

technical standards (e.g., specifications of materials, performance, design, or operation; test methods; sampling procedures; and related management systems practices) that are developed or adopted by voluntary consensus standards bodies. This rule does not use technical standards. Therefore, we did not consider the use of voluntary consensus standards.

#### *L. Environment*

We have analyzed this rule under Commandant Instruction M16475.ID and Department of Homeland Security Management Directive 5100.1, which guide the Coast Guard in complying with the National Environmental Policy Act of 1969 (NEPA)(42 U.S.C. 4321–4370f). There are no factors in this case that would limit the use of a categorical exclusion under section 2.B.2 of the Instruction. Therefore, this rule is categorically excluded, under figure 2–1, paragraph (34)(a), of the Instruction, from further environmental documentation. Paragraph 34(a) pertains to minor regulatory changes that are editorial or procedural in nature. This rule adjusts rates in accordance with applicable statutory and regulatory mandates. A final “Environmental Analysis Check List” and a final “Categorical Exclusion Determination” are available in the docket where indicated under **ADDRESSES**.

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

Administrative practice and procedure, Great Lakes, Navigation (water), Penalties, Reporting and recordkeeping requirements, Seamen. ■ For the reasons set forth in the preamble, the Coast Guard adopts as final without change the interim rule published at 72 FR 8115, February 23, 2007.

Dated: September 10, 2007.

**J.G. Lantz,**

*Acting Assistant Commandant for Prevention,  
U.S. Coast Guard.*

[FR Doc. E7–18306 Filed 9–17–07; 8:45 am]

**BILLING CODE 4910–15–P**

## **AGENCY FOR INTERNATIONAL DEVELOPMENT**

### **48 CFR Parts 727, 742, and 752**

**RIN 0412–AA30**

### **Miscellaneous Amendments to Acquisition Regulations (AIDAR Circular 2007–02)**

**AGENCY:** U.S. Agency for International Development.

**ACTION:** Final Rule.

**SUMMARY:** This final rule amends the USAID acquisition regulation to add two new parts and four new sections in existing parts of the regulation, as more fully discussed in the Supplementary Information. USAID proposed these amendments in the proposed rule published on November 4, 1998, as AIDAR Notice 98–2.

**DATES:** *Effective Date:* October 18, 2007.

**FOR FURTHER INFORMATION CONTACT:** M/OAA/P, Ms. Diane M. Howard, Room 7.08–31, 1300 Pennsylvania Ave., NW., U.S. Agency for International Development, Washington, DC 20523–7801. Telephone (202) 712–0206; Internet: [dhoward@usaid.gov](mailto:dhoward@usaid.gov).

#### **SUPPLEMENTARY INFORMATION:**

##### **A. Background**

AIDAR Notice 98–2 (63 FR 59501, November 4, 1998) proposed four separate items to amend the USAID Acquisition Regulations (48 CFR Chapter 7), or AIDAR. The AIDAR is USAID’s supplement to the Federal Acquisition Regulation (48 CFR Chapter 1), the FAR. The following summarizes each item and the final action USAID is taking for each.

1. Item A of AIDAR Notice 98–2 proposed a new Part 712, specifically section 712.101, “Policy,” to address a potential conflict between an existing AIDAR clause, (48 CFR) 752.7008 “Use of Government Facilities or Personnel (APR 1984)” and the policy stated in (48 CFR) FAR Part 12. The latter states that the government will follow customary commercial practice when acquiring commercial items. The AIDAR clause prohibits the use of Government facilities or personnel in the performance of the contract. The AIDAR clause does not recognize situations in which the customary commercial practice may be for the purchaser to provide facilities or personnel to the vendor. At the time we proposed this new part, we considered the possibility that USAID may provide Government facilities, such as office space and equipment, to contractor employees providing commercial services such as IT support or secretarial/clerical services in USAID facilities. If commercial clients typically provide facilities and equipment for vendors providing similar services in the private sector, then that customary commercial practice would be inconsistent with the policy stated in (48 CFR) AIDAR 752.7008. The proposed part 712 would have required the contracting officer to comply with customary commercial practice unless he or she obtains a waiver in accordance with (48 CFR) FAR 12.302. However, the Agency

received no comments on this proposed rule and we have no indication that if providing facilities and equipment is a common commercial practice, it has ever been a problem in a USAID commercial contract. Therefore, we are withdrawing the proposed new part.

