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**DEPARTMENT OF COMMERCE**

**National Oceanic and Atmospheric Administration**

**50 CFR Part 660**

**[Docket No. 170627602-7999-02]**

**RIN 0648-BG98**

**Magnuson-Stevens Act Provisions; Fisheries off West Coast States; Pacific Coast Groundfish Fishery; Pacific Whiting; Pacific Coast Groundfish Fishery Management Plan; Amendment 21-3; Trawl Rationalization Program**

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

**ACTION:** Final rule.

**SUMMARY:** NMFS issues this final rule to change the management of the Pacific whiting at-sea sectors' (i.e., the Mothership [MS] and Catcher/ Processor [C/P] sectors) allocations for darkblotched rockfish and Pacific ocean perch (POP) by managing the allocations as set-asides rather than as total catch limits, under the authority of the Pacific Coast Groundfish Fishery Management Plan (FMP), and the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act). This rule revises regulations in accordance with Amendment 21-3 to the FMP (see electronic access under **SUPPLEMENTARY INFORMATION**) so that higher than anticipated harvest of darkblotched rockfish or POP that exceeds a sector's initial distribution of those species will not require automatic closure of one or more of the Pacific whiting at-sea sectors. This action is intended to reduce the risk of the Pacific whiting at-sea sectors not attaining their respective Pacific whiting allocations due to the incidental catch of

darkblotched rockfish or POP causing early closure of those sectors. This action does not change or increase the risk of exceeding darkblotched rockfish or POP ACLs, because it also allows NMFS to close one or both of the Pacific whiting at-sea sectors via automatic action if the species-specific set-aside amounts plus the available reserve for unforeseen catch events, known colloquially as the “buffer,” are anticipated to be exceeded. This rule will ensure that the Pacific whiting fishery is managed in accordance with the goals and objectives of the Magnuson-Stevens Act, the FMP, and other applicable laws.

**DATES:** Effective [*Insert date 30 days after publication in the Federal Register*].

**FOR FURTHER INFORMATION CONTACT:** Frank Lockhart (West Coast Region, NMFS), phone: 206-526-6140 and e-mail: *Frank.Lockhart@noaa.gov*.

**SUPPLEMENTARY INFORMATION:**

**Electronic Access**

This final rule is accessible via the Internet at the Office of the Federal Register Web site at <https://www.federalregister.gov>. Background information and documents are available at the NMFS West Coast Region website at [http://www.westcoast.fisheries.noaa.gov/fisheries/management/whiting/pacific\\_whiting.html](http://www.westcoast.fisheries.noaa.gov/fisheries/management/whiting/pacific_whiting.html) and at the Pacific Fishery Management Council's website at <http://www.pcouncil.org/groundfish/fishery-management-plan/groundfish-amendments-in-development>.

Background information and documents are available at the NMFS West Coast Region Web site at <http://www.westcoast.fisheries.noaa.gov/fisheries/groundfish/index.html> and at the Pacific Fishery Management Council's website at <http://www.pcouncil.org/groundfish/fishery-management-plan/groundfish-amendments-in-development/>.

## **Background**

### *Pacific Whiting Fishery*

Bycatch of rockfish species in the Pacific whiting fishery occurs at very low rates, but sporadically and unpredictably. Regulations at 50 CFR 660.55 address the allocation of these rockfish. Darkblotched rockfish and POP are caught almost exclusively by vessels in the shorebased Individual Fishing Quota (IFQ) and at-sea Pacific whiting sectors of the groundfish fishery. NMFS declared both species overfished in 2000 and 1999, respectively, and both stocks have been managed under rebuilding plans as a result. Populations of both species have shown dramatic improvement in recent years. Darkblotched rockfish and POP were both declared rebuilt in 2017. Darkblotched rockfish and POP are both currently managed as allocations, and NMFS automatically closes a fishery sector when it has reached its allocation of either species.

In recent years, both at-sea sectors of the Pacific whiting fishery have exceeded their initial annual allocation of darkblotched rockfish (C/P sector in 2011, and the MS sector in 2014). The latter resulted in an emergency Pacific Fishery Management Council (Council) meeting in order to re-open the fishery. Without implementation of this rule, the risk of an inseason closure of these sectors remains high, although the ACLs of these rockfish are far from being reached. For example, the most recent fishing mortality estimates by NMFS' Northwest Fisheries Science Center indicate that 42 percent of both the darkblotched rockfish and POP ACLs were caught in 2016. While harvest of these species at a level below the ACL may have helped to rebuild stocks more quickly, there is a negative socioeconomic impact from preventing harvest of Pacific whiting, as intended in the FMP.

