



BILLING CODE 3510-22-P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 660

[Docket No. 191125-0091]

RIN 0648-BI67

Magnuson-Stevens Act Provisions; Fisheries off West Coast States; Pacific Coast Groundfish Fishery; Annual Specifications and Management Measures for the 2019 Tribal and Non-Tribal Fisheries for Pacific Whiting, and Requirement to Consider Chinook Salmon Bycatch before Reapportioning Tribal Whiting; Correction

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

ACTION: Final rule; correcting amendment.

SUMMARY: This action contains a correction to the final rule published on May 10, 2019, to establish the harvest specifications and management measures for the 2019 Pacific whiting fishery under the authority of the Pacific Coast Groundfish Fishery Management Plan, the Magnuson-Stevens Fishery Conservation and Management Act, and the Pacific Whiting Act of 2006. This action restores language inadvertently omitted from the final rule that explains that NMFS will consider Chinook salmon bycatch and bycatch rates prior to reapportionment of the tribal Pacific whiting allocation. These corrections are necessary to restore this language so that the regulations accurately implement the National Marine Fisheries Service's intent, as described in the preamble to the final rule.

DATES: Effective [*Insert date of publication in the Federal Register*].

FOR FURTHER INFORMATION CONTACT: Stacey Miller (West Coast Region, NMFS), phone: 503-231-6290, and e-mail: *Stacey.Miller@noaa.gov*.

SUPPLEMENTARY INFORMATION: NMFS published a final rule on May 10, 2019 (84 FR 20578), that implemented the 2019 harvest specifications and management measures for Pacific whiting harvested in the U.S. exclusive economic zone off the coasts of Washington, Oregon and California. The final rule inadvertently omitted regulatory language explaining that NMFS will consider the level of Chinook bycatch and bycatch rates prior to determining reapportionment of the treaty tribes' whiting to the non-treaty sectors. This action is required under Terms of Conditions 2.c. of the 2017 ESA section 7(a)(2) biological opinion on the effects of the Pacific Coast Groundfish Fishery Management Plan on salmonids. The proposed rule (84 FR 9471) published on March 15, 2019, contained this language and the preamble and response to comment in the final rule discussed the reconsideration in detail. This correction action restores the inadvertently omitted regulatory text.

This correction is consistent with NMFS action for the 2019 Pacific whiting harvest specifications and is a minor correction to correctly implement NMFS intent in their final action taken in May 2019.

Classification

Pursuant to 5 U.S.C. 553(b)(B), the Assistant Administrator for Fisheries (AA) finds there is good cause to waive prior notice and an opportunity for additional public comment on this action, as notice and comment would be unnecessary and contrary to public interest. Providing prior notice and the opportunity for additional public comment is unnecessary because the public received notice and an opportunity to comment on the proposed rule (84 FR 9471),

including this regulatory text. This correcting amendment reinstates the regulatory text that was inadvertently omitted from the final rule that published on May 10, 2019 (84 FR 20578). If the rule was delayed to allow for prior notice and an additional opportunity for public comment, it would cause confusion because the public and fishery participants believe that the omitted text is already included in the regulations. Additionally, public comment and notice would be contrary to the public interest because immediate correction of the error is necessary to manage the Pacific whiting stock to optimal yield, ensure that the Pacific Coast Groundfish Fishery Management Plan (FMP) is implemented in a manner consistent with treaty rights of treaty tribes to fish for Pacific whiting in their “usual and accustomed grounds and stations” in common with non-tribal citizens, and protect salmon stocks listed under the Endangered Species Act. To effectively correct the error, the change in this action must be effective upon publication as the fishery has already begun. The correction will not affect the results of analyses conducted to support management decisions in the Pacific whiting fishery. The correction is consistent with NMFS’ intent for regulations and the public expects the regulations to be written as in the correction. No change in operating practices in the fishery is required.

For the same reasons stated above, the AA has determined good cause exists to waive the 30-day delay in effectiveness pursuant to 5 U.S.C. 553(d). This notice only makes a minor correction to the final rule, which was effective May 10, 2019. Delaying effectiveness of this correction would result in conflicts in the regulations and confusion among fishery participants.

Because prior notice and an opportunity for public comment are not required to be provided for this rule by 5 U.S.C. 553, or any other law, the analytical requirements of the Regulatory Flexibility Act, 5 U.S.C. 601 *et seq.*, are not applicable. Accordingly, no Regulatory Flexibility Analysis is required for this rule and none has been prepared.

This final rule is not significant under Executive Order 12866. This final rule was developed after meaningful consultation with the tribal representative on the Council who has agreed with the provisions that apply to tribal vessels.

List of Subjects in 50 CFR Part 660

Fisheries, Fishing, and Indian Fisheries.

Dated: November 25, 2019.

Samuel D. Rauch III,
Deputy Assistant Administrator for Regulatory Programs,
National Marine Fisheries Service.

For the reasons set out in the preamble, 50 CFR part 660 is corrected as follows:

PART 660—FISHERIES OFF WEST COAST STATES

1. The authority citation for 50 CFR 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. Amend § 660.131 by revising paragraph (h)(4) and adding paragraph (h)(5) to read as follows:

§ 660.131 Pacific whiting fishery management measures.

* * * * *

(h) * * *

(4) Estimates of the portion of the tribal allocation that will not be used by the end of the fishing year will be based on the best information available to the Regional Administrator.

(i) Salmon bycatch. This fishery may be closed through automatic action at §660.60(d)(1)(v) and (vi).

(ii) [Reserved]

(5) Prior to reapportionment, NMFS will consider Chinook salmon take numbers and bycatch rates in each sector of the Pacific whiting fishery, in order to prevent a reapportionment that would limit Pacific Coast treaty Indian Tribes' access to the tribal allocation by triggering inseason closure of the Pacific whiting fishery as described at § 660.60(d)(1)(v).

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[FR Doc. 2019-25931 Filed: 11/29/2019 8:45 am; Publication Date: 12/2/2019]