2. Item B of the Notice proposed removing (48 CFR) Chapter 7 (AIDAR) Appendix I, “USAID’s Academic Publication Policy” and adding a new part 727 and subpart 727.4 “Rights in Data and Copyrights.” The intent of this item of the proposed rule was to address four issues: (1) To make the clause at (48 CFR) FAR 52.227–14, “Rights in Data—General” apply to USAID’s contracts performed overseas and awarded to U.S. organizations, (2) to provide an alternate paragraph to add to this FAR clause to reserve USAID’s right to restrict release of data when release may have a negative impact on the Government’s development or diplomatic relationship with the cooperating country, (3) to provide guidance on Rights in Data coverage for overseas contracts with non-U.S. entities, and (4) to incorporate some of the policies and procedures in Appendix I that would be removed with the Appendix but that should be retained, as being in the Agency’s best interests.

We are withdrawing the parts of Item B that affected Appendix I and retaining the current (48 CFR) Chapter 7, Appendix I in its present form. USAID is developing a separate internal policy and regulation on intellectual property. If this policy and regulation affects USAID contracts, we will determine how the AIDAR should implement it and take the appropriate action at that time.

We are, however, finalizing other sections of the proposed (48 CFR) subpart 727.4, but we are amending the language from what appeared in the proposed rule. The only commenter on the proposed rule pointed out several instances where the wording was unclear about the intent of the proposed revision, so we have clarified the wording to address this comment.

We are finalizing the new subpart to address certain FAR requirements that must be met in order for USAID to place limits on release of data under our contracts, as originally explained in the Supplementary Information in the proposed rule.

First, 48 CFR (FAR) § 27.404(g)(3) states, “\* \* \* agencies may, to the extent provided in their FAR supplements, place limitations or restrictions on the contractor’s right to use, release to others, reproduce, distribute, or publish any data first produced in the performance of the

contract, including a requirement to assign copyright to the Government or another party, either by adding a paragraph (d)(3) to the Rights in Data—General clause at 52.227–14, or by express limitations or restrictions in the contract.” Pursuant to (48 CFR) 27.404(g)(3), the final rule also includes new language, at (48 CFR) 27.404(g) and (48 CFR) 752.227–14(d)(3), under which USAID asserts the right to require contractors to assign copyright to the Government or another party. USAID contracting officers will only assert such a right in accordance with the principles as stated in (48 CFR) 27.402.

Second, the prescription for the FAR Rights in Data—General clause (48 CFR 52.227–14) does not require its use in contracts “to be performed outside the United States, its possessions, and Puerto Rico, in which cases agencies may prescribe different clauses (see paragraph (n) of this section.” 48 CFR 27.409(a)(1)(ii). Paragraph (n) states, “Agencies may prescribe in their procedures, as appropriate, a clause consistent with the policy of 27.402 in contracts to be performed outside the United States, its possessions, and Puerto Rico.” 48 CFR 27.409(n). Most USAID contracts are, in fact, performed overseas. USAID’s FAR supplement, the AIDAR, does not address either of these requirements.

The proposed rule’s new subpart, (48 CFR) 727.4, was intended to address these deficiencies in the AIDAR. The commenter pointed out that the wording of the proposed (48 CFR) 727.409(a) appeared to restrict USAID contracting officers to using only (48 CFR) FAR 52.227–14, even if another clause, such as (48 CFR) FAR 52.227–17 “Rights in Data—Special Works,” may apply. Since the proposed rule’s intent was not to impose this kind of limitation, § 727.409 in the final rule more clearly states that contracting officers are to use whichever FAR “Rights in Data” clause best applies.

The prescriptions in the proposed rule also made distinctions between U.S. entities and non-U.S. entities, in that the proposed rule authorized contracting officers to adapt the FAR clause as necessary in contracts with the latter and performed overseas, to comply with applicable laws in the country of performance. The final rule removes any distinctions between U.S. entities and non-U.S. entities, and applies the FAR prescriptions to all contracts. The final rule constitutes Agency procedures pursuant to (48 CFR) FAR 27.409(n).

