

unless the agency meets the consultation and funding requirements of section 6 of the Executive Order. This rule does not have federalism impact as defined in the Executive Order 13132.

January Contreras, Assistant Secretary of the Administration for Children & Families, approved this document on June 6, 2022.

#### List of Subjects in 45 CFR Part 5b

Privacy.

#### Xavier Becerra,

Secretary, Department of Health and Human Services.

For the reasons stated in the preamble, the Department of Health and Human Services proposes to amend 45 CFR part 5b as set forth below:

#### PART 5b—PRIVACY ACT REGULATIONS

■ 1. The authority citation for part 5b continues to read as follows:

**Authority:** 5 U.S.C. 301, 5 U.S.C. 552a.

■ 2. Amend § 5b.11 by adding paragraph (b)(3)(ii) to read as follows:

#### § 5b.11 Exempt systems.

\* \* \* \* \*

(b) \* \* \*  
(3) \* \* \*

(ii) Pursuant to subsection (k)(2) of the Privacy Act:

(A) OCSE Federal Case Registry of Child Support Orders (FCR), HHS/ACF/OCSE, 09–80–0385; only records marked with the Family Violence Indicator are exempt, based on the requirements of 42 U.S.C. 653(b)(2).

(B) [Reserved]

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#### DEPARTMENT OF COMMERCE

#### National Oceanic and Atmospheric Administration

#### 50 CFR Part 660

[Docket No. 220830–0178]

RIN 0648–BL41

#### Magnuson-Stevens Act Provisions; Fisheries Off West Coast States; Pacific Whiting Utilization in the At-Sea Sectors

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

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

**SUMMARY:** NMFS proposes regulatory amendments that would apply to the Pacific Coast Groundfish Trawl Rationalization Program participants that operate in the non-tribal Pacific whiting fishery. This rulemaking proposes to adjust the primary Pacific whiting season start date for all sectors of the Pacific whiting fishery from May 15 to May 1, remove from regulation the mothership catcher vessel (MSCV) processor obligation deadline of November 30, remove from regulation the Mothership (MS) processor cap of 45 percent, and provide the ability to operate as a Catcher/Processor (CP) and an MS in the same year. This action is necessary to provide MS sector participants with greater operational flexibility by modifying specific regulations that have been identified as potentially contributing to lower attainment of the Pacific whiting allocation compared to the CP and shoreside Pacific whiting sectors. This proposed rule is intended to promote the goals and objectives of the Magnuson-Stevens Fishery Conservation and Management Act, the Pacific Coast Groundfish Fishery Management Plan, and other applicable laws.

**DATES:** Comments must be received by October 13, 2022.

**ADDRESSES:** You may submit comments on this document, identified by FDMS Docket Number NOAA–NMFS–2022–0058 by any of the following methods:

**Electronic Submission:** Submit all electronic public comments via the Federal e Rulemaking Portal. Go to <https://www.regulations.gov> and enter NOAA–NMFS–2022–0058 in the Search box, click the “Comment” icon, complete the required fields, and enter or attach your comments.

**Instructions:** Comments sent by any other method, or any other address or individual, or received after the end of the comment period, may not be considered by NMFS. All comments received are a part of the public record and will generally be posted for public viewing on <https://www.regulations.gov> without change. All personal identifying information (e.g., name, address, etc.), confidential business information, or otherwise sensitive information submitted voluntarily by the sender will be publicly accessible. NMFS will accept anonymous comments (enter “N/A” in the required fields if you wish to remain anonymous).

Written comments regarding the burden-hour estimates or other aspects of the collection-of-information requirements contained in this proposed rule may be submitted to NMFS and to

<https://www.reginfo.gov/public/do/PRAMain>. Find this particular information collection by selecting “Currently under 30-day Review—Open for Public Comments” or by using the search function.

#### Electronic Access

This rulemaking is accessible via the internet at the Office of the Federal Register website at <https://www.federalregister.gov/>. Background information and analytical documents (Analysis) are available at the NMFS West Coast Region website at <https://www.fisheries.noaa.gov/species/west-coast-groundfish.html> and at the Pacific Fishery Management Council’s website at <https://www.pcouncil.org>.

**FOR FURTHER INFORMATION CONTACT:** Abbie Moyer, phone: 206–305–9601, or email: [abbie.moyer@noaa.gov](mailto:abbie.moyer@noaa.gov).

#### SUPPLEMENTARY INFORMATION:

#### Authority for Action

NMFS and the Pacific Fisheries Management Council (Council) manage the groundfish fisheries in the exclusive economic zone seaward of California, Oregon, and Washington under the Pacific Coast Groundfish Fishery Management Plan (FMP). The Council prepared the FMP under the authority of the Magnuson-Stevens Fishery Conservation and Management Act (MSA), 16 U.S.C. 1801 *et seq.* Regulations governing U.S. fisheries and implementing the FMP appear at 50 CFR parts 660.