### *Current Allocations Under Amendment 21*

The Council established allocations of darkblotched rockfish and POP for the Pacific whiting at-sea sectors in Amendment 21 to the FMP. When the Council considered allocation of these species, the analysis only incorporated data on catch through 2005, and took the overfished status of the species into account. Ten years of additional data on bycatch in the at-sea sectors are now available. Additionally, six full years of the Shorebased IFQ Program (which was implemented in 2011, 75 FR 60868) fishery information is available. This new information indicates that the stocks of both species are currently much healthier than they were at the time Amendment 21 was implemented, and they are no longer overfished.

The Council's Amendment 21 allocation recommendation was based, in part, on the idea that the C/P and MS sectors could avoid early closures by moving to areas of lower rockfish encounter rates if they were approaching a bycatch allocation. However, experience has shown that this assumption was likely too simplistic. Despite the mitigating measures enacted by the C/P and MS coops, darkblotched rockfish bycatch remains particularly variable, with the potential for rapid accumulation. The 2014 closure of the MS sector provides an illustration: closure occurred after six hauls caught 4.5 mt of darkblotched rockfish, which was nearly 75 percent of their 2014 allocation, with the most of that catch coming from three of the hauls. Some of the largest hauls were delivered to motherships so closely in time that feedback on the size of the catches from observers came too late for the MS coop to effectively respond. Prior to this "lightning strike" event, the sector had made 969 hauls and caught only 2.5 mt of darkblotched rockfish. After the sector was re-opened by an emergency meeting of the Council, the sector made 330 additional hauls that brought in over 14,500 mt of Pacific whiting and only 0.1 mt of additional darkblotched rockfish. The C/P sector has experienced even more rapid accumulations of darkblotched rockfish bycatch, and would have been closed late in the 2011

season if unused allocation had not been available from the MS sector, which had already completed fishing for the year. These events indicate that the current management structure may be adversely impacting the at-sea sectors to a greater degree than was anticipated when the Council adopted the current allocation structure under Amendment 21, due to unpredictability and high volume of bycatch events.

### *Amendment 21-3*

The Council has discussed a variety of solutions to reduce the risk of closure of the Pacific whiting at-sea sectors prior to attainment of their Pacific whiting allocations, such as allowing the transfer of rockfish quota between sectors, but it determined that those solutions were too complex to be analyzed and implemented in a timely manner. At its September 2016 meeting, the Council recommended the interim measure of amending the FMP and implementing revised regulations, so that the amounts of darkblotched rockfish and POP allocated to the C/P and MS sectors are managed as set-asides rather than as total catch limits. The Council also recommended giving NMFS inseason authority to automatically close one or both of the C/P and MS sectors in the event the species-specific set-aside amounts plus the available reserve for unforeseen catch events, known colloquially as the “buffer,” are anticipated to be exceeded.

This action does not revise allocations between sectors, which were set by Amendment 21 to the FMP, and is intended to be an interim solution to address the immediate needs of the C/P and MS sectors. Long-term solutions are being reviewed by the Council as part of the 5-year review of the trawl rationalization program. A long-term solution to address the needs of the Pacific whiting at-sea sectors should focus specifically on fairly and equitably revising the allocation between the trawl sectors, and among all the groundfish fishery sectors, while leaving any applicable stock rebuilding plans unaffected.

## **Intent of the Action**

This action is intended to substantially reduce the risk of the Pacific whiting at-sea sectors not attaining their respective Pacific whiting allocations based on the incidental catch of darkblotched rockfish or POP, when allowing the sector(s) to remain open would not exceed ACLs for these rebuilding stocks. It revises regulations so that higher than anticipated harvest of darkblotched rockfish or POP that exceeds the initial distribution of those species to the at-sea sectors will not require automatic closure of one or more of the at-sea sectors.

The rule also allows NMFS to close one or both of the C/P and MS sectors of the Pacific whiting fishery via automatic action when the set-aside for that sector, plus the available reserve for unforeseen catch events, is reached or is expected to be reached for either darkblotched rockfish or POP. Because of near real-time monitoring by the C/P and MS Coop Programs, and the ability of those programs to respond quickly to changing fishery conditions, closures will occur before allocations to other fisheries or the ACLs are reached, thus limiting the potential effects and precluding potential negative biological and socioeconomic impacts of this action.

## **Comments and Responses**

NMFS published a notice of availability of Amendment 21-3 to the FMP (82 FR 44984) on September 27, 2017, and a proposed rule for this action (82 FR 50106) on October 30, 2017. The comment periods for the FMP amendment and the proposed rule closed on November 27, 2017. NMFS received one public comment in support of the proposed action. No changes were made from the proposed rule or proposed FMP amendment based on public comments.

