher-processor sector, and the mothership sector. Sector-specific limits are not practicable until the shore-based retention and monitoring program is more fully developed.

Vessel-specific catch limit programs ''are similar to individual vessel quotas as applied to groundfish FMU species, stocks, or stock complexes and require more intense monitoring than a sector-specific total catch limit program....Under a vessel-specific total catch limit program, the participating vessels would be monitored inseason and each vessel would be prohibited from fishing once it had achieved its total catch limit for a given FMU species, stock or stock complex.'' (FMP at 6.5.3.2.) The Council is developing alternatives for an individual quota (IQ) program for the limited entry trawl fishery. IQs, depending on specific requirements, could include vessel-specific catch limits for bycatch species. One of the objectives the Council has adopted for the design of the program is ''reduce bycatch and discard mortality.'' Amendment 18 revises the FMP to specify that individual fishing quota programs ''would be established for the purposes of reducing fishery capacity, minimizing bycatch, and to meet other goals of the FMP.'' An IQ program with specific bycatch limits would be dependent upon a more intense level of monitoring than is practicable under the current management regime and could be designed using the FMP's guidance on vessel-specific total catch limit programs.

Section 6.5.3.3 allows the allocation of catch or fishing areas to gear types with lower bycatch rates. The Council made this principle mandatory when, beginning in 2005, it required the use of selective flatfish trawl gear for vessels fishing shoreward of the Trawl RCA north of 40°10′ N. lat. The Council is also implementing this principle in using bycatch models that differ by gear type, which in turn means that the management measures developed out of the bycatch models are gear-specific in addressing target species interactions with depleted species.

Section 6.6 of the FMP addresses ''Gear Definitions and Restrictions.'' Amendment 18 primarily updated the FMP with the gear regulations that NMFS has implemented through regulations. Amendment 19 to the FMP, developed on a concurrent time frame, implements prohibitions in section 6.6.1.1 against: fishing with bottom trawl gear with footrope diameter greater than 8 inches (20.5 cm) shoreward of a boundary line approximating the 100–fm (183–m) depth contour, fishing with bottom trawl gear with a footrope diameter greater than 19 inches (48.6 cm) anywhere in the EEZ, fishing with dredge gear, and fishing with beam trawl gear. These measures are specifically intended to protect groundfish EFH, although they will also reduce the access that some gears have to portions of the EEZ, constraining directed and incidental catch by those gears. Amendment 19's trawl footrope prohibitions in the FMP are the culmination of longer-term Council efforts to restrict trawl gear access to habitat areas where incidental catch of sensitive species may occur.

Amendment 18 adds section 6.7 to update the FMP's guidance on ''Catch Restrictions.'' Amendment 18's additions on catch restrictions primarily provide further guidance on the FMP's direct catch limiting tools: quotas, size limits, total catch limits, prohibited species designation, trip limits, and recreational bag limits, boat limits, and catch dressing requirements.

Amendment 18 adds section 6.8, ''Time/Area Closures'' to the FMP, including a variety of time/area closures in the FMP that vary by type both in their permanency and in the size of area closed, explaining: ''When the Council sets fishing seasons [Section 6.8.1,] it generally uses latitude lines extending from shore to the EEZ boundary to close large sections of the EEZ for part of a fishing year to one or more fishing sectors. RCAs [at section 6.8.2,] by contrast, are coastwide fishing area closures bounded on the east and west by lines connecting a series of coordinates approximating a particular depth contour. RCAs are gear-specific and their eastern and western boundaries may vary during the year. RCAs also may be polygons that are closed to fishing for a brief period (less than one year) in order to provide short-term protection for the more migratory overfished or other protected species. Groundfish fishing areas (GFAs) [at section 6.8.3] are enclosed areas of high abundance of a particular species or species group and may be used to allow targeting of a more abundant stock within that enclosed area. Long-term bycatch mitigation closed areas (section 6.8.4) have boundaries that do not vary by season and are not usually modified annually or biennially.''

Since the court's ruling in *PMCC* v. *Evans*, NMFS has implemented a broad suite of marine area closures intended to reduce incidental catch of overfished groundfish species. RCAs have been used as a significant tool in rebuilding overfished groundfish species through reducing opportunities for incidental cath of those species. RCA boundaries can be altered inseason to tailor fishery management measures with the most recently available catch or scientific information, to better ensure that overfished species OYs are not exceeded.

