

survival and welfare of wildlife and wildlife resources, and the health and welfare of humans. If we do not list the nine constrictor snakes as injurious, the species may expand in captivity to States where they are not already found; this would increase the risk of their escape or intentional release and establishment in new areas, which would likely threaten native fish and wildlife, and humans. Indian pythons, boa constrictors, and Northern African pythons are established in southern Florida and the Commonwealth of Puerto Rico. Releases of the nine constrictor snakes into natural areas of the United States are likely to occur again, and the species are likely to become established in additional U.S. natural areas such as national wildlife refuges and parks, threatening native fish and wildlife populations and ecosystem form, function, and structure.

#### Clarity of Rule

We are required by Executive Orders 12866 and 12988 and by the Presidential Memorandum of June 1, 1998, to write all rules in plain language. This means that each rule we publish must:

- (a) Be logically organized;
- (b) Use the active voice to address readers directly;
- (c) Use clear language rather than jargon;
- (d) Be divided into short sections and sentences; and
- (e) Use lists and tables wherever possible.

If you feel that we have not met these requirements, send us comments by one of the methods listed in the **ADDRESSES** section. To better help us revise the rule, your comments should be as specific as possible. For example, you should tell us the numbers of the sections or paragraphs that are unclearly written, which sections or sentences are too long, and the sections where you feel lists or tables would be useful.

#### Government-to-Government Relationship with Tribes

In accordance with the President's memorandum of April 29, 1994, Government-to-Government Relations with Native American Tribal Governments of the Interior's manual at 512 DM 2, we readily acknowledge our responsibility to communicate meaningfully with recognized Federal tribes on a government-to-government basis. In accordance with Secretarial Order 3206 of June 5, 1997 (American Indian Tribal Rights, Federal-Tribal Trust Responsibilities, and the Endangered Species Act), we readily acknowledge our responsibilities to

work directly with tribes in developing programs for healthy ecosystems, to acknowledge that tribal lands are not subject to the same controls as Federal public lands, to remain sensitive to Indian culture, and to make information available to tribes. We have evaluated potential effects on federally recognized Indian tribes and have determined that there are no potential effects. This rule involves the importation and interstate movement of live boa constrictors, four python species, and four anaconda species, gametes, viable eggs, or hybrids. We are unaware of trade in these species by tribes.

#### Effects on Energy

On May 18, 2001, the President issued Executive Order 13211 on regulations that significantly affect energy supply, distribution, and use. Executive Order 13211 requires agencies to prepare Statements of Energy Effects when undertaking certain actions. This rule is not expected to affect energy supplies, distribution, and use. Therefore, this action is not a significant energy action and no Statement of Energy Effects is required.

#### References Cited

A complete list of all references used in this rulemaking is available upon request from the South Florida Ecological Services Office, Vero Beach, FL (see the **FOR FURTHER INFORMATION CONTACT** section).

#### Authors

The primary authors of this proposed rule are the staff members of the South Florida Ecological Services Office (see **FOR FURTHER INFORMATION CONTACT** section).

#### List of Subjects in 50 CFR Part 16

Fish, Imports, Reporting and recordkeeping requirements, Transportation, Wildlife.

#### Proposed Regulation Promulgation

For the reasons discussed in the preamble, the U.S. Fish and Wildlife Service proposes to amend part 16, subchapter B of chapter I, title 50 of the Code of Federal Regulations, as follows:

#### PART 16—[AMENDED]

1. The authority citation for part 16 continues to read as follows:

**Authority:** 18 U.S.C. 42.

2. Amend § 16.15 by revising paragraph (a) to read as follows:

#### § 16.15 Importation of live reptiles or their eggs.

(a) The importation, transportation, or acquisition of any live specimen, gamete, viable egg, or hybrid of the species listed in this paragraph is prohibited except as provided under the terms and conditions set forth in § 16.22:

- (1) *Boiga irregularis* (brown tree snake).
- (2) *Python molurus* (Indian [including Burmese] python).
- (3) *Broghammerus reticulatus* or *Python reticulatus* (reticulated python).
- (4) *Python sebae* (Northern African python).
- (5) *Python natalensis* (Southern African python).
- (6) *Boa constrictor* (boa constrictor).
- (7) *Eunectes notaeus* (yellow anaconda).
- (8) *Eunectes deschauenseei* (DeSchauensee's anaconda).
- (9) *Eunectes murinus* (green anaconda).
- (10) *Eunectes beniensis* (Beni anaconda).