## **Classification**

The Administrator, West Coast Region Region, NMFS, determined that FMP Amendment 21-3 is necessary for the conservation and management of the West Coast

Groundfish fishery and that it is consistent with the Magnuson-Stevens Act and other applicable laws.

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

The Chief Counsel for Regulation of the Department of Commerce certified to the Chief Counsel for Advocacy of the Small Business Administration during the proposed rule stage that this action would not have a significant economic impact on a substantial number of small entities. The factual basis for the certification was published in the proposed rule and is not repeated here. No comments were received regarding this certification. As a result, a regulatory flexibility analysis was not required and none was prepared.

NMFS determined that this rule will be implemented in a manner that is consistent, to the maximum extent practicable, with the enforceable policies of the approved coastal management programs of Washington, Oregon, and California programs. This determination was submitted for review by the responsible state agencies under section 307 of the CZMA. The state agencies agreed with this determination.

There are no reporting or recordkeeping requirements associated with this final rule. No Federal rules have been identified that duplicate, overlap, or conflict with this action.

Pursuant to Executive Order 13175, this final rule was developed after meaningful collaboration with tribal officials from the area covered by the FMP. Consistent with the Magnuson-Stevens Act at 16 U.S.C. 1852(b)(5), one of the voting members of the Council is 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, Reporting and recordkeeping requirements.

Dated: January 3, 2018.

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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 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 § 660.55, revise paragraphs (c)(1)(i) introductory text and (c)(1)(i)(A) and (B) to read as follows:

**§ 660.55 Allocations.**

\* \* \* \* \*

(c)\* \* \*

(1)\* \* \*

(i) *Trawl fishery allocation.* The allocation for the limited entry trawl fishery is derived by applying the trawl allocation percentage by species/species group and area as specified in paragraph (c) of this section and as specified during the biennial harvest specifications process to the fishery harvest guideline for that species/species group and area. For IFQ species other than darkblotched rockfish, Pacific ocean perch, and widow rockfish, the trawl allocation will be

further subdivided among the trawl sectors (MS, C/P, and IFQ) as specified in §§ 660.140, 660.150, and 660.160 of subpart D. For darkblotched rockfish, Pacific ocean perch, and widow rockfish, the trawl allocation is further subdivided among the trawl sectors (MS, C/P, and IFQ) as follows:

(A) *Darkblotched rockfish*. Distribute 9 percent or 25 mt, whichever is greater, of the total trawl allocation of darkblotched rockfish to the Pacific whiting fishery (MS sector, C/P sector, and Shorebased IFQ sectors). The distribution of allocation of darkblotched rockfish to each of these sectors will be done pro rata relative to the sector's allocation of the commercial harvest guideline for Pacific whiting. Darkblotched rockfish distributed to the MS sector and C/P sector are managed as set-asides at Table 2d, subpart C. The allocation of darkblotched rockfish to the Pacific whiting IFQ fishery contributes to the Shorebased IFQ allocation. After deducting allocations for the Pacific whiting fishery, the remaining trawl allocation is allocated to the Shorebased IFQ Program.

(B) *Pacific Ocean Perch (POP)*. Distribute 17 percent or 30 mt, whichever is greater, of the total trawl allocation of POP to the Pacific whiting fishery (MS sector, C/P sector, and Shorebased IFQ sector). The distribution of POP to each sector will be done pro rata relative to the sector's allocation of the commercial harvest guideline for Pacific whiting. POP distributed to the MS sector and C/P sector are managed as set-asides, at Table 2d, subpart C. The allocation of POP to the Pacific whiting IFQ fishery contributes to the Shorebased IFQ allocation. After deducting allocations for the Pacific whiting fishery, the remaining trawl allocation is allocated to the Shorebased IFQ Program.

\* \* \* \* \*

3. In § 660.60, add paragraph (d)(1)(vii) to read as follows:

**§ 660.60 Specifications and management measures.**

\* \* \* \* \*

(d) \* \* \*

(1) \* \* \*

(vii) Close one or both the MS or C/P sector when the set-aside for that sector, described in Table 2d, subpart C, plus the available reserve for unforeseen catch events, described in Table 2a, subpart C, combined, is reached or is expected to be reached for either darkblotched rockfish or Pacific ocean perch.

