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DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 660

[Docket No. 130405338-4201-01]

RIN 0648- BC84

Fisheries off West Coast States; Pacific Coast Groundfish Fishery Management Plan; Trawl Rationalization Program; Chafing Gear Modifications

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

ACTION: Proposed rule; request for comments.

SUMMARY: The proposed action modifies the existing chafing gear regulations for midwater trawl gear. This action includes regulations that affect all trawl sectors (Shorebased Individual Fishing Quota Program, Mothership Cooperative Program, Catcher/Processor Cooperative Program, and tribal fishery) managed under the Pacific Coast Groundfish Fishery Management Plan (PCGFMP).

DATES: Comments on this proposed rule must be received no later than 5 p.m., local time on [Insert date 30 days after date of publication in the FEDERAL REGISTER]. During the comment period, NMFS is specifically seeking comments on the proposed method of attachment for chafing gear, including the benefits and effects relative to current minimum mesh size restrictions and prohibition on double walled codends.

ADDRESSES: You may submit comments on this document, identified by NOAA-NMFS-2012-0218, by any of the following methods:

- Electronic Submissions: Submit all electronic public comments via the Federal e-Rulemaking Portal. Go to www.regulations.gov/#!docketDetail;D=NOAA-NMFS-2012-0218, click the “Comment Now!” icon, complete the required fields, and enter or attach your comments.
- Fax: 206-526-6736; Attn: Becky Renko.
- Mail: William W. Stelle, Jr., Regional Administrator, West Coast Region, NMFS, 7600 Sand Point Way NE, Seattle, WA 98115-0070; Attn: Becky Renko.

Instructions: Comments sent by any other method, to any other address or individual, or received after the end of the comment period, may not be considered by NMFS. All comments received are a part of the public record and will generally be posted for public viewing on www.regulations.govwithout change. All personal identifying information (e.g., name, address, etc.), confidential business information, or otherwise sensitive information submitted voluntarily by the sender will be publicly accessible. NMFS will accept anonymous comments (enter "N/A" in the required fields if you wish to remain anonymous). Attachments to electronic comments will be accepted in Microsoft Word, Excel, or Adobe PDF file formats only.

FOR FURTHER INFORMATION CONTACT: Becky Renko, 206-526-6110; (fax) 206-526-6736; Becky.Renko@noaa.gov.

SUPPLEMENTARY INFORMATION:

Background

In January 2011, NMFS implemented a trawl rationalization program, a type of catch share program, for the Pacific Coast groundfish fishery’s trawl fleet. The trawl rationalization program was adopted through Amendment 20 to the PCGFMP and consists of an individual

fishing quota (IFQ) program for the shorebased trawl fleet (shoreside IFQ program) and cooperative programs for the at-sea mothership (MS coop program) and catcher/processor (CP coop program) trawl fleets. Since implementing the trawl rationalization program, the Pacific Fishery Management Council (Council) and National Marine Fisheries Service (NMFS) have been working to refine the program with additional regulatory requirements, referred to as trailing actions. One trailing action is the modification of the current the chafing gear requirements for all midwater trawl gear.

Midwater trawl gear is the only type of trawl gear that harvesting vessels in the shorebased IFQ program, MS coop program, and CP coop program are allowed to use to target Pacific whiting. Midwater trawl gear may also be used by vessels in the shorebased IFQ program to target non-whiting species. The proposed action does not contemplate the use of midwater trawl gear beyond what is currently allowed by regulation.

The proposed action is to consider modifications to the chafing gear regulations that apply to all midwater trawl gear. Chafing or chafer panels are webbing or other material attached to the codend to minimize damage to the codend netting from wear caused by the codend rubbing against the stern ramp and trawl alley during net retrieval and from contact with the ocean floor. The current chafing gear restrictions at 50 CFR § 660.130 for midwater trawl gear are: restrict chafing coverage to 50 percent or less of the codend circumference; restrict chafing coverage to the last 50 meshes of the codend; prohibit sections of chafing gear from being longer than 50 meshes; and require chafing gear to be attached outside riblines and restraining straps.

In 2011, some Pacific Coast trawl vessel owners that use midwater gear to target Pacific whiting expressed concern that the current regulations limit chafing gear to the last 50 meshes of the codend. The vessel owners believe that this aspect of the current regulations was an error that

inadvertently occurred when the regulations were revised in 2007. Prior to 2007, the regulations allowed chafing gear to cover the full length of midwater trawl codends. The 2007 regulatory revision consolidated the regulations into one section and was not intended to result in substantive changes to the regulations.