When the contracting officer incorporates (48 CFR) FAR 52.227–14, and if release, reproduction,

distribution, or publication of data first produced or specifically used by the contractor may be sensitive to U.S. Government relations with the cooperating country, the new subpart also prescribes an AIDAR clause contracting officers must use. This new clause, at (48 CFR) 752.227–14, replaces the FAR clause’s paragraph (d) and requires contracting officer approval before the contractor may release or reproduce such data.

3. Item C proposed a new section (48 CFR) 742.1170, “Performance monitoring and progress reporting” and clause at (48 CFR) 752.242–70, entitled “Periodic Progress Reports.” As explained in the supplementary information in the proposed rule, the purpose of the proposed sections was to provide USAID cognizant technical officers (CTOs) with a means to tailor contractors’ progress reporting requirements so that the CTOs can best ensure that contractors are performing in accordance with the contract’s requirements and achieving planned results. These AIDAR sections supplement (48 CFR) FAR Subpart 42.11 and internal Agency policies and procedures for monitoring the results of our implementing partners.

The Agency implemented these new sections after approving a class deviation to the AIDAR, through issuance of an internal directive, a Contract Information Bulletin (CIB) 98–21, “Contractor Progress Reports—New AIDAR Coverage,” on August 12, 1998. Since then, we have identified some areas where the language can be improved for clarity. We also received several comments on this item of the proposed rule, so this final rule includes a few non-substantive wording changes from the proposed rule.

One non-substantive comment asked that we ensure that the language in § 742.1170 and the clause at § 752.242–70 are consistent with each other and that the clause itself clearly states the Government’s rights. Another commenter pointed out that in § 742.1170–4(b), the cognizant technical officer must advise the contracting officer of any “required” action, and recommended changing “required” to “recommended” to be consistent with the next sentence. We agree with this recommendation. The same commenter went on to point out that in the same section, the cognizant technical officer must provide recommendations to the contracting officer in sufficient time for the contracting officer to take necessary action, but the regulation doesn’t include a definition of what is a reasonable timeframe, and recommended that we add a definition.

We are including additional language to establish a typical (but non-binding) timeframe. In the same sentence, we also changed “necessary” to “appropriate” to more accurately reflect the nature of the kinds of recommendations that are likely to result from this report (the last sentence of this section makes clear that the contractor must comply with other notification requirements in the contract).

Finally, the same commenter recommended adding language to paragraph (b) in the new clause at § 752.242–70 to make clear that any withholding due to contractor delay in furnishing a progress report also ends when the contractor submits the report. We accept this recommendation.

Because none of these changes are substantive, we are finalizing the rule with minor editorial changes reflecting the above comments, as well as other minor changes from passive to active voice and for clarity.

4. Item D proposed revisions to (48 CFR) § 752.232–7, “Payments under Time-and-Materials and Labor-Hour Contracts.” The current version of this AIDAR clause is a preamble to the FAR clause of the same name, at (48 CFR) § 52.232–7. We proposed to revise the AIDAR section to (a) clarify certain terms used in the FAR clause and (b) revise the clause to allow for a different withholding methodology than the FAR clause at the time allowed. Task orders were and continue to be issued by USAID contracting officers around the world and are paid by paying offices also located around the world. Because the Agency’s financial management and contracting systems at that time were not able to easily support the coordinated tracking of cumulative withholdings per contract among several task order contracting officers and their respective paying offices, we determined that a new withholding methodology was in the Agency’s best interests. The new methodology proposed limited the withholding to one percent per task order up to a maximum of \$50,000 per task order, but with no limit for the basic contract. We received no comments about this proposed revision during the comment period, but we have received comments about the ambiguity of the existing AIDAR clause, both before and after we published the proposed rule.

The corresponding section of the FAR, (48 CFR) 52.232–7 was revised in August 2005 (Federal Acquisition Circular 2005–05, 70 FR 43580, Item III “Payment Withholding”). After considering the discussion in the supplementary information for this Item

of FAC 2005–05, we concluded that the need for withholding per task order is no longer necessary. Any withholding should be the exception, not the rule, and done only when the contracting officer must take this step to protect the Government's interests. Also, the Agency has a worldwide financial management system and is in the process of acquiring a new contracting system, and these systems are better able to track withholding at the contract level, regardless of where task orders are issued or paid. For these reasons, we determined this item in the proposed rule to be unnecessary.

