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DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 300

[Docket No. 171026999-8049-01]

RIN 0648-BH36

Fisheries off West Coast States; Highly Migratory Fisheries; Amendment 4 to Fishery Management Plan for West Coast Highly Migratory Species Fisheries; Revisions to the Biennial Management Cycle

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

ACTION: Proposed rule; request for comments.

SUMMARY: Based on a recommendation from the Pacific Fishery Management Council (Council) NMFS is proposing to revise regulations under the Magnuson-Stevens Fishery Conservation and Management Act (MSA) to implement Amendment 4 to the Fishery Management Plan for U.S. West Coast Highly Migratory Species (HMS FMP). The intent of Amendment 4 is to bring descriptions of the management context for HMS fisheries up to date, to better describe the Council's role in the process of making stock status determinations for highly migratory species (HMS), including the Council's evaluations of the best scientific information available (BSIA), and to change the schedule of the Council's three-meeting biennial management cycle for HMS stocks. Consistent with Amendment 4, this proposed rule would update and amend the descriptions of biennial management cycle activities in the regulations for the HMS FMP to allow the Council to shift the schedule of Council meetings for

the consideration of HMS management actions from June, September, and November to September, November, and March. The changes proposed to biennial management cycle activities and the schedule are intended to better streamline international and domestic management processes for HMS. Amendment 4 and this proposed rule are administrative in nature and are not expected to affect activities authorized under the FMP or harvest levels of HMS.

DATES: Comments on the proposed rule and supporting documents must be submitted in writing by [*Insert date 45 days after date of publication in the FEDERAL REGISTER*]. However, please note that comments regarding the decision to approve, disapprove, or partially approve Amendment 4 to the HMS FMP must be submitted by the end of the comment period for the Notice of Availability (NOA) for Amendment 4, which was published separately in the *Federal Register* on January 23, 2018 (see the NOA at 83 FR 3108).

ADDRESSES: You may submit comments on this document, identified by NOAA-NMFS-2017-0138, by any of the following methods:

- *Electronic Submission:* Submit all electronic public comments via the Federal e-Rulemaking Portal. Go to <http://www.regulations.gov/#!docketDetail;D=NOAA-NMFS-2017-0138>, click the “Comment Now!” icon, complete the required fields, and enter or attach your comments.
- *Mail:* Submit written comments to Amber.Rhodes@noaa.gov, NMFS West Coast Region Long Beach Office, 501 W. Ocean Blvd., Suite 4200, Long Beach, CA 90802. Include the identifier “NOAA-NMFS-2017-0138” in the comments.

Instructions: Comments must be submitted by one of the above methods to ensure they are received, documented, and considered by NMFS. 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. All comments received are a part of the public record and will generally be posted for public viewing on *www.regulations.gov* without change. All personal identifying information (e.g., name, address, etc.) submitted voluntarily by the sender will 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).

Copies of the proposed Amendment 4, Regulatory Impact Review (RIR) and other supporting documents are available via the Federal eRulemaking Portal:

http://www.regulations.gov, docket NOAA-NMFS-2017-0138, or contact Amber Rhodes, NMFS West Coast Region, 562-980-3231, *Amber.Rhodes@noaa.gov* or Heidi Taylor, NMFS West Coast Region, 562-980-4039, *Heidi.Taylor@noaa.gov*.

FOR FURTHER INFORMATION CONTACT: Amber Rhodes, NMFS, 562-980-3231, *Amber.Rhodes@noaa.gov* or Heidi Taylor, NMFS, 562-980-4039, *Heidi.Taylor@noaa.gov*.

SUPPLEMENTARY INFORMATION:

Background

During the Council's 2016 biennial management cycle meetings for HMS and considerations for recent revisions to agency guidelines for National Standard 1 (81 FR 71858, October 18, 2016), key differences became evident regarding the management of HMS stocks versus other Council-managed stocks for which management activities are largely or fully within the scope of Council jurisdiction. In contrast to assessments for other Council-managed stocks, which are conducted by NMFS, most HMS assessments are conducted by teams of regional fishery management organization (RFMO) scientific committees, which may include scientists

from the United States and other participating nations in Pacific HMS fisheries or international scientists who work at RFMOs. Additionally, NMFS employs peer review processes to determine whether the output of international HMS assessments meet the BSIA standard. (See the August 16, 2016, notice of regional peer review processes, 81 FR 54561.) These peer review processes are consistent with BSIA determinations for most U.S.-targeted stocks subject to international agreements. Following these steps, NMFS uses assessment outputs that meet the BSIA standard to determine stock status by applying the status determination criteria (i.e., maximum fishing mortality thresholds and minimum stock size thresholds) in the HMS FMP.

During its September 2017 meeting, the Council decided to submit Amendment 4 to the HMS FMP to NMFS for review. In a January 23, 2018, Notice of Availability (83 FR 3108), NMFS announced that the Council submitted Amendment 4 to the Secretary of Commerce for approval, and requested comments on Amendment 4. Amendment 4 intends to bring descriptions of the management context for HMS fisheries up to date and to shift the schedule for the Council's biennial management cycle. Finalization of this proposed rule to revise regulations at 50 CFR 660.709 is contingent upon approval of Amendment 4 and NMFS responses to comments received on this proposed rule.