Chafing gear measures were originally adopted in 1994 and were intended to provide vessels with greater flexibility in respect to types, size, and attachment of material used to protect the net without reducing the effectiveness of the mesh size regulation. The measures included restricting chafing coverage to 50 percent or less of the codend circumference, which was intended to leave the top half of the net bare to improve escapement of small fish. Restrictions on the length of chafing section (50 meshes in length) and requirements for attachment outside the riblines and restraining straps were intended to allow the entire length of the codend to be covered, while providing exit points for fish trapped between the codend mesh and the chafing gear.

This proposed rule also includes minor technical revisions to related regulatory text. Section 660.11, General definitions, contains basic descriptions of small footrope, large footrope and midwater trawl gear. In-depth descriptions of these trawl gears found in § 660.130 were modified to eliminate redundancy and increase clarity.

Chafing Modifications for Midwater Trawl Gear

In 2011, while revisions to the chafing gear restrictions were being considered, some Pacific whiting vessel owners requested that broader changes be considered to address the current needs of the fishery. From 2003 to 2010, approximately 63 percent of the vessels that fished for Pacific whiting were also used in the Alaska groundfish fishery to target Pollock with pelagic trawl gear. The chafing requirements for midwater trawl gear used in Pacific Coast

groundfish fisheries are more restrictive than the Alaska groundfish fishery requirements. Codends for midwater trawling range in cost from $10,000 to $200,000 each. To reduce operational costs for vessels operating in both regions, some vessel owners requested that the chafing gear requirements for midwater trawl gear in the Pacific Coast groundfish fishery be modified to allow for greater coverage so codends currently used in the Alaska fisheries could be used in both regions.

In November 2011, the Trawl Rationalization Regulatory Evaluation Committee (TREC) reported on trailing actions and included a recommendation that the Council consider revisions to the chafing gear regulations to conform to current fishery needs. The Council recommended moving forward with revisions for 2013. In March 2012, the TREC presented the Council with a preliminary analysis that included three alternative actions for chafing gear: No Action, Alternative 1 to eliminate all chafing gear restrictions as they apply to midwater trawl gear, and Alternative 2 to amend the midwater trawl gear restrictions to allow for greater chafing gear coverage on the codend consistent with the Alaska groundfish fishery regulations. The Council discussed the issue and indicated that it was important to move ahead with chafing gear revisions for the 2013 Pacific whiting season. The Council selected Alternative 2 as the Final Preferred Alternative to be analyzed in an Environmental Assessment (EA).

At the Council's September 2012 meeting, NMFS informed the Council that its Sustainable Fisheries Division (SFD) had reviewed the range of alternatives and found that Alternative 1, to eliminate all chafing gear restrictions, appeared to be inconsistent with the Council's "Bycatch Mitigation Plan" and measures specified in Amendment 18 to the PCGFMP. Although implementation of trawl rationalization has reduced concerns about groundfish bycatch, the bycatch of non-groundfish species including Endangered Species Act (ESA) listed

species and forage fish was a concern. Section 6.6.1.2 of the PCGFMP describes the Council's bycatch mitigation relative to mesh size restrictions as follows: regarding the "success of minimum mesh size restrictions in allowing juvenile fish to escape trawl nets, the Council also developed restrictions preventing trawlers from using a double-walled codend. Further restrictions related to this objective include prohibitions on encircling the whole of a bottom trawl net with chafing gear and restrictions on the minimum mesh size of pelagic trawl chafing gear (16 inches)". Given the PCGFMP bycatch mitigation measures added under Amendment 18, SFD recommended narrowing the scope of the EA by removing the alternative for unrestricted use of chafing gear. SFD also requested the addition of a new alternative in the EA. The new alternative was to revise the regulations to be consistent with the midwater trawl chafing gear requirements that had been in place prior to 2007 and which represented gear in use in the fishery. The difference between the new SFD requested alternative and No Action was that the new alternative would allow chafing gear to cover the full length of a codend rather than restricting it to the last 50 meshes (No Action); all other provisions were the same. In addition, SFD requested that the Council reconsider its recommendation of a Final Preferred Alternative at the Council's November 2012 meeting following review of an analysis that included the new alternative. In response, the Council recommended removing the unrestricted alternative from the EA and adding the new SFD requested alternative with reconsideration of the new alternative at its November meeting. In addition, the Council recommended adding a variation of the new alternative consistent with a Groundfish Advisory Panel (GAP) request for unrestricted chafing section lengths and the allowance for chafing attachment to be either under or over the codend riblines.

