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DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 660

[Docket No. 141222999-5322-02]

RIN 0648-BE72

Fisheries off West Coast States; Pacific Coast Groundfish Fishery; Trawl Rationalization Program; Midwater Trawl Fishery Season Date Change

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

ACTION: Final rule.

SUMMARY: This action implements revisions to the Pacific Coast Groundfish Trawl Rationalization Program affecting the limited entry midwater trawl fisheries managed under the Pacific Coast Groundfish Fishery Management Plan (FMP). This action revises the primary season-opening date for the Shorebased Individual Fishing Quota (IFQ) Program midwater trawl fishery (targeting both whiting and non-whiting species) to May 15 north of 40°30' N. lat. to the U.S./Canada border. This moves the season a month earlier for waters off the coasts of Washington and Oregon, and a month and half later for waters off the coast of northern California (north of 40°30' N. lat.). This action increases consistency in the season start date along the coast and between the shorebased and at-sea midwater trawl fleets.

DATES: Effective May 15, 2015.

ADDRESSES: NMFS prepared a Final Regulatory Flexibility Analysis (FRFA), which is summarized in the Classification section of this final rule. NMFS also prepared an Initial Regulatory Flexibility Analysis (IRFA) for the proposed rule. Copies of the IRFA, FRFA and the Small Entity Compliance Guide are available from William W. Stelle, Jr., Regional Administrator, West Coast Region, NMFS, 7600 Sand Point Way NE., Seattle, WA 98115-0070; or by phone at 206-526-6150. Copies of the Small Entity Compliance Guide are available on the West Coast Region's Web site at <http://www.westcoast.fisheries.noaa.gov/>.

FOR FURTHER INFORMATION CONTACT: Jamie Goen, 206-526-4656, jamie.goen@noaa.gov.

SUPPLEMENTARY INFORMATION:

Background

Since implementing the trawl rationalization program in 2011, the Pacific Fishery Management Council (Council) and NMFS have been working to implement additional regulatory changes to further improve the trawl rationalization program and respond to industry requests. Changing the midwater trawl fishery season date will further increase consistency in the season start date along the coast and between the shorebased and at-sea midwater trawl fleets. This action revises the primary season-opening date for the Shorebased IFQ Program midwater trawl fishery (targeting both whiting and non-whiting species) to May 15 north of 40°30' N. lat. to the U.S./Canada border. This moves the season a month earlier for waters off the coasts of Washington and Oregon, and a month and half later for waters off the coast of northern California (north of 40°30' N. lat.).

NMFS published a proposed rule for this action on February 17, 2015 (80 FR 8280). The preamble to the proposed rule provided more background and information on the history of

season date changes in the groundfish midwater trawl fisheries, as well as expected impacts. The preamble to the proposed rule also described the re-emerging midwater trawl fishery targeting groundfish species other than Pacific whiting (non-whiting midwater trawl). The season date change in this action applies to all midwater trawling in the Shorebased IFQ Program, whether targeting whiting or non-whiting groundfish species.

Response to Comments

The comment period on the proposed rule ended March 19, 2015. NMFS received one comment letter (with three separate comments) on the proposed rule from a fishing industry organization.

Comment 1: The commenter stated industry support for the midwater season date change as proposed. It provides more flexibility for harvesters and processors to make their own business plans and taking in to consideration markets, weather, and participation in other fisheries. It also equalizes opportunity between whiting sectors (at-sea and shorebased) and simplifies regulations. The commenter urged the importance of this action being effective by May 15, 2015, to provide the expected benefits to industry this year.

Response: NMFS agrees and is implementing the proposed change to be effective on May 15, 2015.

Comment 2: The commenter noted that they did not expect increased impacts on prohibited species, such as salmon, because of this season date change. They also stated that both the at-sea and shorebased whiting fishery participants have actively taken steps to reduce their interactions with prohibited species, including voluntary actions through their harvesting cooperatives to share information and reduce salmon interactions.

Response: NMFS agrees that there is not expected to be a significant impact to

prohibited species, such as salmon, as a result of this action as explained further in the preamble to the proposed rule and in the associated environmental assessment. NMFS will continue to track prohibited and protected species bycatch in groundfish fisheries, including inseason monitoring of Chinook salmon bycatch. In an effort to further support industry's voluntary efforts to reduce bycatch, NMFS will provide the public with inseason estimates of Chinook bycatch in trawl fisheries. Inseason catch of Chinook salmon in at-sea fisheries is already publicly available in a report titled "NWR At-Sea Pacific Whiting Fishery Summary", which can be found on the Pacific States Marine Fisheries Commission website at http://pacfin.psmfc.org/pacfin_pub/data.php. In the spring of 2015, NMFS will also begin providing inseason estimates of Chinook bycatch in shorebased trawl fisheries on the Pacific States Marine Fisheries Commission website. NMFS supports industry's voluntary efforts to track their bycatch, share information, and take appropriate actions to reduce bycatch.