\* \* \* \* \*

Dated: February 5, 2010.

**Thomas L. Strickland,**

*Assistant Secretary for Fish and Wildlife and Parks.*

[FR Doc. 2010-4956 Filed 3-11-10; 8:45 am]

**BILLING CODE 4310-55-S**

#### DEPARTMENT OF COMMERCE

#### National Oceanic and Atmospheric Administration

#### 50 CFR Part 660

[Docket No. 100122041-0118-01]

RIN 0648-AY59

#### Magnuson-Stevens Act Provisions; Fisheries off West Coast States; Pacific Coast Groundfish Fishery; 2010 Tribal Fishery for Pacific Whiting

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

**ACTION:** Proposed rule; request for comments.

**SUMMARY:** This proposed rule is issued consistent with a regulatory framework that was established in 1996 to implement the Washington coastal treaty Indian tribes' rights to harvest Pacific Coast groundfish. Washington coastal treaty Indian tribes mean the Hoh, Makah, and Quileute Indian Tribes and the Quinault Indian Nation. The

Makah and Quileute Tribes have expressed their intent to participate in the 2010 Pacific whiting fishery. This proposed rule establishes an interim formula for setting the tribal allocation of Pacific whiting for the 2010 season only, based on discussions with the Makah and Quileute tribes regarding their fishing plans.

**DATES:** Comments on this proposed rule must be received no later than 5 p.m., local time on April 2, 2010.

**ADDRESSES:** You may submit comments, identified by RIN 0648–AY59 by any one of the following methods:

- Electronic Submissions: Submit all electronic public comments via the Federal eRulemaking Portal <http://www.regulations.gov>.

- Fax: 206–526–6736, Attn: Kevin C. Duffy

- Mail: Barry A. Thom, Acting Regional Administrator, Northwest Region, NMFS, 7600 Sand Point Way NE, Seattle, WA 98115–0070, Attn: Kevin C. Duffy.

Instructions: No comments will be posted for public viewing until after the comment period has closed. All comments received are a part of the public record and will generally be posted to <http://www.regulations.gov> without change. All Personal Identifying Information (for example, name, address, etc.) voluntarily submitted by the commenter may be publicly accessible. Do not submit Confidential Business Information or otherwise sensitive or protected information.

NMFS will accept anonymous comments (enter N/A in the required fields if you wish to remain anonymous). You may submit attachments to electronic comments in Microsoft Word, Excel, WordPerfect, or Adobe PDF file formats only.

**FOR FURTHER INFORMATION CONTACT:** Kevin C. Duffy (Northwest Region, NMFS), phone: 206–526–4743, fax: 206–526–6736 and e-mail: [kevin.duffy@noaa.gov](mailto:kevin.duffy@noaa.gov).

**SUPPLEMENTARY INFORMATION:**

**Electronic Access**

This proposed rule 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 Pacific Fishery Management Council's website at <http://www.pcouncil.org/>.