When the Council finalized its recommendations on Amendment 18 at its November 2005 meeting, it recommended expanding the allowable use of depth-based management measures from reducing catch of and rebuilding overfished stocks to: ''protect and rebuild overfished stocks; extend the fishing season; for the commercial fisheries, to minimize disruption of traditional fishing and marketing patterns; to reduce discards; 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.'' (section 6.2.1.) This expanded allowable use of depth-based management measures makes those measures available for constraining the incidental catch of a broad array of species, not just overfished species.

The wide variety of marine closed areas intended to protect overfished species, protected salmon, and groundfish habitat (closures implemented via Amendment 19) creates a potentially confusing mixture of open and closed areas that apply to various gear types. In order to better enforce the closed areas, NMFS introduced a pilot VMS program on January 1, 2004 (68 FR 62374, November 4, 2003). The pilot VMS regulatory system initially required vessels registered to limited entry permits to carry and use VMS units. When it made its recommendations that NMFS implement this pilot system, the Council stated its intent to expand VMS requirements to cover the open access commercial groundfish fisheries and portions of the recreational fisheries. Over 2004–2005, the Council developed and considered a program to expand VMS requirements to the commercial open access fishery. At its November 2005 meeting, the Council made its final recommendation to require VMS coverage for all open access vessels operating in the EEZ. NMFS is developing a proposed rule to implement the Council's VMS expansion recommendations, which the agency plans to publish in summer 2006. To recognize the need for VMS as a compliance tool for area and/or season closures, the Council recommended including an authorization for its use within the FMP via Amendment 18 at section 6.4.2. Amendment 18 also adds section 6.10, ''Fishery Enforcement and Vessel Safety,'' to provide a more clear framework for evaluating the enforceability of all regulations implementing the FMP, including those related to area closures.

Regulations Implementing Amendment 18

As discussed above, NMFS and the Council have implemented a variety of bycatch minimization regulations since Amendment 13. In addition to those measures already in place, the regulations to implement Amendment 18 would: require that groundfish fishery management measures take into account the co-occurrence ratios of overfished species with more abundant target stocks; revise Federal observer regulations to authorize NMFS to place observers on vessels that participate in the open access groundfish fisheries; allow the use of depth-based closed areas as a routine management measure for protecting and rebuilding overfished stocks, preventing the overfishing of any groundfish species, minimizing the incidental harvest of any protected or prohibited non-groundfish species, controlling effort to extend the fishing season, minimizing the disruption of traditional commercial fishing and marketing patterns, spreading the available recreational catch over a large number of anglers, discouraging target fishing while allowing small incidental catches to be landed, and allowing small fisheries to operate outside the normal season; and update the boundary definitions of the Klamath and Columbia River Salmon Conservation Zones and Eureka nearshore area to use latitude and longitude coordinates in a style similar to that of the GCAs.

This proposed rule would revise Federal regulations at 50 CFR 660.370 to require species co-occurrence ratios to be taken into account during the setting of harvest specifications and management measures. This action is intended to implement the FMP's requirement under Amendment 18 that bycatch be addressed through modeling interactions between target and bycatch species, and the requirement that management measures be designed to take into account those modeled interactions.

To implement Amendment 18 and to clarify the agency's authority to place observers on open access groundfish vessels, this rule proposes to revise observer coverage requirement regulations at § 660.314(c)(2). Catcher vessels that would be subject to Federal observer coverage requirements would include: (A) Any vessel registered for use with a Pacific Coast groundfish limited entry permit that fishes in state or Federal waters seaward of the baseline from which the territorial sea is measured off the States of Washington, Oregon, or California (0–200 nm offshore); (B) Any vessel that is used to take and retain, possess, or land groundfish in or from the EEZ; (C) Any vessel that is required to take a Federal observer by the applicable state law. WCGOP is working with the three West Coast states to ensure that state law is concurrent with Federal law in permitting Federal observer coverage of vessels that take groundfish. This action is intended to ensure that WCGOP has

access not just to vessels targeting groundfish in Federal waters, but also to open access vessels participating in fisheries that take and retain federally managed groundfish species, even if they are not specifically targeting groundfish.