#### Background

This proposed rule would revise regulations that may be unnecessarily constraining, in order to provide increased operational flexibility in the Pacific whiting fishery and increase the Mothership (MS) sector’s ability to utilize its Pacific whiting allocation, while maintaining fair and equitable access to Pacific whiting by all sectors of the program. Specifically, this rule proposes to adjust the primary Pacific whiting season start date for all sectors of the Pacific whiting fishery from May 15 to May 1, remove from regulation the catcher vessel (MSCV) processor obligation deadline of November 30, remove from regulation the MS processor cap of 45 percent, and provide the ability for vessels to operate as a Catcher/Processor (CP) and an MS in the same year. The following sections of this preamble provide (1) a description of the non-tribal Pacific whiting fishery; (2) the need for action; and (3) the proposed regulations.

## A Description of the Non-Tribal Pacific Whiting Fishery

### *Pacific Whiting Fishery*

In January 2011, NMFS implemented a trawl rationalization program, a catch share system, for the Pacific coast groundfish fishery's trawl fleet. The program was adopted through Amendment 20 to the Pacific Coast Groundfish Fishery Management Plan (FMP) (75 FR 78344; December 15, 2010) and is a type of limited access privilege program under the MSA. The trawl rationalization program is intended to increase net economic benefits, create individual economic stability, provide full utilization of the trawl sector allocation, consider environmental impacts, and achieve individual accountability of catch and bycatch. The program consists of cooperatives for the at-sea MS and CP fleets that target and process Pacific whiting (or the at-sea trawl fleet), and an individual fishing quota (IFQ) program for the shorebased trawl fleet that targets both Pacific whiting and a wide range of other groundfish species (or the Shorebased IFQ Program).

The at-sea trawl fleet consists of fishery participants harvesting and processing Pacific whiting and is further divided as follows: (1) The Pacific whiting CP sector, which has been operating under the Pacific Whiting Conservation Cooperative (PWCC) since 1997 and was formalized for management with the implementation of Amendment 20 (the CP Co-op Program); and (2) the Pacific whiting MS sector (MS Co-op Program). The MS sector is made up of mothership catcher vessels (MSCVs), which harvest fish, and motherships, which process the fish at-sea. The MS sector program may include multiple co-ops where vessels pool their harvest together to form fishing cooperatives, as well as vessels not associated with a co-op (*i.e.*, the "non-co-op" segment of the MS fishery). In March of 2011, the owners of all 37 MSCV permits formed a co-op called the "Whiting Mothership Cooperative (WMC)". Every year since then, all participants in the sector have operated in the co-op. One of the primary purposes of the WMC is to minimize the bycatch of constraining rockfish species and Chinook salmon.

The shoreside Pacific whiting sector was grouped into the Shorebased IFQ Program during the development of Amendment 20. Vessels in this fishery target Pacific whiting with midwater trawl gear. Fishery participants must have quota pounds to harvest Pacific whiting catch and associated bycatch. About half of the shoreside Pacific

whiting vessels also cross-participate in the MS fishery (*i.e.*, MSCV). Within the shoreside Pacific whiting fishery, there is the Shoreside Whiting Cooperative, which is voluntarily made up of participating vessels, and is not formally recognized in the groundfish regulations. Historically, approximately two-thirds of shoreside Pacific whiting vessels have participated in the coop between 2012–2018.

Catch allocations for these subsectors are based on formulas set in Amendment 21 to the FMP, or are determined during the biennial management process. The total allowable catch (TAC) for Pacific whiting is set annually outside of the Council's harvest specifications process. The TAC is set through a bilateral process with Canada, consistent with the Agreement Between the Government of the United States of America and the Government of Canada on Pacific Hake/Whiting of 2003 (commonly known as the Pacific Hake/Whiting Treaty) where 73.88 percent of the TAC is allocated to U.S. fisheries, of which 17.5 percent is allocated to the Tribal sector. In the fall of each fishing year, an unused portion of the Tribal allocation may be reapportioned to the non-Tribal sectors. This often results in an initial allocation to the non-tribal sectors and then a post-reapportionment allocation. Species in the Groundfish FMP are managed differently between the at-sea sectors and the shoreside fishery. For the shoreside Pacific whiting fishery, participants must have quota pounds (QPs) to cover all catch of any IFQ species and some non-IFQ species are managed with trip limits. For the at-sea fisheries, set asides are established for select groundfish species within the biennial harvest specifications process. Set asides are managed on an annual basis unless there is a risk of exceeding a harvest specification, an unforeseen impact on other fisheries, or a conservation concern.