Comment 3: The commenter stated that, in addition to increased total allowable catches for widow and yellowtail rockfish (non-whiting species) in 2015 and 2016, the season date change will allow more opportunity for non-whiting midwater fishing, which should increase revenue in coastal communities and provide a greater net benefit to the nation.

Response: NMFS supports efforts to build and maintain resilient and vibrant coastal communities while also balancing conservation of marine resources.

Changes from the Proposed Rule

There are no changes to the regulatory text from the proposed rule.

Classification

Pursuant to section 304(b)(1)(A) of the Magnuson-Stevens Fishery Conservation and Management Act (MSA), the NMFS Assistant Administrator has determined that this rule is

consistent with the Pacific Coast Groundfish FMP, other provisions of the MSA, and other applicable law.

The Council prepared an environmental assessment (EA) for this action and the NMFS Assistant Administrator concluded in a “Finding of No Significant Impact” that there will be no significant impact on the human environment as a result of this rule. The EA is available on the Council’s website at <http://www.pcouncil.org/> or on NMFS’ website at <http://www.nwr.noaa.gov/Groundfish-Halibut/Groundfish-Fishery-Management/Trawl-Program/index.cfm>.

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

A final regulatory flexibility analysis (FRFA) was prepared and incorporates the initial regulatory flexibility analysis (IRFA). A summary of the significant issues raised by the public comments in response to the IRFA, and NMFS’ responses to those comments, and a summary of the analyses completed to support the action are addressed below. NMFS also prepared a Regulatory Impact Review (RIR) for this action. A copy of the RIR/FRFA is available from NMFS (see ADDRESSES). A summary of the FRFA, per the requirements of 5 U.S.C. 604(a) follows:

The SBA has established size criteria for all major industry sectors in the United States, including fish harvesting and fish processing businesses. 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 \$20.5 million for all its affiliated operations worldwide. For marinas and charter/party boats, a small business is one with annual receipts not in excess of \$7.5 million. For purposes of rulemaking, NMFS is also applying the \$20.5 million standard to catcher/processors (C/Ps) because they are

involved in the commercial harvest of finfish. A seafood processor is a small business if it is independently owned and operated, not dominant in its field of operation, and employs 500 or fewer persons on a full time, part time, temporary, or other basis, at all its affiliated operations worldwide. A wholesale business servicing the fishing industry is a small business if it employs 100 or fewer persons on a full time, part time, temporary, or other basis, at all its affiliated operations worldwide. A small organization is any nonprofit enterprise that is independently owned and operated and is not dominant in its field. A small governmental jurisdiction is a government of a city, county, town, township, village, school district, or special district with a population of less than 50,000.

This action revises the primary season opening date for the Shorebased IFQ Program midwater trawl fishery (targeting both whiting and non-whiting species) to May 15 north of 40°30' N. lat. to the U.S./Canada border. This moves the season a month earlier for waters off the coasts of Washington and Oregon (from June 15 to May 15), and a month and half later for waters off the coast of northern California (north of 40°30' N. lat.) (from April 1 to May 15), increasing consistency in the season start date along the coast and between the shorebased and at-sea midwater trawl fleets.

NMFS did not receive any public comments directly related to the IRFA. One public comment did indicate that the change should result in greater revenue to the local fishing communities.

This rule affects shorebased midwater trawlers in the trawl rationalization program and the processors that receive their product. During the 2011 to 2014 period, 30 midwater trawl vessels delivered to 10 shoreside processing plants in this fishery. Some vessels share common ownership, other vessels are owned by processing companies, and some companies own multiple

processing plants. After accounting for these relationships, there are 26 entities that have participated in the fishery, 22 of which are small entities, based on NMFS' review of available information.

There are no significant alternatives that accomplish the stated objectives of applicable statutes and that minimize the impact of the rule on small entities. Most entities affected by this rule are small entities (22 out of 26). An earlier shorebased season will increase the choices available for the Northern fishery (off Oregon and Washington), providing an opportunity to improve business decisions and potential profits from the fishery. For the Central Area fishery, there would be a contraction in flexibility to harvest from April 1 to May 15. Reducing the season in the Central fishery may have a chilling effect on the potential growth in the fishery. However, data for 2011 through 2014 shows that no midwater trawl gear harvest occurred in this area under the IFQ program.

There are no new Federal reporting and recordkeeping requirements associated with this action. There are no relevant Federal rules that may duplicate, overlap, or conflict with this action.