At the Council's November 2012 meeting, a preliminary EA was available. The EA contained three alternatives: (1) No Action, (2) Alternative 1, to amend the midwater trawl gear restrictions to allow for greater chafing gear coverage on the codend consistent with the Alaska groundfish fishery regulations, and (3) Alternative 2, to reinstate the pre-2007 regulations by allowing the full length of the codend to be covered. Two sub-options were considered for Alternative 2. Alternative 2A would eliminate the restrictions on the length of each chafing panel (50 meshes) and allow chafing gear to be attached either under or over the ribelines of the codend; and, Alternative 2B would retain the chafing panel length restrictions. Alternative 2B is the status quo gear restriction currently used in the fishery.

During public comment members of the fishing industry spoke in favor of less restrictive chafing gear measures. However, one commenter raised concerns about potential negative impacts on ESA-listed eulachon, ecosystem prey species, and essential fish habitat (EFH). This same commenter also noted that the Alaska groundfish regulations may have fewer chafing gear restrictions for pelagic trawl gear, but indicated that the Alaska groundfish regulations do have other more restrictive regulations pertaining to the performance of midwater trawl gear that are intended to mitigate possible negative impacts on forage fish and EFH. After considering comments from the advisory bodies and the public, the Council recommended implementation of Alternative 1 with modifications recommended by the GAP (Agenda Item 1.5.b, November 2012). The GAP recommended modifying the language of Alternative 1 slightly to clarify that attaching the chafing gear inside or outside the riblines and straps should be allowed.

Non-Whiting Midwater Trawl

The chafing gear changes proposed by this action would apply to all midwater trawl gear regardless of the target species. Although the Council initially considered the changes in respect

to the Pacific whiting fishery, at its September 2012 meeting the Council confirmed its intent for the changes to apply to all midwater trawl gear. In the 1990s, midwater trawl gear was used to target yellowtail, widow, and chilipepper rockfish. Since 2002, when several species that co-occur with the target species were declared overfished, midwater targeting for species other than Pacific whiting was eliminated or in the case of chilipepper rockfish restricted to waters seaward of the Rockfish Conservation Areas (RCAs). In 2012, widow rockfish was declared rebuilt. In 2013, the Annual Catch Limits (ACLs) for both widow rockfish and bocaccio were increased over 2012. The increased ACLs for widow rockfish and bocaccio are likely to lead to greater use of midwater trawling by vessels targeting non-whiting species.

Midwater trawl gear is generally not designed to touch the ocean bottom, but can be effectively used off-bottom or pelagically to target groundfish species that ascend above the ocean floor. Because the proposed action provides greater flexibility for protecting the portions of the codend that are subject to wear from contact with the seafloor, an increased number of non-whiting vessels may choose to increase chafing gear coverage and use midwater trawl gear.

Limited data are available to understand how the non-whiting midwater trawl fishery might develop and the depths, times, and areas where the fishery is likely to occur. The current shorebased trawl IFQ fishery is very different from the trip limit management structure that was in place the late 1990s. The midwater trawl fishery that emerges from the shorebased IFQ fishery could be very different from the fishery that historically occurred, as different sized midwater nets and codends may be used, and vessels may fish in different areas and at different times of the year or they may target a different array of species.

Tribal Fishery

The chafing gear requirements would affect the tribal fishers using midwater trawl gear to fish in their usual and accustomed fishing areas. At this time, the Makah Tribe is the only tribe that conducts a midwater trawl fishery with trips targeting Pacific whiting and targeting non-whiting. The non-whiting fishery targets yellowtail rockfish. Because the proposed measures are to liberalize the current chafing gear restrictions, vessels fishing in the tribal sector may choose to continue using their current codends or modify their gear.

Environmental Impacts of the Proposed Action

The primary environmental impacts from the allowance for greater chafing gear coverage of midwater trawl codends are the possible increase in the catch of small fish, such as forage fish, and changes in contact with EFH bottom habitat within the trawl RCAs (where bottom trawl has been prohibited since 2002, changing the baseline environment considered in previous NEPA documents on trawl gear impacts). Between 2006 and 2011, the most common forage fish species observed in the at-sea (MS and CP coops) and tribal sectors targeting Pacific whiting with midwater trawl gear were squid, American shad, jack mackerel, shortbelly rockfish, Pacific herring, Pacific mackerel, lanternfish, Pacific sardine, and a variety of smelts including eulachon. Relative to the catch of Pacific whiting, observer data shows that forage fish species make up a low proportion of the overall catch and are expected to continue at levels similar to those observed in recent years. Relative to vessels using midwater trawl gear to target non-whiting species, the change in catch of small fish is difficult to project given the lack of historical total catch (discard plus retained catch) data and because the emerging fishery may be substantially different from historical fisheries. Even with greater chafing coverage on the codend, midwater trawl nets are constructed with very large mesh in the forward sections where small fish may escape capture. The incidental catch of non-groundfish species will continue to be monitored (all

trawl vessels are required to carry at least one groundfish observer) and catch will be evaluated on an annual basis.