### **Current Management Programs Affected by the Proposed Action**

In order to encourage more informed public comment, this proposed rule includes a general description of the program requirements that are proposed to change under this action.

#### *Season Start Date*

The primary Pacific whiting season for all three non-tribal Pacific whiting sectors North of 40°30' N lat. begins on May 15th but historically has varied since the conversion of the fishery from foreign to domestic, when the start date was set at January 1. In 1992, the start date was moved to April 15 to align

with when aggregations of Pacific whiting were available to harvest. To minimize bycatch of Chinook salmon, which was unusually high in 1995, the season was moved back to May 15 in 1996 for some areas. The season start dates are, in part, meant to limit targeting on Pacific whiting fishing when listed Chinook salmon are most likely to be taken incidentally. The dates have fluctuated between April and June in the shorebased fishery to accommodate participation in the shoreside, at-sea, and Alaska pollock fisheries. The June 15 start date for shoreside Pacific whiting (North of 40°30' N lat.) was moved to be consistent with the May 15 start date in the at-sea sectors in 2016. Fishing south of 40°30' N lat. can start April 15 (80 FR 19034, April 9, 2015). The primary season remains open for that sector until the sector allocation of whiting or non-whiting groundfish (with allocations) is reached or projected to be reached and the primary season for that sector is closed by NMFS (section 2.0 of the Analysis) (see **ADDRESSES**).

#### *Mothership Obligation*

Each year by November 30th, a MSCV must declare to NMFS whether they will be participating in the co-op or non-co-op fishery and to which processor they are obligating their catch history assignment (CHA). CHAs cannot be divided or separated from the initial permit it was issued under during Amendment 20. A MSCV can be released from a processor obligation through a mutual agreement exception (MAE) and commit to a new MS permit.

This management measure was intended to provide for some short-term certainty for MS companies in business planning for the upcoming fishing season. It also avoided some of the penalty components associated with the linkage provision (*i.e.*, having to go into the non-co-op fishery for a year before committing to a new processor) (section 3.0.1 of the Analysis).

#### *Mothership Processing Cap*

Under Amendment 20, accumulation limits were imposed to prevent excessive concentration of catch allocations within sectors (there is no cumulative cap across sectors). The MS sector is the only sector with a processing limit. The Council set the processing cap for the MS sector at 45 percent (described at 50 CFR 660.150(f)(3)(i)), which was intended to inhibit consolidation by ensuring that at least three MS companies would participate in the fishery. There are also two additional accumulation limits in the MS fishery as MSCVs are held to a

20 percent accumulation limit of the Pacific whiting CHA and a catch limit of 30 percent of the allocation (section 3.1.1 of the Analysis). A processing limit was considered for the CP sector as a part of the follow-on catch share actions; however, it was rejected in favor of an ownership limit (84 FR 68799; December 17, 2019). For the Shorebased IFQ Program, first receivers are not restricted on the amount of IFQ fish they can process, although they are subject to the same quota share (QS) ownership restrictions as other IFQ participants (10 percent for Pacific whiting). Shoreside vessels are also restricted to annual vessel limits, which is 15 percent for Pacific whiting.

#### *MS Processor & CP Permit Transfer*

Regulations prohibit processing vessels in the at-sea Pacific whiting fishery from operating as both a MS and CP during the same calendar year (50 CFR 660.112(d)(3) and (e)(3)). The origin of this prohibition dates to the implementation of the Pacific whiting sector allocations in 1997. At that time, specific limitations were placed on CP vessels to prevent these higher capacity vessels from harvesting other sector's allocations. During the development of Amendment 20, there was extensive consideration of permitting a processor to operate as a CP and an MS in the same fishing year. The Council ultimately decided to maintain the original prohibition within Amendment 20. To help ensure market stability in the separate sectors, the regulations do not allow processing platforms to switch between the MS and CP sectors in a single calendar year. Restricting CPs from also engaging in MS activity also was intended to protect existing MS processors in the sector and help ensure that they benefit from rationalization in addition to MSCVs (section 3.2.1 of the Analysis).

Additionally, as described in 50 CFR 660.25, CP or MS endorsed permits are only allowed two transfers within their respective sectors in a calendar year, and the second transfer can only be back to the original vessel. Under Amendment 20, the Council considered having zero or only one transfer allowed (Appendix B to the Amendment 20 Final Environmental Impact Statement (FEIS)). The Council ultimately chose a two-transfer allowance to provide flexibility if a MS were unable to process catch (e.g., due to fire or a breakdown) or if unexpected opportunities arose in other fisheries (such as pollock) and another MS would be able to fill that role. For the CP sector, a limit of two transfers was also recommended as part of the Council's

final action in November 2008, which was a change from the single transfer recommended by the Council in June 2008 (section 3.2.1 of the Analysis).