Further, we now consider the existing AIDAR section to be unnecessary as a supplementary preamble to the FAR clause, since the prescription for the FAR clause addresses how USAID has traditionally used this clause for payments under time-and-material and labor-hour contracts. We are therefore removing the existing AIDAR clause through this final rule.

## B. Regulatory Planning and Review

This is not a significant regulatory action and, therefore, is subject to review under Section 6(b) of Executive Order 12866, Regulatory Planning and Review, dated September 30, 1993. This rule is not a major rule under 5 U.S.C. 804.

## C. Regulatory Flexibility Act

The U.S. Agency for International Development certifies that this final rule will not have a significant economic impact on a substantial number of small entities within the meaning of the Regulatory Flexibility Act, 5 U.S.C. 601, *et seq.*, because the rule does not impose any costs on either small or large businesses; therefore, an Initial Regulatory Flexibility Analysis has not been performed. This final rule revises (48 CFR) AIDAR parts 712, 727, 742, and 752 to require contracting officers to comply with customary commercial practice or to obtain a waiver pursuant to (48 CFR) FAR Part 12 in order to prohibit contractors from using government facilities or personnel in a commercial services contract; allows contracting officers to require contractors to obtain contracting officer approval before releasing or publishing data first produced in the performance of the contract, if the release or publication may have a negative effect on the Government's development objectives or diplomatic relationship with the cooperating country; and to specify progress reporting requirements in contracts.

## D. Paperwork Reduction Act

The Paperwork Reduction Act does not apply because the changes to the AIDAR do not impose any additional information collection requirements that require the approval of the Office of Management and Budget under 44 U.S.C. 3501, *et seq.* AIDAR Subpart 742 and the clause at § 752.242–70 supplement the progress reporting requirements already included in (48 CFR) FAR Subpart 42.11 and are consistent with any information collection requirements in the FAR.

### List of Subjects, in 48 CFR Parts 727, 742, and 752.

Government procurement.

■ For the reasons set forth in the Preamble, 48 CFR Chapter 7 is amended as set forth below.

■ 1. Add part 727 to subchapter E to read as follows:

### PART 727—PATENTS, DATA, AND COPYRIGHTS

#### Subpart 727.4—Rights in Data and Copyrights

Sec.

727.404 Basic Rights in Data Clause.

727.409 Solicitation provisions and contract clauses.

**Authority:** Sec. 621, Pub. L. 87–195, 75 Stat. 445, (22 U.S.C. 2381) as amended; E.O. 12163, Sept. 29, 1979, 44 FR 56673; 3 CFR 1979 Comp., p. 435.

#### Subpart 727.4—Rights in Data and Copyrights

##### 727.404 Basic Rights in Data Clause.

(a) through (f) [Reserved]

(g) When the contract includes a requirement for the contractor to assign copyright to the government or another party, the contracting officer shall incorporate (48 CFR) 752.227–14 and/or include an express limitation or restriction in the contract. USAID contracting officers will assert such a right in limited circumstances in accordance with the principles as stated in (48 CFR) 27.402.

##### 727.409 Solicitation provisions and contract clauses.

(a) When the contracting officer incorporates (48 CFR) FAR 52.227–14, and if the release or publication of data first produced in the performance of the contract may be sensitive to U.S. Government relations with the cooperating country, the contracting officer must use the clause at (48 CFR) 752.227–14.

(b) through (m) [Reserved]

(n) The prescriptions for provisions and clauses in (48 CFR) FAR 27.409

apply to all USAID contracts regardless of place of performance.

## PART 742—CONTRACT ADMINISTRATION

■ 2. The authority citation for part 742 continues to read as follows:

**Authority:** Sec. 621, Pub. L. 87–195, 75 Stat. 445, (22 U.S.C. 2381) as amended; E.O. 12163, Sept. 29, 1979, 44 FR 56673; 3 CFR 1979 Comp., p. 435.

■ 3. Add subpart 742.11 to read as follows:

### Subpart 742.11—Production, Surveillance, and Reporting

Sec.

742.1170 Performance monitoring and progress reporting.

742.1170–1 General.

742.1170–2 Applicability.

742.1170–3 Policy.

