

unilaterally, including but not limited to, the use of conditions intended to reopen a certification (“reopeners”). Among other issues, EPA is concerned that the rule’s prohibition of modifications may limit the flexibility of certifications and permits to adapt to changing circumstances. EPA is interested in stakeholder feedback on modifications and “reopeners,” including but not limited to, whether the statutory language in CWA Section 401 supports modification of certifications or “reopeners,” the utility of modifications (e.g., specific circumstances that may warrant modifications or “reopeners”), and whether there are alternate solutions to the issues that could be addressed by certification modifications or “reopeners” that can be accomplished through the federal licensing or permitting process.

8. *Neighboring jurisdictions.* The rule addresses the so-called “neighboring jurisdiction” process in CWA Section 401(a)(2), including interpreting the timeframe in which a federal agency must notify EPA for purposes of Section 401(a)(2) and providing process requirements for the agency’s analysis and the neighboring jurisdictions’ review and response. EPA is interested in stakeholder feedback on the neighboring jurisdiction process, including but not limited to, whether the agency should elaborate in regulatory text or preamble on considerations informing its analysis under CWA Section 401(a)(2), whether the agency’s decision whether to make a determination under CWA Section 401(a)(2) is wholly discretionary, and whether the agency should provide further guidance on the Section 401(a)(2) process that occurs after EPA makes a “may affect” determination.

9. *Data and other information.* EPA is interested in receiving any data or information from stakeholders about the application of the 401 Certification Rule, including but not limited to, impacts of the rule on processing certification requests, impacts of the rule on certification decisions, and whether any major projects are anticipated in the next few years that could benefit from or be encumbered by the 401 Certification Rule’s procedural requirements. Additionally, EPA is interested in stakeholder feedback about existing state CWA Section 401 procedures, including whether the agency should consider the extent to which any revised rule might conflict with existing state CWA Section 401 procedures and place a burden on those states to revise rules in the future.

10. *Implementation coordination.* EPA is interested in hearing from stakeholders about facilitating implementation of any rule revisions. For example, given the relationship between federal provisions and state processes for water quality certification, should EPA consider specific implementation timeframes or effective dates to allow for adoption and integration of water quality provisions at the state level. Similarly, EPA is interested in receiving feedback on whether concomitant regulatory changes should be proposed and finalized simultaneously by relevant federal agencies (e.g., the Army Corps of Engineers, Federal Energy Regulatory Commission) so that implementation of revised water certification provisions would be more effectively coordinated and would avoid circumstances where regulations could be interpreted as inconsistent with one another.

#### Outreach

EPA is aware that CWA Section 401 and the 401 Certification Rule are of interest to many states, tribes, federal agencies, project proponents, and the public because of the relationship between water quality certifications and federal licensing and permitting processes. As a result, EPA wants to ensure that it has the opportunity to consider stakeholder input prior to revising the 401 Certification Rule. EPA intends to have multiple webinar-based listening sessions to solicit feedback on potential approaches to revise the 401 Certification Rule. During these listening sessions, EPA will provide background information on the prior rulemaking effort. Stakeholders will have the opportunity to provide input to EPA on the topics provided above and any other relevant information on the 401 Certification Rule for the agency’s consideration. Information on the listening session dates, times, and registration instructions will be made available on EPA’s website, located at <https://www.epa.gov/cwa-401>. Persons or organizations wishing to provide verbal input during a listening session will be selected on a first-come, first-served basis, with consideration given to hearing from different stakeholder groups. Due to the expected number of participants, individuals will be asked to limit their oral presentation to three minutes. Further instructions on signing up and participating in listening sessions will be made available on EPA’s website above at a later date. Supporting materials and written feedback from those who do not have an

opportunity to speak can be submitted to the docket as described above.

**Michael S. Regan,**  
*Administrator.*

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## DEPARTMENT OF COMMERCE

### National Oceanic and Atmospheric Administration

#### 50 CFR Part 660

[RTID 0648–XA696]

#### Fisheries Off West Coast States; West Coast Salmon Fisheries; Amendment 21 to the Pacific Coast Salmon Fishery Management Plan

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

**ACTION:** Announcement of availability of fishery management plan amendment; request for comments.

**SUMMARY:** The Pacific Fishery Management Council (Council) has submitted Amendment 21 to the Pacific Coast Salmon Fishery Management Plan (FMP) to the Secretary of Commerce for review. If approved, Amendment 21 would set an annual Chinook salmon abundance threshold below which the Council and NMFS would implement specific management measures, through the annual ocean salmon management measures, to limit ocean salmon fishery impacts on the availability of Chinook salmon as prey for endangered Southern Resident killer whales (SRKW).

**DATES:** Comments on Amendment 21 must be received by August 2, 2021.

**ADDRESSES:** You may submit comments on this document, identified by NOAA–NMFS–2021–0006, by the following method:

- *Electronic Submissions:* Submit all electronic public comments via the Federal e-Rulemaking Portal. Go to [www.regulations.gov](http://www.regulations.gov) and enter NOAA–NMFS–2021–0006 in the Search box. Click the “Comment” icon, complete the required fields, and enter or attach your comments.