In April of 2020, NMFS implemented an emergency rule suspending the prohibition on an at-sea Pacific whiting processing vessel from operating as a MS and CP in the same calendar year after one company that owned a MS permit was not able to process as a MS in the 2020 season due to unforeseen health, economic, and safety risks and instead was operating only as a CP (85 FR 37027, June 19, 2020). This left three MSCVs who had previously committed to this MS without a platform to deliver their catch (section 3.2.1 of the Analysis). Under this emergency rule, a processor could be simultaneously registered to a MS and a CP-endorsed permit within the calendar year and would declare into one of the fisheries prior to leaving port. A second emergency rule was implemented in May 2021 which again suspended the prohibition on dual registration (86 FR 26439, May 14, 2021).

#### **Need for Action**

The MS sector has experienced lower than average attainment than the other non-tribal commercial Pacific whiting sectors since the start of the trawl catch share program, particularly since 2017. Causes of under-attainment have been attributed to the limited availability of motherships for delivery of catch due to seasonal overlap with the Alaskan Eastern Bering Sea walleye pollock fishery. In addition, existing regulations have been identified as hindering some catcher vessels' opportunity to harvest or deliver fish to MS processors, by limiting the ability for available processors to accept fish from catcher vessels. These obstacles to harvesting and processing in the MS sector have led to reduced economic opportunity for participants.

Section 2.2.1 of the Analysis found that from 2017–2019, the shoreside sector averaged attainment of 92 percent of the initial Pacific whiting allocations while the MS sector averaged 71 percent and the CP sector 100 percent (83, 64, and 90 percent of the post-tribal reapportionment allocation, respectively). Additionally, from 2017–2019, the MS sector is estimated to have not achieved potential economic opportunity of \$14.5–\$27.3 million in production value from unharvested Pacific whiting from the initial allocations and \$21.5 to \$31.8 million compared to the post-reapportionment allocations (section 5.4.1.0 of the Analysis).

This issue was first brought to the Council's attention in 2016 during public meetings to discuss the Council's 5-year Review of the Trawl Rationalization Program. The Council later received a public comment letter in September 2018 from a member of industry proposing to increase the processing cap of 45 percent within the follow-on actions package. The letter suggested that increasing the processing cap would be a positive step towards increasing efficiency and achieving optimum yield by allowing platforms with capacity in a given year to take additional deliveries and get more quota out of the water.

During the March 2019 meeting, the Council heard from the industry regarding MS sector utilization proposals and discussed the supplemental reports from the Council's advisory bodies. The Council prioritized the MS utilization issues and, in November 2019, directed industry to develop the scope of action and draft purpose and need statement for the MS sector utilization action.

In an informational report submitted by the Council's Groundfish Advisory Subpanel (GAP), the GAP reported during the previous five seasons, more than 350 million pounds of Pacific whiting worth more than \$28 million in ex-vessel revenue had been left unharvested in the MS sector. Some catcher vessels had been unable to harvest and deliver their full MS sector allocations and, in certain cases, catcher vessels had been stranded without a MS processor to deliver to in a season or year. The GAP also reported that many MS sector participants, including all six MS processor vessels and several MS catcher vessels, participate in the Alaska pollock fishery where record high catch limits in recent years had limited the availability of processor vessels and some catcher vessels to participate in the Pacific whiting fishery during the primary Pacific whiting season, between May 15 and December 31.

In September 2020, based on the GAP's informational report, Council and NMFS staff submitted a scoping paper in the advanced briefing book outlining some questions for consideration. The Council's Groundfish Management Team (GMT) provided a preliminary look at the data, thoughts on potential causes of under-attainment, and regulatory issues. After considering the information provided, the Council adopted a purpose and need statement for public review and continued to scope the following issues: (1) Primary whiting season start date (which could apply to other Pacific whiting sectors); (2) Processor obligation deadline; (3) MS

processor cap; and (4) MS/CP permit transfers.

The Council considered a request to allow processing south of 42° N lat. in the at-sea sectors as a part of this action; however, due to potential interactions with salmon, the Council decided to consider the action at a later time and encouraged the industry to test the idea through future exempted fishing permit experiments.

Finally, at the March 2022 meeting, the Council adopted the following as the final preferred alternatives: (1) Move the season start date for the primary Pacific whiting season start date north of 40 degrees 30 minutes north latitude from May 15th to May 1st, and move all administrative deadlines associated with the season start date to 45 days prior to May 1; (2) Remove the mothership processor obligation deadline from regulation; (3) Remove the mothership processor cap from regulation; and (4) Allow a vessel to be registered to a mothership and catcher-processor endorsed permit in the same year, with unlimited transfers.