As mentioned earlier, Amendment 18 expands the use of depth-based management measures beyond protecting and rebuilding overfished stocks. This proposed rule would revise Federal regulations at 50 CFR 660.370 so that routine management measures for all fisheries allow depth-based management measures to be used: ''to protect and rebuild overfished stocks, to prevent the overfishing of any groundfish species by minimizing the direct or incidental catch of that species, to minimize the incidental harvest of any protected species taken in the groundfish fishery, 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.'' This measure is intended to allow the expanded use of depth-based closed areas both as biennial and inseason management measures to protect a more broad variety of species than just overfished species.

NMFS has primarily used depth-based management in the non-whiting groundfish fisheries. The whiting fishery has been managed with salmon protection zones off the Columbia and Klamath rivers since 1993 (April 20, 1993, 58 FR 21263.) The whiting fishery is also restricted within the Eureka management area (43°00′ to 40°30′ N. lat., approximately Cape Blanco, OR to Cape Mendocino, CA), wherein it is subject to more restrictive trip limits shoreward of the 100–fm (183–m) depth contour. Both the salmon protection zones and the trip limit restrictions within the Eureka management area are intended to reduce bycatch of endangered and threatened salmon taken incidental to the whiting fishery. NMFS is using this Amendment 18 proposed rule to update the boundary designations for the Klamath River and Columbia River Salmon Conservation Zones, and to update the Eureka restriction zone so that it is bounded by the RCA 100–fm (183–m) boundary line, rather than by a bathymetric curve found on a series of NOAA charts. Current regulatory language designating the boundaries of these areas is not as precise as that used for RCAs and other overfished species conservation areas. This proposed rule would revise Federal regulations to define the boundaries of the salmon conservation zones within series of latitude/longitude coordinates, as has been done for the RCAs and other overfished species conservation areas. This proposed rule would also revise Federal regulations to refer to the area affected by more restrictive trip limits as shoreward of the boundary line approximating the 100–fm (183–m) depth contour, as defined for RCAs and other management areas with latitude/longitude coordinates at § 660.393. These measures are intended to improve the enforceability of regulations designed to reduce salmon bycatch in the whiting fishery.

Continuing Council Efforts in Support of Amendment 18

In a multi-species fishery like the West Coast groundfish fishery, developing management measures to minimize bycatch is an ongoing effort. When the Council adopted Amendment 18, they discussed next steps for bycatch minimization, particularly looking for practical near-term actions that could swiftly result in bycatch reduction. In addition to the suite of management measures brought into the FMP and Federal regulations via Amendment 18, the Council recommended: (1) investigating the state and Federal total catch data delivery systems with the aim of increasing the frequency with which observer and total catch data is made available to the Council and the public, and (2) implementing a permitting program for the groundfish open access fishery so as to better connect catch with vessels in particular geographic areas.

For the first issue, more timely access to total catch data, the Council asked NMFS to begin a dialogue within the Council process by reporting to the Council on the process for observer data compilation and analysis. The agency's initial sense is that there are several steps in the data aggregation process that need to be reviewed for efficiency: (1) the delivery of fish ticket and port sampler data to the Pacific Fisheries Information Network (PacFIN;) (2) the verification of fish ticket data with observer data to ensure that the correct fish tickets are matched to the correct observed trips; (3) the delivery of finalized trawl logbook data to PacFIN; (4) the analysis of observer data and its expansion to the total fleet; (5) the compilation of observer data into formats compatible with confidentiality laws and the Information Quality Act.

For the second issue, open access fleet permitting, the Council did not specify whether it intended the size of the open access fleet to be reduced. When recommending permits for open access fishery participants, Council members expressed a desire to have more complete data on catch attributable to vessels landing groundfish outside of the limited entry fishery. NMFS's draft Environmental Assessment on expanding VMS coverage to the open access fishery found that 1,000 - 1,500 vessels participate in the open access fishery each year. Amendment 18 revises the second objective of the FMP to place a higher priority on managing harvest capacity so that it is better matched to available groundfish resources. NMFS supports the Council's desire to permit the open access fleet so as to provide better vessel-specific tracking of landings in that sector. However, the agency also supports bringing the capacity within the open access fishery into line with the resources available to that fleet, and will be urging the Council to consider management alternatives to reduce open access fleet size. The Council is initially scheduled to consider this issue at its September 10–15, 2006, meeting in Foster City, CA.