\* \* \* \* \*

4. In subpart C, revise Table 2b to Part 660 to read as follows:

**Table 2b. to Part 660, Subpart C – 2018, and Beyond, Allocations by Species or Species Group (Weight in Metric Tons)**

Species	Area	Fishery HG or ACT	Trawl		Non-trawl	
			Percent	Mt	Percent	Mt
BOCACCIO a/	S. of 40°10' N. lat.	725.6	39	283.3	61	442.3
COWCOD a/b/	S. of 40°10' N. lat.	4.0	36	1.4	64	2.6
DARKBLOTCHED ROCKFISH c/	Coastwide	575.8	95	547.0	5	28.8
PACIFIC OCEAN PERCH d/	N. of 40°10' N. lat.	231.6	95	220.0	5	11.6
YELLOWEYE ROCKFISH a/	Coastwide	14.0	NA	1.1	NA	12.9
Arrowtooth flounder	Coastwide	11,644.9	95	11,062.6	5	582.2
Big skate a/	Coastwide	436.6	95	414.8	5	21.8
Canary rockfish a/e/	Coastwide	1,466.6	NA	1,060.1	NA	406.5
Chilipepper	S. of 40°10' N. lat.	2,461.1	75	1,845.8	25	615.3
Dover sole	Coastwide	48,406.3	95	45,986.0	5	2,420.3
English sole	Coastwide	7,324.2	95	6,958.0	5	366.2
Lingcod	N. of 40°10' N. lat.	2,831.8	45	1,274.3	55	1,557.5
Lingcod	S. of 40°10' N. lat.	1,135.0	45	510.8	55	624.3
Longnose skate a/	Coastwide	1,853.0	90	1,667.7	10	185.3
Longspine thornyhead	N. of 34°27' N. lat.	2,700.2	95	2,565.2	5	135.0
Pacific cod	Coastwide	1,091.0	95	1,036.4	5	54.5
Pacific whiting	Coastwide	TBD	100	TBD	0	TBD
Petrale sole	Coastwide	2,772.1	95	2,633.5	5	138.6
Sablefish	N. of 36° N. lat.	N/A	See Table 2c			
Sablefish	S. of 36° N. lat.	1,939.0	42	814.4	58	1,124.6
Shortspine thornyhead	N. of 34°27' N. lat.	1,639.0	95	1,557.0	5	81.9
Shortspine thornyhead	S. of 34°27' N. lat.	855.7	NA	50.0	NA	805.7
Splitnose rockfish	S. of 40°10' N. lat.	1,750.3	95	1,662.8	5	87.5
Stary flounder	Coastwide	1,271.7	50	635.9	50	635.9
Widow rockfish f/	Coastwide	12,437.3	91	11,317.9	9	1,119.4
Yellowtail rockfish	N. of 40°10' N. lat.	4,972.1	88	4,375.4	12	596.6
Minor Shelf Rockfish a/	N. of 40°10' N. lat.	1,963.2	60	1,181.8	40	781.4
Minor Slope Rockfish	N. of 40°10' N. lat.	1,688.9	81	1,368.0	19	320.9
Minor Shelf Rockfish a/	S. of 40°10' N. lat.	1,576.8	12	192.37	88	1,384.4
Minor Slope Rockfish	S. of 40°10' N. lat.	688.8	63	433.9	37	254.9
Other Flatfish	Coastwide	7,077.0	90	6,369.3	10	707.7

a/ Allocations decided through the biennial specification process.

b/ The cowcod fishery harvest guideline is further reduced to an ACT of 4.0 mt.

c/ Consistent with regulations at §660.55(c), 9 percent (49.2 mt) of the total trawl allocation for darkblotched rockfish is allocated to the Pacific whiting fishery, as follows: 20.7 mt for the Shorebased IFQ Program, 11.8 mt is managed as a set-aside for the MS sector, and 16.7 mt is managed as a set-aside for the C/P sector. The tonnage calculated here for the Pacific whiting IFQ fishery contributes to the total shorebased trawl allocation, which is found at §660.140(d)(1)(ii)(D).

d/ Consistent with regulations at §660.55(c), 17 percent (37.4 mt) of the total trawl allocation for POP is allocated to the Pacific whiting fishery, as follows: 15.7 mt for the Shorebased IFQ Program, 9.0 mt is managed as a set-aside the MS sector, and 12.7 mt is managed as a set-aside for the C/P sector. The tonnage calculated here for the Pacific whiting IFQ fishery contributes to the total shorebased trawl allocation, which is found at §660.140(d)(1)(ii)(D).

e/ Canary rockfish is allocated approximately 72 percent to trawl and 28 percent to non-trawl. 46 mt of the total trawl allocation of canary rockfish is allocated to the MS and C/P sectors, as follows: 30 mt for the MS sector, and 16 mt for the C/P sector.

f/ Consistent with regulations at §660.55(c), 10 percent (1,131.8 mt) of the total trawl allocation for widow rockfish is allocated to the Pacific whiting fishery, as follows: 475.4 mt for the Shorebased IFQ Program, 271.6 mt for the MS sector, and 384.8 mt for the C/P sector. The tonnage calculated here for the Pacific whiting IFQ fishery contributes to the total shorebased trawl allocation, which is found at §660.140(d)(1)(ii)(D).