#### Proposed Action

The proposed action would revise existing regulations that apply to the Pacific Coast Groundfish Trawl Rationalization Program participants while operating in the non-tribal Pacific whiting fishery in order to provide increased operational flexibility and harvesting capabilities in the Pacific whiting fishery and increase the MS sector's ability to utilize its Pacific whiting allocation. The proposed revisions include: (1) adjusting the primary Pacific whiting season start date for all sectors of the Pacific whiting fishery North of 40°30' N. lat. from May 15 to May 1, and adjusting administrative dates associated with the start of the season; (2) removing from regulation the MSCV processor obligation deadline of November 30; (3) removing from regulation the MS processor cap of 45 percent; and (4) removing restrictions prohibiting an at-sea Pacific whiting processing vessel from operating as a MS or CP in the same calendar year.

The Council recommended and NMFS proposes these changes based on information in the Analysis indicating that these measures would: (1) increase utilization of available MS quota that has previously been unrealized (2) increase opportunities in the MS sector by providing participants with an additional 15 days to participate in the Pacific whiting fishery, providing up to a month of Pacific whiting harvest opportunities between the Alaska pollock seasons; (3) increase overall

attainment leading to economic benefits for all sectors.

#### Season Start Date

This proposed action would amend regulations at 50 CFR 660.131(b)(2)(iii) to allow all sectors of the Pacific whiting fishery North of 40°30' N lat. to begin operating May 1. Currently, there are reporting requirements due 45 days prior to the current season start date of May 15. This proposed action would align all of these administrative dates to 45 days prior to the new season start date of May 1, which would be March 17. Specifically, these proposed date changes would apply to the annual MS co-op and CP co-op reports (50 CFR 660.113(c)(3) and (d)(3), respectively), the deadline for proposed salmon mitigation plans (SMPs) (50 CFR 660.113(e)(3)), the submission deadline for post season SMP reports (50 CFR 660.113(e)(6)(i)), the deadline for declaring into the MS co-op or non-co-op fishery (50 CFR 660.150(g)(2)(i)), and the MS co-op and CP co-op permit annual registration deadlines (50 CFR 660.150(d)(1)(ii) and 660.160(d)(1)(ii), respectively). Additionally, this proposed action would move up an Electronic Monitoring (EM) application due date (50 CFR 660.604(e)) and an EM renewal date (50 CFR 660.604(i)) from February 15 to February 1 to align with the new season start date of May 1.

The Council recommended and NMFS proposes this earlier season start date to provide vessels with an additional 15 days to participate in the Pacific whiting fishery and provide even more opportunity to harvest the Pacific whiting quota. The proposed season start date would apply to all non-tribal sectors participating in the Pacific whiting fishery. As noted in section 2.2.1 of the Analysis, many vessels that fish in the Pacific whiting fishery earn the majority of their revenue in the Alaska fisheries and are likely incentivized to prioritize higher price of pollock above Pacific whiting. Therefore, this proposed action would provide vessels with an additional 15 days to participate in the Pacific whiting fishery providing up to a month of Pacific whiting harvest opportunities between the Alaskan Eastern Bering Sea walleye pollock seasons.

This proposed action is expected to considerably increase attainment for the MS sector, leading to economic benefits for all participants. According to section 2.2.1 of the Analysis, the potential additional catch that could have occurred in the additional two weeks of fishing in the 2016–2020 period could have been associated with \$8.4 to \$20.3 million in production revenue for the

MS sector (assuming market conditions, weather, and other factors). The additional catch would have resulted in an estimated \$10.5–\$22.8 million in income impacts and 159 to 345 associated jobs.

There would be no additional biological impacts to Pacific whiting under the proposed action, because participants in the fishery will continue to be limited to allocations set as part of the annual whiting harvest specifications process. Allocation amounts would have been or will be analyzed as part of annual whiting management actions. Additionally, impacts to non-whiting groundfish species are expected to be within those analyzed during the biennial harvest specification process where mechanisms to control catch (e.g., IFQs, co-ops, set asides) would still be in effect, preventing exceedances of allocations and ACLs. Section 2.2.2 of the Analysis shows that bycatch of non-whiting groundfish species is typically higher in the fall; therefore, overall bycatch would likely decrease if vessels were able to shift effort into May 1–14, as explained in the Analysis, and exhibit the same lower bycatch patterns as May 15–31.