Beyond these two issues, the Council is considering a variety of management programs that include reducing bycatch as management goals: additional area closures to protect both overfished species and protected salmon as part of the 2007–2008 groundfish harvest specifications and management measures; a trawl IQ program intended, in part, to minimize discard; a full retention and electronic monitoring program for the shorebased whiting fishery; and a groundfish allocation EIS that would establish allocations between the trawl and fixed gear sectors of the limited entry fleet, and between the commercial and recreational fisheries, in order to allow the development and consideration of a trawl IQ program, and sector-specific and/or vessel-specific total catch limit programs.

Because technology and economic considerations change over time, the practicability of effectively using different bycatch minimization measures also changes over time. Amendment 18 to the groundfish FMP contains measures to both minimize bycatch to the extent practicable at this time, and to foster fishery management programs that will expand the array of management measures that are practicable in the future. Bycatch minimizing management tools that might not now be available to manage the fleet may become available in the future. Amendment 18 provides a

framework for implementing bycatch minimization measures that are impracticable at this time, but which may become practicable in the future.

Classification

At this time, NMFS has not determined whether Amendment 18, which this rule would implement, is consistent with the national standards of the Magnuson-Stevens Act and other applicable laws. NMFS, in making that determination, will take into account the data, views, and comments received during the comment period.

NMFS prepared a final EIS a bycatch minimization program in the Pacific Coast groundfish fisheries. Amendment 18 would implement the Council's preferred alternative from that EIS. A notice of availability for the final EIS was published on September 24, 2004 (69 FR 57277.) A copy of the final EIS is available online at: *http://www.nwr.noaa.gov/groundfish-Halibut/Groundfish-Fishery-Management/NEPA-Documents/Programmatic-EIS.cfm.*

This proposed rule has been determined to be not significant for purposes of Executive Order 12866.

This action contains a variety of proposed revisions to Federal regulations. With respect to the Regulatory Flexibility Act (RFA), the revisions to observer regulations proposed by this action are within the scope of the analysis conducted for the initial implementation of the observer program: the EA/RIR/IRFA on ''An Observer Program for Catcher Vessels in the Pacific Coast Groundfish Fishery''(2000). NMFS summarized the Final Regulatory Flexibility Analysis for that action in the preamble to the final rule published on April 24, 2001 (66 FR 20609.) For the remainder of the regulatory actions proposed in this rule, NMFS prepared an updated initial regulatory flexibility analysis (IRFA) as required by section 603 of the RFA. The IRFA describes the economic impact this proposed rule, if adopted, would have on small entities. A description of the action, why it is being considered, and the legal basis for this action are contained in the preamble to this proposed rule. A summary of the analysis follows.

As discussed earlier in this document, regulations beyond those applying to the observer program would: require that groundfish fishery management measures take into account the co-occurrence ratios of overfished species with more abundant target stocks; allow the use of depth-based closed areas as a routine management measure for preventing the overfishing of any groundfish species by minimizing the direct or incidental catch of that species (in addition to the current use of depth-based management measures to protect overfished species;) allow the use of depth-based closed areas as a routine management measure for minimizing the bycatch of any prohibited or protected species taken incidentally in the groundfish fishery, for controlling effort to extend the fishing season, for minimizing the disruption of traditional fishing seasons and marketing patterns, for allowing the recreational catch to be available to the largest number of anglers, for discouraging target fishing while allowing small incidental catches to be landed, and for allowing small fisheries to operate outside of the normal fishing season, and; update the boundary definitions of the Klamath and Columbia River Salmon Conservation Zones and Eureka nearshore area to use latitude and longitude coordinates in a style similar to that of the GCAs.

Approximately 1,511 vessels participated in the West Coast commercial groundfish fisheries in 2003. Of those, about 498 vessels were registered to limited entry permits issued for either trawl, longline, or pot gear. All but 10–20 of the 1,511 vessels participating in the groundfish fisheries are considered small businesses by the Small Business Administration. In the 2001 recreational fisheries, there were 106 Washington charter vessels engaged in salt water fishing outside of Puget Sound, 232 charter vessels active on the Oregon coast, and 415 charter vessels active on the California coast. Although some charter businesses, particularly those in or near large California cities, may not be small businesses, all are assumed to be small businesses for purposes of this discussion.