Midwater trawls, also called pelagic or off-bottom trawls, are trawls where the doors may be in contact with the seabed (although they usually are not), while the footrope generally remains suspended above the seafloor, but may contact the bottom on occasion. Midwater trawls are generally towed above the ocean floor, although they may be used near the bottom. When fishing close to the bottom, the footropes of pelagic trawls can cause benthic animals to be separated from the bottom. Because of the large mesh in the forward sections of the net, most bottom animals would likely fall through the mesh and immediately be returned to the ocean floor. Sessile organisms that create structural habitat may be uprooted or pass under the footropes of midwater trawls towed close to the bottom, while those organisms that are more mobile or attached to light substrates may pass over the footrope with little damage. The unprotected footrope on midwater trawls effectively precludes the use of the nets on rough or hard substrates, meaning that they are not expected to affect the more complex habitats that occur on those substrates.

Although the trawl RCAs were intended to minimize interactions between trawl vessels and overfished rockfish species, the trawl RCAs have effectively removed groundfish bottom trawling from a large portion of the EEZ since 2002. Because the RCAs have been closed to bottom trawling for over 10 years, the seafloor habitats have likely recovered considerably from pre-RCA years. In other words, it was necessary for the analysis in the EA to consider the effects of the proposed action on a recovered EFH habitat. Although the boundaries of the RCAs have varied between years, north of 40°10’ N. latitude the RCAs have continuously restricted much of the bottom trawling in waters between 75 and 200 fm. The proposed action would allow

increased chafing coverage for all midwater trawl gear. With increased intensity from vessels targeting whiting plus non-whiting vessels, it is expected that more vessels will be making "occasional" contact with the benthic organisms and habitat than has been seen with the midwater fishery targeting Pacific whiting. Similarly, effort may increase in EFH conservation areas where only midwater trawling is allowed, and where bottom trawling has been prohibited since 2005.

Double-walled codends

Regulations at § 660.130 (b)(1) specifically prohibit the use of double-walled codends. A double-walled codend is a codend constructed of two walls (layers) of webbing. To prevent chafing gear from being used to create the effect of a double-walled codend, NMFS is considering clarifying the prohibition relative to chafing gear in the final regulations.

Classification

NMFS has made a preliminary determination that the proposed action is consistent with PCGFMP, the MSA, and other applicable law. In making its final determination, NMFS will take into account the complete record, including the data, views, and comments received during the comment period.

An EA was prepared for this action. The EA includes socio-economic information that was used to prepare the RIR and IRFA. The EA is available on the Council's website at http://www.pcouncil.org/. This action also announces a public comment period on the EA.

Pursuant to the procedures established to implement section 6 of Executive Order 12866, the Office of Management and Budget (OMB) has determined that this proposed rule is not significant.

An initial regulatory flexibility analysis (IRFA) was prepared, as required by section 603 of the Regulatory Flexibility Act (RFA). The IRFA describes the economic impact this proposed rule, if adopted, would have on small entities. A description of the action, why it is being considered, and the legal basis for this action are contained at the beginning of this section in the preamble and in the SUMMARY section of the preamble. A copy of the IRFA is available from NMFS (see ADDRESSES) and a summary of the IRFA, per the requirements of 5 U.S.C. 604(a) follows: The Pacific Fishery Management Council and NMFS are proposing to liberalize current midwater trawl chafing gear regulations. In revising these regulations, the Council and NMFS have reviewed the differences of how the regulations should be interpreted and enforced and current industry practices. NMFS and the Council have also reviewed the current status of species being harvested and similar regulations for Alaska fisheries. With the recent implementation of the Pacific Coast Groundfish trawl rationalization program, NMFS and the Council took into account the increased potential to target rebuilt rockfish species with midwater gear. In proposing these regulations, NMFS and Council also considered the effects upon essential fish habitat, protected and ESA listed species, the harvest of small fish (groundfish and non-groundfish including forage and juvenile fish), and the effects of other conservation and management measures contained in the PCGFMP. NMFS and the Council also considered the economic effects of various chafing gear alternatives, particularly upon harvesting vessels.