Appendices A–C of the Analysis present a comprehensive analysis of potential effects of moving the season start date on overall salmon take and evolutionarily significant unit (ESU) level impact. The Analysis shows that even if the bycatch from May 1–14 were additive to the bycatch for the entire Pacific whiting fishery (tribal and non-tribal) during the May 15-end of season time period, the overall estimates of total bycatch are conservative and are still within the estimates analyzed in the 2017 Endangered Species Act (ESA) Section 7(a)(2) Biological Opinion (F/WCR–2017–7552) regarding the effects of the Council's Groundfish FMP on listed salmonids (2017 Biological Opinion). Additionally, the Analysis shows that impacts likely would not be additive as effort may shift to earlier in the season where bycatch rates are lower.

#### MS Obligation Deadline

This proposed action would remove regulations at 50 CFR 660.150(c)(7) that require MSCVs to obligate their CHA to a MS permit by November 30 during the limited entry permit (LEP) renewal process (50 CFR 660.25(b)(4)(i)(A)). Under this proposed rule, there would also no longer be a requirement for MSCV-endorsed permit owners to notify NMFS of a mutual agreement exception (MAE) nor require NMFS to track the obligations (50 CFR 660.150(c)(7)(iv)).

Additionally, the requirement for notification of a MS permit withdrawal at 50 CFR 660.150(c)(7)(v) would no longer be required. MSCVs would still be required to renew their limited entry permits each year, which includes the co-op declaration for the following year (50 CFR 660.150(g)(2)(i)); and co-op(s) would also still be required to submit their annual application per 50 CFR 660.150(d)(1)(iii).

The Council recommended and NMFS proposes the removal of the MS obligation requirement from regulations to provide MSCVs additional flexibility to change processors inseason without regulatory delay. Removal of the obligation deadline would provide a more flexible management regime whereby participants could continue to balance individual needs of each entity to optimally harvest fish through private contracts and still provide consistent revenue. This proposed action is expected to reduce administrative costs due to MSCVs not needing to notify NMFS of MAEs inseason and is expected to remove a regulatory and administrative burden to NMFS and members of the MS sector. Current enforcement costs, the capability to monitor fishing activity (*i.e.*, area closures, gear requirements, safety standards) and monitoring of the fishery through electronic monitoring or observers, including catch and discard accounting, would not change.

#### MS Processor Cap

This proposed action would remove the MS usage limit (*i.e.* processor cap) of 45 percent from regulation (§ 660.150(f)(3)(i)) and there would be no restrictions on the amount of the MS sector allocation that an entity could process. MS permit holders would no longer be required to submit to NMFS a trawl identification of ownership interest (OI) form in order to verify compliance of the MS processor cap, as per § 660.150(f)(3)(iv). MSCVs would still be held to a 20 percent accumulation limit of the Pacific whiting CHA (50 CFR 660.150(g)(3)(i)) and a catch limit of 30 percent of the allocation (50 CFR 660.150(g)(3)(ii)).

The Council recommended and NMFS proposes the removal of the MS processor cap to provide MS permit holders additional flexibility and to prevent occurrences of MSCVs not being able to deliver to a MS processor that had exceeded or was close to exceeding the 45 percent processing cap. Removal of the MS processor cap would provide positive benefits to the MS sector through increased harvesting capabilities and increased flexibility in management of the MS sector. This in

turn would provide an increase in revenue for the fishery as a whole and for fishing communities.

Additionally, this proposed action would eliminate the need for the industry or NMFS to monitor compliance with the accumulation limit and would provide the industry with the ability to harvest more fish when fish are present on the grounds and optimize the efficiencies built into the fishery (*i.e.*, available crew, scheduled landings to motherships and processing capacity).

As mentioned above, the Council set the processing cap for the MS sector at 45 percent (described at 50 CFR 660.150(f)(3)(i)) to inhibit consolidation. Section 3.1.4 of The Analysis, however, shows it is likely that more than one MS would continue to participate in the fishery under the proposed action. Several factors, including Alaska pollock fishery opportunities and actual capacity of a single MS vessel, suggest that it would be unlikely and probably not feasible for one vessel to process the entire allocation. In addition, the Analysis shows even if an entity was able to process the entirety of the MS allocation under the proposed action, there would still be competition from other owners across the other whiting sectors and other fisheries that produce whitefish.

#### MS Processor & CP Permit Transfer

This proposed action would remove restrictions prohibiting an at-sea Pacific whiting processing vessel from operating as a MS or CP in the same calendar year (50 CFR 660.112(d)(3) and (e)(3)). This action would allow a processing vessel to operate as both an MS and CP in the same calendar year, but not on the same trip. Owners of processing vessels that intend to operate as both an MS and a CP during the Pacific whiting season would be required to register the processing vessel under valid MS and CP permits per regulations at 50 CFR 660.25(b). The vessel may be registered under both an MS permit and a CP endorsed permit simultaneously. Additionally, this proposed rule includes some administrative changes to allow additional transfers of limited entry MS permits and limited entry permits with a CP endorsement so that these permits may be transferred more than twice within a calendar year.