The regulations that require that groundfish fishery management measures take into account the co-occurrence ratios of overfished species with more abundant target stocks, allow the use of depth-based closed areas as a routine management measure for preventing the overfishing of any groundfish species by minimizing the direct or incidental catch of that species, and allow the use of depth-based closed areas a routine management measure for minimizing the bycatch of any prohibited or protected species taken incidentally in the groundfish fishery apply to all 1,700 vessels participating in the West Coast commercial groundfish fisheries. The regulations that update the boundary definitions of the Klamath and Columbia River Salmon Conservation Zones and Eureka nearshore area apply to the 40–50 vessels that annually participate in the West Coast Pacific whiting fishery.

NMFS and the Council developed these proposed regulations in order to implement Amendment 18, which brings the Council's bycatch minimization program into the FMP. As discussed earlier in this document, the Council developed Amendment 18 from its preferred alternative in a September 2004 final EIS on a bycatch minimization program in the West Coast groundfish fisheries. The EIS analyzed seven alternatives for a long-term bycatch minimization program: (1) Status quo, control bycatch by trip limits that vary by gear, depth, fishing area, and season; (2) reduce effort in the fishery to allow for larger trip limits; (3) shorten the commercial fishing season to allow for larger trip limits; (4) establish sector catch and mortality caps; (5) establish an individual quota program for the commercial fishery; (6) close large marine areas to fishing, implement more strict gear restrictions, establish individual bycatch caps, and; (7) preferred, include all current bycatch minimization program elements in the FMP, develop and adopt sector-specific caps for overfished and depleted groundfish species where practicable; support the future use of Individual Fishing Quota programs for appropriate sectors of the fishery; improve baseline accounting of bycatch by sector for to better meet future bycatch program goals.

Each of the alternatives analyzed in the EIS was expected to have different overall effects on the economy. Because of the length of time necessary to complete an EIS of this magnitude, many of the actions contemplated in the preferred alternative and elsewhere in the EIS were analyzed and implemented via some separate earlier action. For example, the large-scale marine area closures off the West Coast known as RCAs were first implemented coastwide as part of the 2004 groundfish harvest specifications and management measures. The actions contemplated in the preferred alternative that have not yet been implemented and which are not proposed to be implemented via this rule, such as vessel-specific bycatch caps, are not practicable at this time. All of the requirements in this action do not increase the costs associated with reporting, record-keeping, or other compliance requirements directly. These requirements are: (1) groundfish fishery management measures take into account the co-occurrence ratios of overfished species with more abundant target stocks; (2) the allowance of the use of depth-based closed areas a routine management measure for

preventing the overfishing of any groundfish species by minimizing the direct or incidental catch of that species; and 3) the allowance of the use of depth-based closed areas as a routine management measure for minimizing the bycatch of any prohibited or protected species taken incidentally in the groundfish fishery. However, rules based on these provisions will, at some future time, result in compliance requirements. When this occurs, those management measures will be analyzed as part of the applicable rulemaking process. A copy of this analysis is available from NMFS (see **ADDRESSES**).

NMFS issued Biological Opinions under the Endangered Species Act (ESA) on August 10, 1990, November 26, 1991, August 28, 1992, September 27, 1993, May 14, 1996, and December 15, 1999, pertaining to the effects of the Pacific Coast groundfish FMP fisheries on Chinook salmon (Puget Sound, Snake River spring/summer, Snake River fall, upper Columbia River spring, lower Columbia River, upper Willamette River, Sacramento River winter, Central Valley spring, California coastal), coho salmon (Central California coastal, southern Oregon/northern California coastal), chum salmon (Hood Canal summer, Columbia River), sockeye salmon (Snake River, Ozette Lake), and steelhead (upper, middle and lower Columbia River, Snake River Basin, upper Willamette River, central California coast, California Central Valley, south/central California, northern California, southern California). These biological opinions have concluded that implementation of the FMP for the Pacific Coast groundfish fishery was not expected to jeopardize the continued existence of any endangered or threatened species under the jurisdiction of NMFS, or result in the destruction or adverse modification of critical habitat.