Fishermen use chafing gear to protect their trawl nets, particularly codends, from abrasion. Regulations specify the limits on the use of chafing gear panels. The main differences among the alternatives reviewed by NMFS and the Council related to how much of the circumference and length of the codend could be covered and what size of chafer panels could be used. The No Action alternative (existing regulations) would limit chafing gear to the very end of

the codend (the last 50 mesh lengths) and to 50 percent of the codend's circumference via a single panel. Under Alternative 1 (Council Preferred Alternative), fishermen would have the option of covering up to 100 percent of the length of the codend and up to approximately 75 percent of the codend's circumference through the use of a single panel or multiple panels. Alternative 2A differs from Alternative 1 by limiting coverage to 50 percent of the codend circumference. Fishermen would have the option of covering up to 100 percent of the length of the codend and up to 50 percent of the codend's circumference with a single panel or multiple panels.

Alternative 2B (Status Quo) differs from Alternative 1 in circumference coverage and from Alternative 2A in panel size. Under Alternative 2B, fishermen would have the option of covering up to 50 percent of the length of the codend and up to 50 percent of the codend's circumference; however, no single panel could cover more than 50 meshes of the codend. For example, to cover the length of a 500 mesh codend, 10 panels would be required. This alternative is labeled the "Status Quo Alternative" as it reflects the midwater chafing gear restrictions that were in effect during the 2006 season. According to the EA, "Up until 2011, the current regulations were interpreted and enforced in a manner that allowed fishers to cover the entire length of their codends using a series of 50-mesh panels, provided the panels did not exceed 50 percent of the codend circumference and the terminal end of each panel was unattached to allow small fish to escape. Recently, these regulations have been reinterpreted as allowing the use of only a single 50-mesh panel (see Section 1.4 of the EA for a complete history). This reinterpretation has not yet been enforced because it would entail a sudden and unexpected change in regulatory enforcement and require industry to incur expenses while deliberations are underway on whether to realign the regulations with standing policy or change the policy." The

Council did consider eliminating all chafing gear restrictions. The Council rejected this option because it could have allowed for up to 100 percent chafing gear coverage of the net, including the main body and the codend, which could be damaging to biota escaping the net and would likely be in conflict with the PCGFMP's Amendment 18 bycatch mitigation program.

This proposed rule would affect those vessels that use midwater trawl gear in Pacific Coast groundfish fisheries. Annual midwater whiting revenues were about $47 million in both 2011 and 2012 and non-whiting midwater trawl revenues averaged about $500,000 during this period. Nine catcher processors, 19 mothership catcher vessels, and 27 shoreside vessels participated in these fisheries during 2012 and 2013. Three different vessels operated in the non-tribal non-whiting shoreside midwater fishery--three in 2012 and one in 2013. The tribal fleet consists of 4-5 tribal whiting vessels of which 2-3 per year also fish in the Alaska groundfish fisheries. Five tribal midwater vessels operate in the tribal yellowtail rockfish fishery. These vessels do not participate in the Alaska groundfish fishery. As part of the permitting processes for 2014, NMFS asked non-tribal vessel owners to assess whether they are small businesses based on following criteria: A business involved in fish harvesting is a small business if it is independently owned and operated and not dominant in its field of operation (including its affiliates) and if it has combined annual receipts not in excess of $19.0 million for all its affiliated operations worldwide. Tribal vessels are considered small businesses. After taking into account vessels that fish in multiple midwater fisheries and affiliations, there are 28 midwater businesses, 22 of which are small businesses.

The costs to replace a midwater net including its codend are as high as $400,000. Codends for midwater trawling range in cost from $10,000 to $200,000 each. Uses of chafing gear can double the life of a net. The number of tows, tow size, and other features of the vessel

and its operations affect the life of a net. With chafing gear covering the side and bottom panels of a midwater codend, nets can be used for 5 to 15 years or longer if vessel owners periodically replace the chafer panels. The EA assessed changes in costs and revenues and by fishery (tribal, non-tribal, whiting, and pelagic). Expected differences in net costs between whiting and pelagic fisheries are likely to be small; therefore, the EA used the costs associated with the Pacific whiting fishery to analyze the alternatives. Codends used for the pelagic rockfish fishery may be the same size or smaller, but are unlikely to be larger than the codends used for whiting. The useful life of a net used just for pelagic rockfish may be longer than a net used for Pacific whiting, because the volume of fish handled by a single codend will likely be smaller, on average. For this reason, the costs of whiting codends are used as a proxy, but should be considered an upper bound on the cost differences that might be expected for the midwater pelagic rockfish fishery.