Current requirements for operating as a MS or CP would continue to apply. To operate in the MS fishery (*i.e.*, receive deliveries of catch from MS catcher vessel and process MS sector allocations at-sea) the vessel must be included in the MS co-op agreement. To operate in

the CP fishery (*i.e.*, catch and process CP sector allocations at-sea) the vessel must be included in the CP co-op agreement. Including a new vessel in either the MS or CP co-op agreement constitutes a material change to the co-op agreement. Within 7 calendar days of the new processing vessel operating for the first time in either the MS co-op fishery or the CP co-op fishery, the respective co-op manager must notify NMFS in writing of such change to the co-op agreement as required in regulations at 50 CFR 660.150(d)(1)(iii)(B)(4) and 660.160(d)(1)(iii)(B)(4).

Consistent with current regulations at 50 CFR 660.150(d)(1)(iii)(B)(4) and 660.160(d)(1)(iii)(B)(4), within 30 days of a new vessel participating in a co-op fishery, the MS or CP co-op manager must submit a revised co-op agreement to NMFS that lists all vessels and/or processing vessels operating in the respective co-op and include the new processing vessel, along with a letter describing the change to the co-op agreement.

For each trip, the vessel would still be required to update its vessel monitoring system (VMS) declaration to reflect its activity for that trip prior to departure as specified in existing groundfish regulations at 50 CFR 660.13(d)(4)(iv)(A).

A separate economic data collection (EDC) form is required for the owner, lessee, charterer of a mothership vessel registered to an MS permit as well as owner, lessee, charterer of a catcher processor vessel registered to a CP-endorsed limited entry permit. If a vessel holds both types of permit in one calendar year, two EDC forms must be submitted as specified at 50 CFR 660.114. Additionally, separate cost recovery requirements apply to each sector, as described at 50 CFR 660.115.

The Council recommended and NMFS proposes lifting the restriction on MS and CP permit transfers to increase the likelihood that MSCVs have markets to which to deliver catch throughout the fishing season. The operational flexibility provided in this action would provide significant additional economic opportunity to at-sea Pacific whiting fishery participants and fishing communities. These measures would allow catcher vessels to harvest MS sector allocations and provide catch revenue to the respective vessel crews. In the event that additional processing vessels cannot commit to taking deliveries from catcher vessels (due to changes in business plans, for example) this action would provide additional harvesting and processing opportunities for at-sea Pacific whiting fishery participants.

### Summary of Anticipated Effects of This Proposed Rule

Overall, this proposed action is expected to increase attainment across all three non-tribal Pacific whiting sectors, with the largest change expected in the MS sector. While the movement of the primary season start date would likely provide the most benefit in terms of harvest opportunities when both MS and MSCVs can be on the fishing grounds, the increased flexibility to have more processors (via the unlimited permit transfer) or have processors accept and potentially process higher amounts of catch (removal of the processor cap) would, in combination, provide the most opportunity to increase attainment and economic benefits for all sectors. Increased attainment of the Pacific whiting allocation, through additional fishing opportunity, processing capacity, and flexibility, would result in positive benefits to the fleet and the communities in which participants reside. There are expected to be no biological impacts outside of those previously disclosed in harvest specifications processes for both groundfish and Pacific whiting or those in the 2017 Biological Opinion for salmonids.

### Other Actions Included in This Proposed Rule

NMFS is also proposing additional administrative changes in this rule. This proposed action would adjust cost recovery regulation language to state that the value of “Pacific whiting” instead of “all groundfish” will be used in the annual cost recovery fee calculations for the at-sea sectors to reflect the current practice of using Pacific whiting only in the cost recovery fee calculations. While the cost recovery regulations state that all groundfish harvested should be used to calculate ex-vessel value, it is current practice to use Pacific whiting only when calculating the ex-vessel value of the MS and CP sectors. Only Pacific whiting is used because there is insufficient data available on the value of non-whiting species encountered by the MS and CP sectors. This would reflect the original intention of the Council in their 2011 cost recovery recommendations. The Council recommended this change to NMFS at the April 2021 meeting.

This proposed action would make some technical, non-substantive changes to improve comprehensibility of the regulations by removing outdated regulations.

### Classification

Pursuant to section 304(b)(1)(A) and 305(d) of the Magnuson-Stevens Act, the NMFS Assistant Administrator has determined this rule is consistent with the FMP, other provisions of the Magnuson-Stevens Act, and other applicable law, 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. After accounting for cross participation, multiple Quota Share account holders, and affiliation through ownership, NMFS estimates that there are 103 non-tribal entities directly affected by this action, 89 of which are considered “small” businesses.