Section 212 of the Small Business Regulatory Enforcement Fairness Act of 1996 states that, for each rule or group of related rules for which an agency is required to prepare a FRFA, the agency shall publish one or more guides to assist small entities in complying with the rule, and shall designate such publications as "small entity compliance guides." The agency shall explain the actions a small entity is required to take to comply with a rule or group of rules. As part of this rulemaking process, a small entity compliance guide (the guide) was prepared. Copies of this final rule are available from the West Coast Regional Office, and the guide will be included in a public notice sent to all members of the groundfish email group. To sign-up for the

groundfish email group, click on the “subscribe” link on the following website:

http://www.westcoast.fisheries.noaa.gov/publications/fishery_management/groundfish/public_notices/recent_public_notices.html. The guide and this final rule will also be available on the West Coast Region’s website (see ADDRESSES) and upon request.

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 Groundfish FMP fisheries on Chinook salmon (Puget Sound, Snake River spring/summer, Snake River fall, upper Columbia River spring, lower Columbia River, upper Willamette River, Sacramento River winter, Central Valley spring, California coastal), coho salmon (Central California coastal, southern Oregon/northern California coastal), chum salmon (Hood Canal summer, Columbia River), sockeye salmon (Snake River, Ozette Lake), and steelhead (upper, middle and lower Columbia River, Snake River Basin, upper Willamette River, central California coast, California Central Valley, south/central California, northern California, southern California). These biological opinions have concluded that implementation of the FMP 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 FMP is not likely to jeopardize the continued existence of any of the affected ESUs. Lower Columbia River coho (70 FR 37160, June 28, 2005) and Oregon Coastal

coho (73 FR 7816, February 11, 2008) were 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.

NMFS has reinitiated section 7 consultation on the Pacific Coast Groundfish FMP with respect to its effects on listed salmonids. In the event the consultation identifies either reasonable and prudent alternatives to address jeopardy concerns, or reasonable and prudent measures to minimize incidental take, NMFS would coordinate with the Council to put additional alternatives or measures into place, as required. After reviewing the available information, NMFS has concluded that, consistent with sections 7(a)(2) and 7(d) of the ESA, this action will not jeopardize any listed species, would not adversely modify any designated critical habitat, and will not result in any irreversible or irretrievable commitment of resources that would have the effect of foreclosing the formulation or implementation of any reasonable and prudent alternative measures.

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, the southern distinct population segment (DPS) of green sturgeon, humpback whales, the eastern DPS of Steller sea lions, and leatherback sea turtles. The opinion also concluded 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. Since that biological opinion, the eastern DPS of Steller sea lions was delisted on November 4, 2013 (78

FR 66140); however, this delisting did not change the designated critical habitat for the eastern DPS of Steller sea lions. On January 21, 2013, NMFS informally consulted on the fishery's effects on eulachon to consider whether the 2012 opinion should be reconsidered for eulachon in light of new information from the 2011 fishery and the proposed chafing gear modifications. NMFS determined that information about bycatch of eulachon in 2011 and chafing gear regulations did not change the effects that were analyzed in the December 7, 2012, biological opinion, or provide any other basis to reinitiate consultation.

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.

West Coast pot fisheries for sablefish are considered Category II fisheries under the Marine Mammal Protection Act (MMPA), 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. MMPA section 101(a)(5)(E) requires that NMFS authorize the taking of ESA-listed marine mammals incidental to U.S. commercial fisheries if it makes the requisite findings, including a finding that the incidental mortality and serious injury from commercial fisheries will have a negligible impact on the affected species or stock. As noted above, NMFS concluded in its biological opinion for the 2012 groundfish fisheries that these fisheries were not likely to jeopardize Steller sea lions or humpback whales. The eastern distinct population segment of Steller sea lions was delisted under the ESA on November 4, 2013 (78 FR 66140).

On September 4, 2013, based on its negligible impact determination dated August 28, 2013, NMFS issued a permit for a period of 3 years to authorize the incidental taking of humpback whales by the sablefish pot fishery (78 FR 54553).

List of Subjects in 50 CFR Part 660

Fisheries, Fishing, and Indian fisheries.

Dated: April 6, 2015.

Eileen Sobeck,

Assistant Administrator for Fisheries,

National Marine Fisheries Service.

For the reasons stated in the preamble, 50 CFR part 660 is 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 § 660.131, revise paragraph (b)(2)(iii)(C) to read as follows:

§ 660.131 Pacific whiting fishery management measures.

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(b) * * *

(2) * * *

(iii) * * *

(C) *Shorebased IFQ Program.* The start of the Shorebased IFQ Program primary whiting

season is:

(1) North of 40°30' N. lat.—May 15;

(2) South of 40°30' N. lat.—April 15.

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