**Background**

The regulations at 50 CFR 660.324(d) establish the process by which the tribes with treaty fishing rights in the area covered by the Pacific Coast Groundfish

Fishery Management Plan (FMP) can request new allocations or regulations specific to the tribes during the biennial harvest specifications and management measures process. These requests must be made in writing. The regulations also state “the Secretary will develop tribal allocations and regulations under this paragraph in consultation with the affected tribe(s) and, insofar as possible, with tribal consensus.” These procedures employed by NOAA in implementing tribal treaty rights under the FMP, in place since May 31, 1996, were designed to provide a framework process by which NOAA Fisheries can accommodate tribal treaty rights by setting aside appropriate amounts of fish in conjunction with the Pacific Fishery Management Council's (Council) process for determining harvest specifications and management measures. The Council's groundfish fisheries require a high degree of coordination among the tribal, state, and federal co-managers in order to rebuild overfished species and prevent overfishing, while allowing fishermen opportunities to sustainably harvest over 90 species of groundfish managed under the FMP.

Since 1996, NMFS has been allocating a portion of the U.S. Optimum Yield (OY) of Pacific whiting to the tribal fishery following the process established in 50 CFR 660.324(d). The tribal allocation is subtracted from the total U.S. whiting OY before it is allocated to the non-tribal sectors.

To date, only the Makah Tribe has prosecuted a tribal fishery for Pacific whiting. The Makah Tribe has annually harvested a whiting allocation since 1996 using midwater trawl gear. Since 1999, the tribal allocation has been based on a statement of need for their tribal fishery. In recent years, the specific tribal amount has been determined using a sliding scale relative to the U.S. whiting OY of between 14 and 17.5 percent, depending on the specific OY determined by the Council. In general, years with a relatively low OY result in a tribal allocation closer to 17.5 percent, and years with a relatively high OY result in a tribal allocation closer to 13 percent.

Allocations of Pacific whiting to treaty Indian tribes on the coast of Washington have varied between 25,000 mt and 35,000 mt for the years 2000–2005. In 2000, with a U.S. OY of 232,000 mt, 32,500 mt of whiting was set aside for treaty Indian tribes on the coast of Washington State. In 2001 and 2002, the U.S. OY declined to 190,400 mt and 129,600 mt, respectively, and the tribal allocations for those years were also lower: 27,500 mt and 22,680

mt, respectively. In 2003, with a U.S. OY of 148,200 mt, the tribal allocation was 25,000 mt. In 2004, the U.S. OY was 250,000 mt with a tribal allocation of 32,500 mt. In 2005, the U.S. OY of 269,069 had a corresponding tribal allocation of 35,000 mt. In 2006, the U.S. OY of 269,069 mt resulted in a tribal allocation of 32,500 mt. In 2007, the U.S. OY of 242,591 mt had a corresponding tribal allocation of 35,000 mt. In 2008, the U.S. OY of 269,545 mt resulted in a tribal allocation of 35,000 mt.

For the 2009–2010 harvest specification biennial cycle, three of the four coastal tribes indicated their intent to participate in the whiting fishery at some point during this two-year period. The Quinault Nation indicated their intent to start fishing in 2010, and both the Quileute and Makah Tribes indicated they intended to fish in both 2009 and 2010. All three tribes notified NOAA Fisheries of their intent to participate in the whiting fishery during the November 2007 Council meeting, and subsequently followed up with written requests for allocations pursuant to 50 CFR 660.324(d) prior to the March 8–14, 2008 Council meeting.

After the initial tribal requests were received, several meetings and discussions took place between the tribal, state, and federal co-managers. These meetings resulted in an understanding by NOAA and the State of Washington that a tribal allocation of 50,000 mt in 2009 would satisfy the needs expressed by the Quileute and the Makah. This allocation was based on the separate requests of the Quileute for up to 8,000 mt in 2009, and the Makah for up to 42,000 mt in 2009, for a total of 50,000 mt.

Based on the requests received from the Tribes during the schedule specified in 50 CFR 660.324, the Council recommended a tribal set-aside of 50,000 mt for 2009 only, with the Makah Tribe to manage 42,000 mt, including the bycatch amounts associated with this portion of the set-aside, and the Quileute Tribe to manage 8,000 mt, including the bycatch amounts associated with this portion of the set-aside. The Council also requested that NOAA Fisheries convene the co-managers, including the states of Oregon and Washington, and the Washington coastal treaty tribes, in government to government discussions to develop a proposal for 2010 and beyond for tribal set-asides of Pacific Whiting.