*Instructions:* Comments must be submitted by the above method to ensure that the comments are received, documented, and considered by NMFS. Comments sent by any other method, to any other address or individual, or received after the end of the comment period, may not be considered. All comments received are a part of the public record and will generally be

posted for public viewing on [www.regulations.gov](http://www.regulations.gov) without change. All personal identifying information (e.g., name, address, etc.) submitted voluntarily by the sender will be publicly accessible. Do not submit confidential business information, or otherwise sensitive or protected information. NMFS will accept anonymous comments (enter "N/A" in the required fields if you wish to remain anonymous).

The draft FMP, as amended through Amendment 21, with notations showing how Amendment 21 would change the FMP, if approved, is available on the NMFS website at <https://www.fisheries.noaa.gov/action/amendment-21-pacific-coast-salmon-fishery-management-plan>.

The Council and NMFS prepared a draft Environmental Assessment. An electronic copy of this document may be obtained from the West Coast Regional Office website at <https://www.fisheries.noaa.gov/west-coast/laws-and-policies/west-coast-regional-national-environmental-policy-act-documents>.

**FOR FURTHER INFORMATION CONTACT:**  
Jeromy Jording at 360-763-2268.

**SUPPLEMENTARY INFORMATION:**

**Background**

The ocean salmon fisheries in the exclusive economic zone (EEZ) (3–200 nautical miles) (5.6–370.4 kilometers) off Washington, Oregon, and California are managed under the Pacific Coast Salmon Fishery Management Plan (FMP). The Magnuson-Stevens Fishery Conservation and Management Act (MSA) requires that each regional fishery management council submit any FMP or plan amendment it prepares to NMFS for review and approval, disapproval, or partial approval by the Secretary of Commerce (Secretary). The MSA also requires that NMFS, upon receiving an FMP or amendment, immediately publish a notice that the FMP or amendment is available for public review and comment. This document announces that proposed Amendment 21 to the FMP is available

for public review and comment. NMFS will consider the public comments received during the comment period described above in determining whether to approve, partially approve, or disapprove Amendment 21 to the FMP.

Amendment 21 was developed by the Council to address impacts of the fisheries managed under the FMP on Chinook salmon as prey for the SRKW distinct population segment of *Orcinus orca*, which is listed as endangered under the Endangered Species Act (ESA). The development of Amendment 21 was informed by the risk assessment prepared by the Council's ad hoc SRKW Workgroup.<sup>1</sup> The risk assessment identified Chinook salmon as the primary prey of SRKW. Chinook salmon, as well as coho salmon, are targeted in ocean salmon fisheries managed under the FMP. The Workgroup also identified a range of potential management measure the Council could take to limit ocean salmon fishery impacts to Chinook salmon prey availability for SRKW. The Council considered the Workgroup recommendations in the development of Amendment 21.

If approved, Amendment 21 would establish a threshold for annual Chinook salmon abundance below which additional management measures would be implemented to limit the effects of the fisheries on SRKW. This low abundance threshold is defined as October 1 projections of Chinook salmon abundance in the area from the U.S./Canada border to Cape Falcon, OR, prior to salmon fisheries occurring in the EEZ (referred to as time step 1 (TS1)). If an annual forecast for this abundance is less than the arithmetic mean of the seven lowest years of TS1 starting abundance during the period 1992–2016 (1994–1996, 1998–2000 and 2007), currently calculated as 966,000 Chinook salmon, management responses

<sup>1</sup> The SRKW Workgroup's risk assessment report can be found on the Council's website: <https://www.pcouncil.org/documents/2020/05/e-2-srkw-workgroup-report-1-pacific-fishery-management-council-salmon-fishery-management-plan-impacts-to-southern-resident-killer-whales-risk-assessment-electronic-only.pdf/>.

would be implemented through the annual management measures for ocean salmon fisheries. The management measures include a limit on the annual quota in non-tribal commercial fisheries north of Cape Falcon, Oregon, shifting quota for Chinook salmon catch north of Cape Falcon, Oregon, from the spring time period when the available information indicates the whales experience greater overlap with salmon fisheries to the summer time period, and time and area closures in times and areas for which current data indicate greater foraging use by the killer whales (see proposed FMP language for detail). The goal for the Amendment 21 management responses is to limit ocean salmon fishery impacts on foraging opportunities for SRKW on Chinook salmon in years of low Chinook salmon abundance. Management measures implemented under Amendment 21 would be applied in concert with measures designed to meet other requirements of the FMP including conservation objectives and annual catch limits for specific salmon stocks and stock complexes.

Because Amendment 21 will be implemented through the annual management measures for the ocean salmon fishery, NMFS is not promulgating an implementing rule at this time.

All comments received by the end of the comment period on Amendment 21 (see **DATES** and **ADDRESSES** above) will be considered in the Secretary's decision to approve, disapprove, or partially approve this amendment. To be considered in this decision, comments must be received by close of business on the last day of the comment period; that does not mean postmarked or otherwise transmitted by that date.

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

Dated: May 26, 2021.

**Jennifer M. Wallace,**

*Acting Director, Office of Sustainable Fisheries, National Marine Fisheries Service.*

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