742.1170–4 Progress reporting requirements and contract clause.

### Subpart 742.11—Production, Surveillance, and Reporting

#### 742.1170 Performance monitoring and progress reporting.

##### 742.1170–1 General.

Performance monitoring is a function of contract administration used to determine contractor progress towards achieving the goals and objectives of the contract and to identify any factors that may delay or prevent the accomplishment of those goals and objectives. Performance monitoring requires USAID personnel, particularly the cognizant technical officer, to maintain adequate knowledge of the contractor's activities and progress in order to ensure that USAID's objectives, as stated in the contract's Statement of Work, will be achieved.

##### 742.1170–2 Applicability.

(a) This section applies to USAID non-personal, professional/technical services contracts exceeding the simplified acquisition threshold, but may be applied to other USAID contracts, if the contracting officer and requiring office determine that doing so is in the best interests of the Agency. The contracting officer must ensure that this determination is documented in the contract file. This section does not apply to personal services contracts.

(b) The underlying principles of FAR 48 CFR subpart 42.11 apply to USAID contracts and are inherent to this section. However, not all of the specific requirements and terminology in FAR 48 CFR subpart 42.11 are compatible with the types of technical assistance contracts usually awarded by USAID.

Therefore, this section 742.1170 applies when the requirements of FAR 48 CFR subpart 42.11 do not meet USAID requirements or are otherwise not appropriate.

(c) The progress reports discussed in this section are separate from the performance evaluation reports prepared in accordance with FAR 48 CFR subpart 42.15 and internal Agency procedures, although they may be used by USAID personnel or their authorized representatives when evaluating the contractor's performance. Furthermore, the policies, procedures, and limitations of this section do not apply to technical reports, studies, papers, etc., the acquisition of which may be part of or even the sole purpose of the contract.

#### **742.1170-3 Policy.**

(a) The contractor is responsible for timely contract performance. Performance monitoring by USAID does not obviate this responsibility.

(b) The requiring office, particularly the cognizant technical officer and the contracting officer, will determine how to monitor the contractor's performance to protect the Government's interests, by considering:

(1) The contract requirements for reporting progress;

(2) The contract performance schedule;

(3) The contractor's implementation plan or workplan;

(4) The contractor's history of contract performance;

(5) The contractor's experience with the services or supplies being provided under the contract;

(6) The contractor's financial capability;

(7) Any other factors the requiring office, particularly the cognizant technical officer and the contracting officer, considers appropriate and necessary to adequately monitor contractor performance (for example, the day-to-day working proximity of the cognizant technical officer or contracting officer to the contractor's place of performance).

(c) In monitoring contractor performance, the requiring office (particularly the cognizant technical officer and contracting officer) must utilize any of the contractor's existing systems or processes for monitoring progress, provided that doing so is not contrary to the terms of the contract. The requiring officer or cognizant technical officer must not require anything from the contractor that is outside the scope or terms of the contract or may result in claims of waivers, of changes, or of other contract modifications. Further, progress reports

shall not require information already available from other sources.

#### **742.1170-4 Progress reporting requirements and contract clause.**

(a) When the requiring office needs information on contract performance status on a regular basis, the contracting officer may require the contractor to submit periodic progress reports, tailored to address specific contract requirements but limited to only that information essential to USAID's needs in monitoring the contractor's progress.

(b) Because the cognizant technical officer is the individual most familiar with the contractor's performance, the contractor must submit the progress reports directly to the cognizant technical officer. The cognizant technical officer must review the reports and advise the contracting officer, in writing, of any recommended action, including any action needed to address potential or actual delays in performance. The cognizant technical officer must so advise the contracting officer in sufficient time, typically thirty days, for him or her to take any action that the contracting officer determines is appropriate. The requirements of this paragraph do not relieve the contractor of notification requirements identified elsewhere in the contract.

(c) The contracting officer must insert the clause at 752.242-70, Periodic Progress Reports, in solicitations and contracts that require progress reporting, as specified in this section. The contracting officer must include specific reporting instructions in the Schedule.

### **PART 752—SOLICITATION PROVISIONS AND CONTRACT CLAUSES**

■ 4. The authority citation for Part 752 continues to read as follows:

**Authority:** Sec. 621, Pub. L. 87-195, 75 Stat. 445, (22 U.S.C. 2381) as amended; E.O. 12163, Sept. 29, 1979, 44 FR 56673; 3 CFR 1979 Comp., p. 435.