In accordance with this recommendation, NOAA Fisheries established an overall Tribal set-aside of 50,000 mt for 2009, on March 6, 2009

(74 FR 9874). Further, NOAA Fisheries established interim individual Tribal set-asides for the Quileute and Makah Tribes in the amounts of 8,000 mt and 42,000 mt, respectively, which represented the amounts requested or agreed upon at the time the shares of the 2009 fishery were being established by the Council in accordance with the procedures set forth in 50 CFR 660.324. These interim individual Tribal set-asides for 2009 only were not in any manner to be considered a determination of treaty rights to the harvest of Pacific whiting for use in future fishing seasons, nor did they set precedent for individual Tribal allocations of the Pacific whiting resource. Rather, the amounts set aside for each tribe for 2009 were based on the timely requests from the tribes at the June Council meeting. Only the Makah engaged in a tribal whiting fishery in 2009.

Following the Council's direction, in 2008 NMFS and the co-managers also began the process to determine the long-term tribal allocation for whiting. At the September 2008 Council meeting, NOAA, the states and the Quinault, Quileute, and Makah tribes met and agreed on a process in which NOAA would pull together the current information regarding whiting, circulate it among the co-managers, seek comment on the information and possible analyses, and then prepare analyses of the information to be used by the co-managers in developing a tribal allocation for use in 2010 and beyond. The goal was agreement among the co-managers on a total tribal allocation for incorporation into the Council's planning process for the 2010 season. An additional goal was to provide the tribes sufficient time and information to develop an inter-tribal allocation or other necessary management agreement. This process has been moving forward. In 2009, NMFS shared a preliminary report summarizing scientific information available on the migration and distribution of Pacific whiting on the west coast. The co-managers have met to discuss this information and plan further meetings. However, due to the detailed nature of this evaluation of the scientific information, and the need to negotiate a long-term tribal allocation following completion of the evaluation, the process was not completed in time for the 2010 Pacific whiting fishery.

#### **Tribal Allocation for 2010**

Both the Makah and Quileute have stated their intent to participate in the whiting fishery in 2010. The Quinault Nation has indicated that they plan to

participate in the 2011 fishery, but not the 2010 fishery. Because the development of scientific information needed by the co-managers to negotiate a long term tribal allocation is not yet complete, NOAA Fisheries is moving forward with this proposed rule as an interim measure to address the allocation for and management of the 2010 tribal Pacific whiting fishery. As with the 2009 allocation, this proposed rule is not intended to establish any precedent for future whiting seasons or for the long-term tribal allocation of whiting.

The proposed rule would be implemented under authority of section 305(d) of the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act), 1801 et seq, which makes the Secretary responsible for "carrying out any fishery management plan or amendment approved or prepared by him, in accordance with the provisions of this Act." With this proposed rule, NMFS, acting on behalf of the Secretary, would ensure that the FMP is implemented in a manner consistent with treaty rights of four Northwest tribes to fish in their "usual and accustomed grounds and stations" in common with non-tribal citizens. *Washington v. Washington State Commercial Passenger Fishing Vessel Ass'n*, 443 U.S. 658, 674 (1979).