NMFS reinitiated a formal ESA section 7 consultation under the ESA in 2005 for both the Pacific whiting midwater trawl fishery and the groundfish bottom trawl fishery. The December 19, 1999 Biological Opinion had defined an 11,000 Chinook incidental take threshold for the Pacific whiting fishery. During the 2005 Pacific whiting season, the 11,000 fish Chinook incidental take threshold was exceeded, triggering reinitiation. Also in 2005, new data from the West Coast Groundfish Observer Program became available, allowing NMFS to complete an analysis of salmon take in the bottom trawl fishery.

NMFS prepared a Supplemental Biological Opinion dated March 11, 2006, which addressed salmon take in both the Pacific whiting midwater trawl and groundfish bottom trawl fisheries. In its 2006 Supplemental Biological Opinion, NMFS concluded that catch rates of salmon in the 2005 whiting fishery were consistent with expectations considered during prior consultations. Chinook bycatch has averaged about 7,300 over the last 15 years and has only occasionally exceeded the reinitiation trigger of 11,000. Since 1999, annual Chinook bycatch has averaged about 8,450. The Chinook ESUs most likely affected by the whiting fishery has generally improved in status since the 1999 section 7 consultation. Although these species remain at risk, as indicated by their ESA listing, NMFS concluded that the higher observed bycatch in 2005 does not require a reconsideration of its prior ''no jeopardy'' conclusion with respect to the fishery. For the groundfish bottom trawl fishery, NMFS concluded that incidental take in the groundfish fisheries is within the overall limits articulated in the Incidental Take Statement of the 1999 Biological Opinion. The groundfish bottom trawl limit from that opinion was 9,000 fish annually. NMFS will continue to monitor and collect data to analyze take levels. NMFS also reaffirmed its prior determination that implementation of the Groundfish FMP is not likely to jeopardize the continued existence of any of the affected ESUs.

There are four groundfish treaty tribes operating off the U.S. West Coast: Makah, Quileute, Hoh, and Quinault. Representatives of these tribes participate in the Pacific Council process, and were part of the development of Amendment 18 to the FMP. Under the Magnuson-Stevens Act at 16 U.S.C. 1852(b)(5), one of the voting members of the Pacific Council must be a representative of an Indian tribe with federally recognized fishing rights from the area of the Council's jurisdiction. In accordance with E.O. 13175, this proposed rule was developed after meaningful consultation and collaboration with the tribal representative on the Pacific Council and with the tribal officials from the four groundfish treaty tribes affected by this action. NMFS consulted and collaborated with tribal officials on this action both within the Pacific Council process, and externally to that process.

List of Subjects in 50 CFR Part 660

Fisheries, Fishing, Indian fisheries.

Dated: June 21, 2006.

James W. Balsiger,

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

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

PART 660—FISHERIES OFF WEST COAST STATES

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

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

2. In § 660.314, paragraphs (c)(2), and (f)(1)(v)(B) are revised to read as follows:

§ 660.314 Groundfish observer program.

* * * * *

(c) * * *

(2) *Catcher vessels.* When NMFS notifies the vessel owner, operator, permit holder, or the vessel manager of any requirement to carry an observer, the vessel may not be used to fish in the EEZ without carrying an observer.

(i) For the purposes of this section, catcher vessels include all of the following vessels:

(A) Any vessel registered for use with a Pacific Coast groundfish limited entry permit that fishes in state or Federal waters seaward of the baseline from which the territorial sea is measured off the States of Washington, Oregon, or California (0–200 nm offshore).

(B) Any vessel that is used to take and retain, possess, or land groundfish in or from the EEZ.

(C) Any vessel that is required to take a Federal observer by the applicable state law.

(ii) *Notice of departure Basic rule.* At least 24 hours (but not more than 36 hours) before departing on a fishing trip, a vessel that has been notified by NMFS that it is required to carry an observer, or that is operating in an active sampling unit, must notify NMFS (or its designated agent) of the vessel's intended time of departure. Notice will be given in a form to be specified by NMFS.

(A) *Optional notice Weather delays.* A vessel that anticipates a delayed departure due to weather or sea conditions may advise NMFS of the anticipated delay when providing the basic notice described in paragraph (c)(2)(i) of this section. If departure is delayed beyond 36 hours from the time the original notice is given, the vessel must provide an additional notice of departure not less than 4 hours prior to departure, in order to enable NMFS to place an observer.