■ 5. Add section 752.227-14 to read as follows:

#### **752.227-14 Rights in Data—General.**

As prescribed in 727.409(b), insert the following clause:

Rights in Data—

##### **General (OCT 2007)**

The following paragraph (d) replaces paragraph (d) of (48 CFR) FAR 52.227-14 Rights in Data—General.

(d) Release, publication and use of data.

(1) For all data first produced or specifically used by the Contractor in the performance of this contract in the United States, its territories, or Puerto Rico, the Contractor shall have the right to use, release

to others, reproduce, distribute, or publish such data, except to the extent such data may be subject to the Federal export control or national security laws or regulations, or unless otherwise provided in this paragraph of this clause or expressly set forth in this contract [see paragraph (d)(3) for limitations on contracts performed outside of the US].

(2) The Contractor agrees that to the extent it receives or is given access to data necessary for the performance of this contract which contain restrictive markings, the Contractor shall treat the data in accordance with such markings unless otherwise specifically authorized in writing by the Contracting Officer.

(3) For all data first produced or specifically used by the Contractor in the overseas performance of this contract, the Contractor shall not release, reproduce, distribute, or publish such data without the written permission of the Contracting Officer. The government also may require the contractor to assign copyright to the government or another party as circumstances warrant or as specifically stated elsewhere in the contract.

#### **752.232-7 [Removed]**

■ 6. Remove section 752.232-7.

■ 7. Add section 752.242-70 to read as follows:

#### **752.242-70 Periodic progress reports.**

As prescribed in 742.1170-3(c), insert the following clause in contracts for which periodic progress reports are required from the contractor. The term "contract" shall be interpreted as "task order" or "delivery order" when this clause is used in an indefinite-delivery contract.

#### **Periodic Progress Reports (OCT 2007)**

(a) The contractor shall prepare and submit progress reports as specified in the contract schedule. These reports are separate from the interim and final performance evaluation reports prepared by USAID in accordance with FAR 42.15 and internal Agency procedures, but they may be used by USAID personnel or their authorized representatives when evaluating the contractor's performance.

(b) During any delay in furnishing a progress report required under this contract, the contracting officer may withhold from payment an amount not to exceed US\$25,000 (or local currency equivalent) or 5 percent of the amount of this contract, whichever is less, until such time as the contractor submits the report or the contracting officer determines that the delay no longer has a detrimental effect on the

Government's ability to monitor the contractor's progress.

Lynn Kopala,

*Acting Procurement Executive.*

[FR Doc. E7-18234 Filed 9-17-07; 8:45 am]

BILLING CODE 6116-01-P

## DEPARTMENT OF COMMERCE

### National Oceanic and Atmospheric Administration

#### 50 CFR Part 660

[Docket No.070830493-7496-01; I.D. 082806B]

RIN 0648-AV95

#### Magnuson-Stevens Act Provisions; Fisheries Off West Coast States; Pacific Coast Groundfish Fishery; Biennial Specifications and Management Measures; Correction

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

**ACTION:** Final rule; correction.

**SUMMARY:** NMFS announces corrections to Federal regulations for the West Coast groundfish fishery. This action corrects the latitude/longitude coordinates for the Salmon Troll and South Coast Recreational Yelloweye Rockfish Conservation Areas (RCAs) so that they are published in the proper sequence. This action correctly announces the 2007 tribal allocation amount of Pacific whiting. This action clarifies the application of the Ocean Salmon Conservation Zone in the Pacific whiting fishery. This action corrects some coordinates of the depth contour line approximations that are used to define the RCAs. This action is intended to eliminate any confusion for the public that may have occurred as a result of prior incorrect NMFS publications.

**DATES:** Effective September 18, 2007. Comments on this rule will be accepted through October 18, 2007.

**ADDRESSES:** You may submit comments, identified by 0648-AV95 by any of the following methods:

- E-mail: [Correction.nwr@noaa.gov](mailto:Correction.nwr@noaa.gov). Include 0648-AV95 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: Gretchen Arentzen
- Mail: D. Robert Lohn, Administrator, Northwest Region,

NMFS, 7600 Sand Point Way NE, Seattle, WA 98115-0070, Attn: Gretchen Arentzen.