NMFS' proposed formula for determining the 2010 tribal allocation of whiting is based on discussions with the Makah and Quileute Tribes regarding their intent and needs for the 2010 fishing season, and on NMFS' preliminary review of the range of potential total tribal allocation suggested by current scientific information. The specific tribal allocation depends on the amount of the U.S. OY, which will be determined by the Pacific Fishery Management Council at their March 2010 meeting, based on an updated stock assessment. To accommodate the possibility that the U.S. OY of whiting might be different than in 2009, NMFS is proposing an approach for determining the 2010 tribal allocation that can account for a range of potential OYs. The Makah Tribe has requested the opportunity to harvest up to 17.5 percent of the U.S. OY of whiting in 2010. The Quileute Tribe has stated that it plans to have two boats participating in the 2010 fishery, and that it believes that 8,000 mt of whiting are necessary to ensure the economic viability of one boat. NMFS therefore proposes that the tribal allocation for 2010 be  $[17.5 \text{ percent} * (\text{U.S. OY})] + 16,000 \text{ mt}$ . Assuming an OY similar to the 2009 OY, the tribal allocation under this approach would be 39,789 mt (29

percent of the OY). The highest OY in the last five years was 269,545 mt. At this level, the tribal allocation would be 63,170 mt (23 percent of the OY).

In its proposed rule regarding the 2009 tribal whiting allocation, NOAA Fisheries stated that it believed the 50,000 mt interim set aside for that year, although higher than the prior tribal set asides, is still clearly within the tribal treaty right to Pacific whiting. As described above, while further review of scientific information will occur in 2010, NMFS believes that current knowledge on the distribution and abundance of the coastal Pacific whiting stock reveals that the range of percentages of the OY proposed here lies within the range of tribal treaty rights to Pacific whiting.

#### **Reapportionment**

In addition to discussing the overall tribal allocation for the 2010 tribal whiting fishery, NMFS and the tribes discussed the issue of reapportionment of whiting from the tribal fishery to the non-tribal fishery. In this proposed rule, NMFS reasserts its regulatory authority to reapportion whiting from the tribal to the non-tribal fishery, consistent with 50 CFR 660 323(c).

NMFS currently has the authority to reapportion whiting between the non-tribal and tribal fisheries on an annual basis. This authority has been used in two instances: January 11, 2001 (66 FR 48370); and May 5, 2009 (74 FR 20620). However, during discussion between the tribes in 2009, the tribes lacked a consensus position on this issue. The Quileute and Quinault tribal fishery managers stated their belief that NMFS does not have authority to reapportion whiting to the non-tribal fishery, while the Makah tribal fishery managers stated their belief that NMFS does have the authority to do so. NMFS had hoped to come to consensus on this issue in advance of the March 2010 Council meeting, but was unable to do so. NMFS maintains that it currently has the regulatory authority to reapportion Pacific whiting, consistent with 50 CFR 660.323(c).

For 2010, the Regional Administrator will coordinate with the affected tribe(s) before any decisions are made on reapportionment of any portion of the tribal allocation of whiting.

#### **Classification**

At this time, NMFS has preliminarily determined that the management measures for the 2010 Pacific whiting tribal fishery are consistent with the national standards of the Magnuson-Stevens Act and other applicable laws. In making the final determination,

NMFS will take into account the data, views, and comments received during the comment period.

NMFS has initially determined that this proposed rule is not significant for purposes of Executive Order 12866.

An Initial Regulatory Flexibility Analysis (IRFA) was prepared, as required by section 603 of the Regulatory Flexibility Act (RFA), 5 U.S.C. 600 *et seq.* The IRFA describes the economic impact this proposed rule, if adopted, would have on small entities. A summary of the analysis follows. A copy of this analysis is available from NMFS (see ADDRESSES).

Under the RFA, the term "small entities" includes small businesses, small organizations, and small governmental jurisdictions. The Small Business Administration has established size criteria for all major industry sectors in the US, 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 \$4.0 million for all its affiliated operations worldwide. 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 business involved in both the harvesting and processing of seafood products is a small business if it meets the \$4.0 million criterion for fish harvesting operations. 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. For marinas and charter/party boats, a small business is one with annual receipts not in excess of \$7.0 million. The RFA defines "small organizations" as any nonprofit enterprise that is independently owned and operated and is not dominant in its field. The RFA defines small governmental jurisdictions as governments of cities, counties, towns, townships, villages, school districts, or special districts with populations of less than 50,000.