5. In subpart C, revise Table 2d to Part 660 to read as follows:

**Table 2d. To Part 660, Subpart C - At-Sea Whiting Fishery Annual Set-Asides, 2018 and Beyond**

<b>Species or Species Complex</b>	<b>Area</b>	<b>Set Aside (mt)</b>
BOCACIO	S. of 40°10 N. lat.	NA
COWCOD	S. of 40°10 N. lat.	NA
DARKBLOTCHED ROCKFISH a/	Coastwide	28.5
PACIFIC OCEAN PERCH b/	N. of 40°10 N. lat.	21.7
YELLOWEYE ROCKFISH	Coastwide	0
Arrowtooth flounder	Coastwide	70
Canary rockfish c/	Coastwide	Allocation
Chilipepper	S. of 40°10 N. lat.	NA
Dover sole	Coastwide	5
English sole	Coastwide	5
Lingcod	N. of 40°10 N. lat.	15
Lingcod	S. of 40°10 N. lat.	NA
Longnose skate	Coastwide	5
Longspine thornyhead	N. of 34°27 N. lat.	5
Longspine thornyhead	S. of 34°27 N. lat.	NA
Minor Nearshore Rockfish	N. of 40°10 N. lat.	NA
Minor Nearshore Rockfish	S. of 40°10 N. lat.	NA
Minor Shelf Rockfish	N. of 40°10 N. lat.	35
Minor Shelf Rockfish	S. of 40°10 N. lat.	NA
Minor Slope Rockfish	N. of 40°10 N. lat.	100
Minor Slope Rockfish	S. of 40°10 N. lat.	NA
Other Fish	Coastwide	NA
Other Flatfish	Coastwide	20
Pacific cod	Coastwide	5
Pacific Halibut d/	Coastwide	10
Pacific Whiting	Coastwide	Allocation
Petrale sole	Coastwide	5
Sablefish	N. of 36° N. lat.	50
Sablefish	S. of 36° N. lat.	NA
Shortspine thornyhead	N. of 34°27 N. lat.	20
Shortspine thornyhead	S. of 34°27 N. lat.	NA
Starry flounder	Coastwide	5
Widow Rockfish c/	Coastwide	Allocation
Yellowtail rockfish	N. of 40°10 N. lat.	300

a/ Darkblotched rockfish will be managed as set-asides for the MS and C/P sectors based on pro-rata distribution described at §660.55(c)(1)(i)(A), resulting in a set-aside of 11.8 mt for the MS sector, and a set-aside of and 16.7 mt for C/P sector.

b/ POP will be managed as set-asides for the MS and C/P sectors based on pro-rata distribution described at §660.55(c)(1)(i)(B), resulting in a set-aside of 9.0 mt for the MS sector, and a set-aside of and 12.7 mt for the C/P sector.

c/ See Table 1.b., to Subpart C, for the at-sea whiting allocations for these species.

d/ As stated in §660.55 (m), the Pacific halibut set-aside is 10 mt, to accommodate bycatch in the at-sea Pacific whiting fisheries and in the shorebased trawl sector south of 40°10 N. lat. (estimated to be approximately 5 mt each).

6. In § 660.150, revise paragraphs (c)(1)(i) and (ii) to read as follows:

**§ 660.150 Mothership (MS) Coop Program.**

\* \* \* \* \*

(c) \* \* \*

(1) \* \* \*

(i) Species with formal allocations to the MS Coop Program are Pacific whiting, canary rockfish, and widow rockfish;

(ii) Species with set-asides for the MS and C/P Coop Programs, as described in Table 2d, subpart C.

\* \* \* \* \*

7. In § 660.160, revise paragraphs (c)(1)(i) and (ii) to read as follows:

**§ 660.160 Catcher/processor (C/P) Coop Program.**

\* \* \* \* \*

(c) \* \* \*

(1) \* \* \*

(i) Species with formal allocations to the C/P Coop Program are Pacific whiting, canary rockfish, and widow rockfish;

(ii) Species with set-asides for the MS and C/P Programs, as described in Table 2d, subpart C.

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