Adoption of any alternative other than the No-Action alternative will result in increased codend useful life because of greater protection from onboard abrasion sources and some wear reduction on those occasions when seafloor contact occurs. Under the No Action alternative, vessel owners will likely have to modify the chafing gear they use so that the gear is compliant. As a result, their nets will have the least amount of protection and thus have to be replaced more often. Currently, fishermen are using gear compliant with Alternative 2B, and so there would be no additional costs associated with this alternative. The gear currently used in the fishery (compliant with Alternative 2B) would also be compliant with the other action alternatives. The other alternatives also would not necessarily require additional expenditures on gear.

Alternative 1 is the Council's Final Preferred Alternative (FPA). Alternative 1 allows fishermen more flexibility as up to 75% of the cod-end's circumference could be covered,

comports with the chafing gear currently used by the majority of the fleet in both Pacific Coast and Alaska fisheries, and provides the best protection for expensive codends. The EA states: "Fishers that only participate in the Pacific Coast whiting fishery would have a one-time cost of $5,000 to $10,000 to bring their codends into compliance. For fishers that fish in Alaska and the Pacific Coast fishery they would likely either obtain an additional codend for use in the Pacific Coast fishery or incur an annual chafer replacement cost of between $5,000 and $10,000 to limit their coverage to the terminal 50 net meshes. Data in the EA shows that 62 percent of Pacific Coast whiting vessels also fished off Alaska between 2004 and 2010. These along with most other whiting vessels likely have codend chafing gear on their codends that is noncompliant with Pacific Coast whiting fishery regulations, as they were recently reinterpreted. The increased codend replacement cost under the PFMC Preferred Alternative (Alternative 1) could be as high at $9,500 per year with no chafer replacement after about 10 years to extend codend useful life or $7,321 per year with chafer replacement after about 10 years of use. The replacement cost under the other two action alternatives would be expected to be higher, but very close to Alternative 1. This is because of lower amount of chafer coverage provided under those alternatives (50 percent of codend circumference) compared to Alternative 1 (up to 75 percent of codend circumference)." For perspective, the EA assessed the costs of the No-Action Alternative relative to Pacific whiting revenues and found them to be about 2 percent of the 2011 average ex-vessel value in the shoreside fishery, about 1 percent of that value for the mothership sector catcher vessels and about 1 percent of the that value for catcher processors. (Note that these revenues exclude revenues from other Pacific Coast and Alaska fisheries Inclusion of such revenues would lower these percentages.)

Increased chafing gear may potentially increase the catch of small or undersized fish. The

EA finds under the trawl catch share program, vessels have substantial incentive to avoid the catch of small, unmarketable groundfish for which quota is required. For each pound of these fish caught, fishermen must use a pound of quota, forgoing their opportunity to use that quota to cover catch for which they can get paid. The effect of catching small fish which must be covered with quota is the reduction of vessel revenue. On this basis, regardless of the amount and continuity of chafing gear allowed on a codend, the incentive of fishermen is to configure the gear to avoid the catch of target fish of small size. Thus, they may not use the maximum amount of chafing gear, minimum mesh size, etc. to the degree allowed under any particular alternative. Liberalizing the chafing gear regulations increases the flexibility fishermen have in configuring their gear and may allow fishermen to develop other means for avoiding small size fish. A review of various discussions in the EA suggests that processors and fishing communities will not be negatively impacted by implementation of Alternatives 1, 2A, or 2B. The No-Action alternative will impose costs on the fishery, reduce vessel profits and may have a small but likely negligible effect on communities. Increased small fish landings may have a small negligible effect on processors.

Based on the discussion above, NMFS has determined that this proposed rule would not have a significant economic effect on a substantial number of small entities. This rule would revise existing regulations to conform to current industry chafing gear practices while increasing the flexibility of vessel owners to make chafing gear modifications according to their own individual operations and needs. There are no significant alternatives to the proposed rule that accomplish the stated objectives and that minimize the impact of the proposed rule on small entities. For transparency purposes, NMFS has prepared this IRFA. Through the rulemaking process associated with this action, we are requesting comments on this conclusion.

This proposed rule does not contain a collection-of-information requirement subject to review and approval by OMB under the Paperwork Reduction Act (PRA).

Pursuant to Executive Order 13175, this proposed rule was developed after meaningful consultation and collaboration with tribal officials from the area covered by the PCGFMP. 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. The proposed regulations, which have a direct effect on the tribes, were deemed by the Council as "necessary or appropriate" to implement the PCGFMP as amended.