In recent years the number of participants engaged in the Pacific whiting fishery has varied with changes in the whiting OY and economic conditions. Pacific whiting shoreside vessels (26 to 29), mothership processors (4 to 6), mothership catcher vessels (11 to 20), catcher/processors (5 to 9), Pacific whiting shoreside first

receivers (8 to 16), and four tribal trawlers are the major units of this fishery. For 2010, an additional two tribal trawlers are expected to enter the fishery.

NMFS' records suggest the gross annual revenue for each of the catcher/processor and mothership operations operating off the coasts of Washington, Oregon, and California exceeds \$4,000,000. Therefore, they are not considered small businesses. NMFS' records also show that 10 to 43 catcher vessels have taken part in the mothership fishery yearly since 1994. These companies are all assumed to be small businesses (although some of these vessels may be affiliated to larger processing companies). Since 1994, 26 to 31 catcher vessels participated in the shoreside fishery annually. These companies are all assumed to be small businesses (although some of these vessels may be affiliated to larger processing companies). Tribal trawlers are presumed to be small entities whereas the Tribes are presumed to be small government jurisdictions.

Pacific whiting has grown in importance, especially in recent years. Through the 1990s, the volume of Pacific whiting landed in the fishery increased. In 2002 and 2003, landings of Pacific whiting declined due to information showing the stock was depleted and the subsequent regulations that restricted harvest in order to rebuild the species. Over the years 2003 to 2007 estimated Pacific whiting ex-vessel values averaged about \$29 million. In 2008, these participants harvested about 248,000 mt of whiting worth about \$63 million in ex-vessel value based on shoreside ex-vessel prices of \$254 per ton the highest ex-vessel revenues and prices on record. In comparison, the 2007 fishery harvested about 224,000 mt worth \$36 million at an average ex-vessel price of about \$160 per mt. Preliminary estimates of the 2009 fishery indicate that the tribal and non-tribal fleets harvested about 120,000 tons of whiting worth about \$15 million. During 2009, ex-vessel prices declined to about \$119 per mt, presumably due to the worldwide recession.

Relative to the 2009 allocation of 50,000 mt, the proposed Pacific whiting allocation for treaty Indian tribes ranges from a decrease of 10,211 mt (50,000 mt minus 39,789 mt) to an increase of 13,170 mt (63,170 mt minus 50,000 mt). In terms of the average 2009 ex-vessel price of \$119 per mt, the proposed allocation of whiting to tribes ranges from a decrease of \$1.2 million to an increase of \$1.6 million with the 2009 initial allocation of 50,000 mt. Compared to the actual 2009 harvest of 20,446 mt and estimated ex-vessel tribal

revenue of \$2.4 million, on the low end, if the tribal allocation of 37,789 mt is harvested, tribal revenues would reach \$4.5 million, or an increase of \$2.3 million. On the high end, if the tribal allocation of 63,170 mt is harvested, tribal revenues would reach \$7.5 million, an increase of \$5.1 million.

Tribal fisheries are a mixture of the similar activities that non-tribal fisheries undertake as the tribal harvest will go shoreside for processing or to a mothership for at-sea processing. The processing facilities that the tribes use also process fish harvested by non-tribal fisheries. This rule directly regulates what entities can harvest whiting. Increased allocations to tribal harvesters (harvest vessels are small entities, tribes are small jurisdictions) implies decreased allocations to non-tribal harvesters (a mixture of small and large businesses). Note that in the instance where, by September 15, it is determined that some proportion of the whiting allocation to the tribal fishery is projected not to be harvested, the Regional Administrator may reapportion to the non-tribal whiting fishery.

There are no reporting, recordkeeping or other compliance requirements in the proposed rule.

No Federal rules have been identified that duplicate, overlap, or conflict with this action. This rule does not contain policies with federalism implications sufficient to warrant preparation of a federalism assessment under Executive Order 13132.

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 Pacific Coast 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 for the Pacific Coast groundfish fishery 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.