Amendment 4 is intended to better align the Council's biennial management cycle for HMS with the timing of international stock assessments and stock status determinations. Most HMS are internationally assessed, and stock assessments for HMS, unlike assessments for domestically-managed stocks, are not routinely subject to the review of the Council's Scientific and Statistical Committee for purposes of determining BSIA. Therefore, the results from updated international assessments that have been determined to be BSIA may not be readily available to the Council during their June and September meetings for scoping, determining alternatives, and

selecting preferred management recommendations to address the status of stocks deemed overfished or subject to overfishing. Thus, these decisions currently must occur on an ad hoc basis, sometimes resulting in inefficiencies and in difficulties in interpreting and applying outdated information. The changes to the current biennial management cycle included in Amendment 4 and implemented by this proposed rule would allow the Council to streamline domestic and international management activities, such as stock assessment and biological reference point reviews, and to better align schedules to meet statutory timelines in section 304(e) and (i) of the MSA (16 U.S.C. 1854(e) and (i)) for making recommendations for domestic regulations and international measures when stocks are determined to be overfished or subject to overfishing. Additionally, this rule's proposed revisions to 50 CFR 660.709 would ensure that the meeting schedule is not codified in regulations, thus allowing the Council to make changes to the schedule for its meetings in the biennial management cycle, consistent with the HMS FMP, without needing to seek a change in the regulatory language. Allowing the Council to make this type of adjustment without seeking a regulatory change improves the efficiency with which future changes to the biennial management cycle can be implemented.

Proposed Regulations

This proposed rule would amend 50 CFR 660.709 to update the descriptions of biennial management cycle activities under the HMS FMP and shift the schedule of Council meetings from June, September, and November to September, November, and March by referring to the schedule specified in the HMS FMP. Thus, the proposed regulations remove the need to make future schedule changes to the Council's biennial management cycle through a rulemaking.

Classification

Pursuant to section 304 (b)(1)(A) of the MSA (16 U.S.C. 1854(b)(1)(A)), the NMFS Assistant Administrator has determined that this proposed rule is consistent with Amendment 4 to the HMS FMP, other provisions of the MSA, and other applicable laws, subject to further consideration after public comment.

This proposed 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 that this proposed rule, if adopted, would not have a significant economic impact on a substantial number of small entities. For Regulatory Flexibility Act (RFA) purposes only, NMFS has established a size standard for businesses, including their affiliates, whose primary industry is commercial fishing (see 50 CFR 200.2). A business primarily engaged in commercial fishing (NAICS 11411) is classified as a small business if it is independently owned and operated, is not dominant in its field of operation (including its affiliates), and has combined annual receipts not in excess of \$11 million for all its affiliated operations worldwide. However, this proposed rule to revise regulations at 50 CFR 660.709, consistent with Amendment 4 to the HMS FMP, is administrative in nature and will not directly affect the operations of any businesses, small or large, that are authorized to catch finfish under the HMS FMP. Because the proposed action does not include revisions to stock status determination criteria (i.e., minimum stock size thresholds or maximum fishing mortality thresholds) used to determine whether management unit species of the HMS FMP are subject to overfishing or are overfished, the proposed action will not directly affect fishing activities authorized under the HMS FMP or the harvest levels of these fisheries. Therefore, there are no

significant economic impacts on a substantial number of small entities. As a result, an initial regulatory flexibility analysis is not required, and none has been prepared.

There are no new collection-of-information requirements associated with this action that are subject to the Paperwork Reduction Act; however, existing collection-of-information requirements associated with the HMS FMP still apply. These requirements have been approved by the Office of Management and Budget (OMB control numbers 0648-0204, 0648-0223, 0648-0361, 0648-0498). Notwithstanding any other provision of the law, no person is required to respond to, and no person shall be subject to penalty for failure to comply with, a collection-of-information subject to the requirements of the PRA, unless that collection-of-information displays a currently valid OMB control number.

List of Subjects in 50 CFR Part 660

Fisheries, Fishing, Reporting and recordkeeping requirements.

Dated: February 22, 2018.

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

Subpart K—Highly Migratory Fisheries

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

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

2. In § 660.709, remove paragraphs (a)(2) and (a)(3), redesignate paragraph (a)(4) as (a)(2), and revise paragraphs (a)(1) and (d) to read as follows:

§ 660.709 Annual specifications.

(a) *Procedure.* (1) Each year, the HMSMT will deliver a stock assessment and fishery evaluation report to the Council for all HMS with any necessary recommendations for harvest guidelines, quotas or other management measures to protect HMS, including updated maximum sustainable yield (MSY) and optimum yield (OY) estimates based on the best available science. The Council's Scientific and Statistical Committee may review the estimates and make a recommendation on their suitability for management. As described in the fishery management plan, the Council will periodically review these recommendations and decide whether to adopt updated numerical estimates of MSY and OY, which are then submitted as recommendations for NMFS to review as part of the management measures review process.

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(d) Irrespective of the normal review process, the Council may propose management action to protect HMS at any time. The Council may adopt a management cycle different from the one described in the fishery management plan provided that such change is made by a majority vote of the Council and a 6-month notice of the change is given.

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