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 PCGFMP 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 PCGFMP is 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 issued a Supplemental Biological Opinion on March 11, 2006 concluding that neither the higher observed bycatch of Chinook in the 2005 whiting fishery nor new data regarding salmon bycatch in the groundfish bottom trawl fishery required a reconsideration of its prior ‘‘no jeopardy’’ conclusion. NMFS also reaffirmed its prior determination that implementation of the PCGFMP is not likely to jeopardize the continued existence of any of the affected species. Lower Columbia River coho (70 FR 37160, June 28, 2005) and Oregon Coastal coho (73 FR 7816, February 11, 2008) were recently relisted as threatened under the ESA. The 1999 biological opinion concluded that the bycatch of salmonids in the Pacific whiting fishery were almost entirely Chinook salmon, with little or no bycatch of coho, chum, sockeye, and steelhead.

On January 22, 2013, NMFS requested the reinitiation of the biological opinion for listed salmonids to address changes in the fishery, including the trawl rationalization program and the emerging midwater trawl fishery. The consultation will not be completed prior to publication of this proposed rule to modify chafing gear regulations for the Pacific whiting fishery. NMFS has considered the likely impacts on listed salmonids for the period of time between the proposed rule and, if appropriate, final rule and the completion of the reinitiated consultation relative to sections 7(a)(2) and 7(d) of the ESA. On December 18, 2013, NMFS determined that ongoing fishing under the PCGFMP, assuming that the proposed chafing gear modifications are implemented in early 2014, prior to the completion of the consultation would not be likely to jeopardize listed salmonids or result in any irreversible or irretrievable commitment of resources that would have the effect of foreclosing the formulation or implementation of any necessary reasonable and prudent alternatives.

On December 7, 2012, NMFS completed a biological opinion concluding that the groundfish fishery is not likely to jeopardize non-salmonid marine species including listed eulachon, green sturgeon, humpback whales, Steller sea lions, and leatherback sea turtles. The opinion also concludes that the fishery is not likely to adversely modify critical habitat for green sturgeon and leatherback sea turtles. An analysis included in the same document as the opinion concludes that the fishery is not likely to adversely affect green sea turtles, olive ridley sea turtles, loggerhead sea turtles, sei whales, North Pacific right whales, blue whales, fin whales, sperm whales, Southern Resident killer whales, Guadalupe fur seals, or the critical habitat for Steller sea lions. With this rulemaking, an informal consultation on eulachon was initiated on January 21, 2013. NMFS considered whether the 2012 opinion should be reconsidered for eulachon in light of new information from the 2011 fishery and the proposed chafing gear modifications and determined that information about the eulachon bycatch in 2011 and chafing gear regulations did not change the anticipated extent of effects of the action, or provide any other basis to reinitiate the December 7, 2012 biological opinion. Therefore, the December 7, 2012 biological opinion meets the requirements of section 7(a)(2) of the ESA and implementing regulations at 50 CFR 402 and no further consultation is required at this time.

On November 21, 2012, the U.S. Fish and Wildlife Service (FWS) issued a biological opinion concluding that the groundfish fishery will not jeopardize the continued existence of the short-tailed albatross. The FWS also concurred that the fishery is not likely to adversely affect the marbled murrelet, California least tern, southern sea otter, bull trout, nor bull trout critical habitat.

This proposed rule would not alter the effects on marine mammals over what has already been considered for the fishery. West Coast pot fisheries for sablefish are considered Category II

fisheries under the MMPA's List of Fisheries, indicating occasional interactions. All other West Coast groundfish fisheries, including the trawl fishery, are considered Category III fisheries under the MMPA, indicating a remote likelihood of or no known serious injuries or mortalities to marine mammals. On February 27, 2012, NMFS published notice that the incidental taking of Steller sea lions in the West Coast groundfish fisheries is addressed in NMFS' December 29, 2010 Negligible Impact Determination (NID) and this fishery has been added to the list of fisheries authorized to take Steller sea lions (77 FR 11493,February 27, 2012). On September 4, 2013, based on its negligible impact determination dated August 28, 2013, NMFS issued a permit for a period of three years to authorize the incidental taking of humpback whales by the sablefish pot fishery (78 FR 54553, September 4, 2013).

List of Subjects in 50 CFR Part 660

Fisheries, Fishing, and Indian fisheries.

Dated: March 13, 2014

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Eileen Sobeck,

Assistant Administrator for Fisheries,

National Marine Fisheries Service.

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

PART 660–FISHERIES OFF WEST COAST STATES

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

Authority: 16 U.S.C. 1801 et seq., 16 U.S.C. 773 et seq., and 16 U.S.C. 7001 et seq.

2. In § 660.130, paragraphs (b)(2-)(4) and the introductory text of paragraph (c) are revised as follows:

§ 660.130 Trawl fishery—management measures.