In 2005 NMFS reinitiated a formal section 7 consultation under the ESA for both the Pacific whiting midwater trawl fishery and the groundfish bottom trawl fishery. The December 19, 1999, Biological Opinion had defined an 11,000 Chinook incidental take threshold for the Pacific whiting fishery. During the 2005 Pacific whiting season, the 11,000 fish Chinook incidental take threshold was exceeded, triggering reinitiation. Also in 2005, new data from the West Coast Groundfish Observer Program became available, allowing NMFS to complete an analysis of salmon take in the bottom trawl fishery.

NMFS prepared a Supplemental Biological Opinion dated March 11, 2006, which addressed salmon take in both the Pacific whiting midwater trawl and groundfish bottom trawl fisheries. In its 2006 Supplemental Biological Opinion, NMFS concluded that catch rates of salmon in the 2005 whiting fishery were consistent with expectations considered during prior consultations. Chinook bycatch has averaged about 7,300 fish over the last 15 years and has only occasionally exceeded the reinitiation trigger of 11,000 fish.

Since 1999, when NMFS issued its previous opinion establishing the 11,000 fish threshold, annual Chinook bycatch has averaged about 8,450 fish. The Chinook Environmentally Significant Units (ESUs) most likely affected by the whiting fishery have generally improved in status since the 1999 Section 7 consultation. Although these species remain at risk, as indicated by their ESA listing, NMFS concluded that the higher observed bycatch in 2005 does not require a reconsideration of its prior “no jeopardy” conclusion with respect to the

fishery. For the groundfish bottom trawl fishery, NMFS concluded that incidental take in the groundfish fisheries is within the overall limits articulated in the Incidental Take Statement of the 1999 Biological Opinion. The groundfish bottom trawl limit from that opinion was 9,000 fish annually. NMFS will continue to monitor and collect data to analyze take levels. NMFS also reaffirmed its prior determination that implementation of the Groundfish 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) were recently listed and Oregon Coastal coho (73 FR 7816, February 11, 2008) were recently re-listed as threatened under the ESA. The 1999 biological opinion for salmonids concluded that the bycatch of these species in the Pacific whiting fishery were almost entirely Chinook salmon, with little or no bycatch of coho, chum, sockeye, and steelhead. The Southern Distinct Population Segment (DPS) of green sturgeon (71 FR 17757, April 7, 2006) were also recently listed as threatened under the ESA. As a consequence, NMFS has reinitiated its section 7 consultation on the Council’s Groundfish FMP.

After reviewing the available information, NMFS concluded that, in keeping with sections 7(a) (2) and 7(d) of the ESA, the proposed action would 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.

With regard to marine mammals, sea turtles, and seabirds, NMFS is reviewing the available data on fishery interactions and have entered into pre-consultation with the United States Fish and Wildlife Service, NMFS and other Federal

agencies. In addition, NMFS has begun discussions with Council staff on the process to address the concerns, if any, that arise from our review of the data.

Pursuant to Executive Order 13175, this proposed rule was developed after meaningful consultation and collaboration with tribal officials from the area covered by the FMP. Under the Magnuson-Stevens Act, 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.

#### List of Subjects in 50 CFR Part 660

Fisheries, Fishing, Indian Fisheries.

Dated: March 9, 2010.

**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 proposed to be amended as follows:

#### PART 660—FISHERIES OFF WEST COAST STATES

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

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

2. In § 660.385 paragraph (e) is revised to read as follows:

#### § 660.385 Washington coastal tribal fisheries management measures.

\* \* \* \* \*

(e) *Pacific whiting.* The tribal allocation for 2010 will be calculated using the following formula: total tribal allocation = [17.5 percent \* (U.S. OY)] + 16,000 mt.

\* \* \* \* \*

[FR Doc. 2010-5479 Filed 3-11-10; 8:45 am]

**BILLING CODE 3510-22-S**