(B) *Optional notice Back-to-back fishing trips.* A vessel that intends to

make back-to-back fishing trips (i.e., trips with less than 24 hours between offloading from one trip and beginning another), may provide the basic notice described in paragraph (c)(2)(i)) of this section for both trips, prior to making the first trip. A vessel that has given such notice is not required to give additional notice of the second trip.

(iii) *Cease fishing report.* Withing 24 hours of ceasing fishing, vessel owners, operators, or managers must notify NMFS or its designated agent that fishing has ceased. This requirement applies to any vessel that is required to carry an observer, or that is operating in a segment of the fleet that NMFS has identified as an active sampling unit.

* * * * *

(f) * * *

(1) * * *

(v) * * *

(B) *Annual general endorsements.* Each observer must obtain an annual general endorsement to their certification prior to his or her first deployment within any fishing year subsequent to a year in which a certification training endorsement is obtained. To obtain an annual general endorsement, an observer must successfully complete the annual briefing, as specified by the Observer Program. All briefing attendance, performance, and conduct standards required by the Observer Program must be met.

* * * * *

3. In § 660.370, paragraphs (b) and (c)(3) are revised to read as follows:

§ 660.370 Specifications and management measures.

* * * * *

(b) *Biennial actions.* The Pacific Coast Groundfish fishery is managed on a biennial, calendar year basis. Harvest specifications and management measures will be announced biennially, with the harvest specifications for each species or species group set for two sequential calendar years. In general, management measures are designed to achieve, but not exceed, the specifications, particularly optimum yields (harvest guidelines and quotas), commercial harvest guidelines and quotas, limited entry and open access allocations, or other approved fishery allocations, and to protect overfished and depleted stocks. Management measures will be designed to take into account the co-occurrence ratios of target species with overfished species, and will select measures that will minimize bycatch to the extent practicable.

(c) * * *

(3) *All fisheries, all gear types, depth-based management measures.* Depth-based management measures, particularly the setting of closed areas known as Groundfish Conservation Areas, may be implemented in any fishery 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 § 660.390–.394. Depth-based management measures and the setting of closed areas may be used: to protect and rebuild overfished stocks, to prevent the overfishing of any groundfish species by minimizing the direct or incidental catch of that species, to minimize the incidental harvest of any protected or prohibited species taken in the groundfish fishery, 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.

* * * * *

4. In § 660.373, paragraphs (c)(1), (c)(2), and (d) are revised to read as follows:

§ 660.373 Pacific whiting (whiting) fishery management.

* * * * *

(c) * * *

(1) *Klamath River Salmon Conservation Zone.* The Klamath River Salmon Conservation Zone is an area off the northern California coast intended to protect salmon from incidental catch in the whiting fishery. The Klamath River Conservation Zone is defined by straight lines connecting the following specific latitude and longitude coordinates in the order listed:

(i) 41°38.80′ N. lat., 124°07.49′ W. long.;

(ii) 41°38.80′ N. lat., 124°23.00′ W. long.;

(iii) 41°26.80′ N. lat., 124°19.26′ W. long.;

(iv) 41°26.80’ N. lat., 124°03.80′ W. long.; and connecting back to 41°38.80′ N. lat., 124°07.49′ W. long.

(2) *Columbia River Salmon Conservation Zone.* The Columbia River Salmon Conservation Zone is an area off the northern Oregon and southern Washington coast intended to protect salmon from incidental catch in the whiting fishery. The Columbia River Salmon Conservation Zone is defined by straight lines connecting the following specific latitude and longitude coordinates in the order listed:

(i) 46°18.00′ N. lat., 124°04.50′ W. long.;

(ii) 46°18.00′ N. lat., 124°13.30′ W. long.;

(iii) 46°11.10′ N. lat., 124°11.00′ W. long.;

(iv) 46°13.58′ N. lat., 124°01.33′ W. long.; and connecting back to 46°18.00′ N. lat., 124°04.50′ W. long.

(d) *Eureka area trip limits.* Trip landing or frequency limits may be established, modified, or removed under § 660.370 or § 660.373, specifying the amount of Pacific whiting that may be taken and retained, possessed, or landed by a vessel that, at any time during a fishing trip within the Eureka management area (from 43°00.00’’ to 40°30.00’’ N. lat.) and shoreward of a boundary line approximating the 100 fm (183 m) depth contour, as defined with latitude/longitude coordinates at § 660.393.

* * * * *

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