#### FOR FURTHER INFORMATION CONTACT:

Gretchen Arentzen (Northwest Region, NMFS), phone: 206-526-6147; fax: 206-526-6736 and; e-mail: [gretchen.arentzen@noaa.gov](mailto:gretchen.arentzen@noaa.gov).

#### SUPPLEMENTARY INFORMATION:

##### Electronic Access

This final rule also is accessible via the Internet at the Office of the Federal Register's website at <http://www.gpoaccess.gov/fr/index.html>. Background information and documents are available at the website of the Pacific Fishery Management Council (Council) at <http://www.pcouncil.org>.

##### Background

The Pacific Coast Groundfish FMP and its implementing regulations at title 50 in the Code of Federal Regulations (CFR), part 660, subpart G, regulate fishing for over 90 species of groundfish off the coasts of Washington, Oregon, and California. Groundfish specifications and management measures are developed by the Pacific Fishery Management Council (Council), and are implemented by NMFS. On September 29, 2006, NMFS published a proposed rule (71 FR 57764) to implement Amendment 16-4 to the Pacific Coast Groundfish FMP and to establish the 2007-2008 harvest specifications and management measures for groundfish taken in the EEZ off the coasts of Washington, Oregon, and California. NMFS accepted public comment on the proposed rule and responded to these comments in the preamble to the final rule, which published in the **Federal Register** on December 29, 2006 (71 FR 78638).

The 2007-2008 groundfish harvest specifications and management measures added a new potential closed area, the Ocean Salmon Conservation Zone (OSCZ), in the whiting fishery that could be implemented inseason through automatic action. Regulations at § 660.373(c)(3) define the OSCZ as a closed area applying to the whiting fishery; however, it does not state in this part that the OSCZ is closed only through automatic action when NMFS projects the whiting fishery may take in excess of 11,000 Chinook salmon within a calendar year. The process for implementation of this closed area is properly described in § 660.370(d). A cross-reference to this automatic action section is added to the whiting regulations defining the OSCZ to clarify that the OSCZ is only closed after NMFS initiates an automatic management

action to implement this closed area based on the projected take of Chinook salmon.

A range of Pacific whiting (whiting) harvest specifications and management measures was adopted in the 2007-2008 harvest specifications and management measures for groundfish, and final 2007 specifications and management measures for whiting were adopted in March 2007. NMFS published a final rule establishing the 2007 whiting harvest specifications and management measures on April 18, 2007 (72 FR 19390), which included the level of the acceptable biological catch (ABC), optimum yield (OY), tribal allocation, and allocations for the nontribal commercial whiting sectors. The final 2007 tribal allocation was set according to an abundance-based sliding scale method, where the tribal allocation varies with the U.S. whiting optimum yield (OY) ranging from 14 percent (or less) of the U.S. OY when OY levels are above 250,000 mt, to 17.5 percent of the U.S. OY when the OY level is at or below 145,000 mt. NMFS had explained this method in the preamble to the proposed rule for the 2007-2008 groundfish harvest specifications and management measures. The tribal allocation was correctly expressed in the preamble to that final rule as 32,500 mt, however NMFS did not publish that amount in § 660.385(e), leaving the outdated 2006 tribal whiting allocation of 35,000 mt in current regulations. This rule corrects 660.385(e) by inserting the 2007 tribal allocation.

The preambles to the proposed and final rules for the 2007-2008 groundfish harvest specifications and management measures described the Yelloweye Rockfish Conservation Areas (YRCAs), closed areas intended to protect overfished species; however, the regulatory text published the latitude and longitude coordinates defining the Salmon Troll YRCA and the South Coast Recreational YRCA in the incorrect sequence, resulting in closed areas that are not the same size or shape as those analyzed by NMFS, recommended by the Council, and discussed in the preamble to the final rule. This correction re-publishes the YRCA latitude and longitude coordinates in the correct sequence to form the closed areas intended to protect yelloweye rockfish.

The 2007-2008 groundfish harvest specifications and management measures added a new Rockfish Conservation Area (RCA) boundary line approximating the 180-fm (32-m) depth contour off California with modifications to allow fishing for petrale sole. After publication of the