* * * * *

(b) * * *

(2) Mesh size. Groundfish trawl gear, including chafing gear, must meet the minimum mesh size requirements in this paragraph. Mesh size requirements apply throughout the net. Minimum trawl mesh sizes are: Bottom trawl, 4.5 inches (11.4 cm); midwater trawl, 3.0 inches (7.6 cm). Minimum trawl mesh size requirements are met if a 20-guage stainless steel wedge, less one thickness of the metal wedge, can be passed with only thumb pressure through at least 16 of 20 sets of two meshes each of wet mesh.

(3) Bottom trawl gear. -- (i) Large footrope trawl gear. Lines or ropes that run parallel to the footrope may not be augmented with material encircling or tied along their length such that they have a diameter larger than 19 inches (48 cm). For enforcement purposes, the footrope will be measured in a straight line from the outside edge to the opposite outside edge at the widest part on any individual part, including any individual disk, roller, bobbin, or any other device.

(ii) Small footrope trawl gear. Lines or ropes that run parallel to the footrope may not be augmented with material encircling or tied along their length such that they have a diameter

larger than 8 inches (20 cm). For enforcement purposes, the footrope will be measured in a straight line from the outside edge to the opposite outside edge at the widest part on any individual part, including any individual disk, roller, bobbin, or any other device.

(A) Selective flatfish trawl gear. Selective flatfish trawl gear is a type of small footrope trawl gear. The selective flatfish trawl net must be a two-seamed net with no more than two riblines, excluding the codend. The breastline may not be longer than 3 ft (0.92 m) in length. There may be no floats along the center third of the headrope or attached to the top panel except on the riblines. The footrope must be less than 105 ft (32.26 m) in length. The headrope must be not less than 30 percent longer than the footrope. The headrope shall be measured along the length of the headrope from the outside edge to the opposite outside edge. An explanatory diagram of a selective flatfish trawl net is provided as Figure 1 of part 660, subpart D.

(B) [Reserved]

(iii) Chafing gear restrictions for bottom trawl gear. Chafing gear may encircle no more than 50 percent of the net's circumference and may be in one or more sections. Chafing gear may be used only on the last 50 meshes, measured from the terminal (closed) end of the codend. Only the front edge (edge closest to the open end of the codend) and sides of each section of chafing gear may be attached to the codend; except at the corners, the terminal edge (edge closest to the closed end of the codend) of each section of chafing gear must not be attached to the net. Chafing gear must be attached outside any riblines and restraining straps.

(4) Midwater (pelagic or off-bottom) trawl gear. Midwater trawl gear must have unprotected footropes at the trawl mouth, and must not have rollers, bobbins, tires, wheels, rubber discs, or any similar device anywhere on any part of the net. The footrope of midwater gear may not be enlarged by encircling it with chains or by any other means. Ropes or lines

running parallel to the footrope of midwater trawl gear must be bare and may not be suspended with chains or any other materials. Sweep lines, including the bottom leg of the bridle, must be bare. For at least 20 ft (6.15 m) immediately behind the footrope or headrope, bare ropes or mesh of 16-inch (40.6-cm) minimum mesh size must completely encircle the net.

(i) Chafing gear restrictions for midwater trawl gear. Chafing gear may cover the bottom and sides of the codend in either one or more sections. Only the front edge (edge closest to the open end of the codend) and sides of each section of chafing gear may be attached to the codend; except at the corners, the terminal edge (edge closest to the closed end of the codend) of each section of chafing gear must not be attached to the net. Chafing gear is not permitted on the top codend panel except as provided in paragraph (b)(4)(ii) of this section.

(ii) Chafing gear exception for midwater trawl gear. A band of mesh (a "skirt") may encircle the net under or over transfer cables, lifting or splitting straps (chokers), riblines, and restraining straps, but must be the same mesh size and coincide knot-to-knot with the net to which it is attached and be no wider than 16 meshes.

(c) Restrictions by limited entry trawl gear type. Management measures may vary depending on the type of trawl gear (i.e., large footrope, small footrope, selective flatfish, or midwater trawl gear) used and/or on board a vessel during a fishing trip, cumulative limit period, and the area fished. Trawl nets may be used on and off the seabed. For some species or species groups, Table 1 (North) and Table 1 (South) of this subpart provide trip limits that are specific to different types of trawl gear: Large footrope, small footrope (including selective flatfish), selective flatfish, midwater, and multiple types. If Table 1 (North) and Table 1 (South) of this subpart provide gear specific limits for a particular species or species group, it is unlawful to take

and retain, possess or land that species or species group with limited entry trawl gears other than those listed. The following restrictions are in addition to the prohibitions at § 660.112(a)(5).

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