NMFS considers two criteria in determining the significance of adverse regulatory effects, namely, disproportionality and profitability. Disproportionality compares the effect of the regulatory action between small and large entities. This action is expected to increase utilization and flexibility for all entities participating in the Pacific whiting fishery, and is not expected to place any of the small entities at a significant competitive disadvantage to large entities. Moving the primary season start date two weeks earlier (May 1) would provide additional opportunities and incentives to increase the harvest of the MS sector’s allocation and provide a substantial increase in revenue for the fishery as a whole and for fishing communities. Removal of the obligation deadline provides a more flexible management regime whereby participants can continue to balance individual needs of each entity to optimally harvest fish through private contracts and still provide consistent revenue. Removal of the MS processor cap would provide positive benefits to the MS sector through increased harvesting capabilities and increased flexibility in management of the MS sector. And, allowing processing vessels to operate as an MS and CP in the same year without any permit transfer limits would provide additional processing capacity to harvest Pacific whiting in the at-sea sectors. Therefore, we do not expect significant or disproportionate adverse economic effects from this action.

As a result, an initial regulatory flexibility analysis is not required and none has been prepared.

This proposed rule contains a collection-of-information requirement subject to review and approval by the Office of Management and Budget (OMB) under the Paperwork Reduction Act (PRA). This rule revises the existing requirements for the Pacific Coast Groundfish Trawl Rationalization Program Permit and License Information Collection OMB Control Number 0648–0620 by removing the requirement for the owner of the MSCV-endorsed permit to submit a copy of a MAE to NMFS that includes the MS permit owner’s acknowledgement of termination of the catcher vessel’s obligation to the permitted MS vessel. If a MS permit withdraws from the fishery before Pacific whiting has been allocated to the MS sector, this rule removes the requirement of the MS permit owner withdrawing from the fishery to provide written notification to NMFS and all owners of MSCV-endorsed permits with CHA obligated to the MS permit withdrawing. Additionally, this rule removes the requirement for a MS to submit an ownership interest (OI) form. This rule would remove three hours and 18 burden minutes per year for the fishery. Public reporting burden for removing the requirements of submitting a MAE, a MS permit withdrawal and removing the requirement of a MS submitting an OI form is estimated to result in a reduced average cost of \$5.34 per year for participants of the fishery.

The existing collection of information requirements would continue to apply under the following OMB Control Number 0648–0573: Expanded Vessel Monitoring System (VMS) Requirements for the Pacific Groundfish Fishery.

Public comment is sought regarding whether this proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; the accuracy of the burden estimate; ways to enhance the quality, utility, and clarity of the information to be collected; and ways to minimize the burden of the collection of information, including through the use of automated collection techniques or other forms of information technology. Submit comments on these or any other aspects of the collection of information at <https://www.reginfo.gov/public/do/PRAMain>.

Notwithstanding any other provisions of the law, no person is required to respond or, nor shall any person be subject to a 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, Indian fisheries.

Dated: August 31, 2022.

**Samuel D. Rauch, III,**

Deputy Assistant Administrator for Regulatory Programs, National Marine Fisheries Service.

For the reasons set out in the preamble, NOAA proposes to amend 50 CFR part 660 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. Amend § 660.25 as follows:

- a. Revise paragraphs (b)(4)(i)(E), (b)(4)(v)(A), and (b)(4)(vii)(C);
- b. Add paragraph (b)(4)(vii)(D); and
- c. Revise paragraph (b)(4)(viii)(C).

The revisions read as follows:

**§ 660.25 Permits.**

\* \* \* \* \*

- (b) \* \* \*
- (4) \* \* \*
- (i) \* \* \*

(E) Limited entry permits with an MS/catcher vessel (CV) endorsement will not be renewed until SFD has received complete documentation of permit ownership as required under § 660.150(g).

\* \* \* \* \*

- (v) \* \* \*

(A) *General.* Change in permit owner and/or vessel owner applications must be submitted to NMFS with the appropriate documentation described at paragraphs (b)(4)(viii) and (ix) of this section. The permit owner may convey the limited entry permit to a different person. The new permit owner will not be authorized to use the permit until the change in permit owner has been registered with and approved by NMFS. NMFS will not approve a change in permit owner for a limited entry permit with a sablefish endorsement that does not meet the ownership requirements for such permit described at paragraph (b)(3)(iv)(B) of this section. NMFS will not approve a change in permit owner for a limited entry permit with an MS/CV endorsement that does not meet the ownership requirements for such permit described at § 660.150(g)(3). NMFS considers the following as a change in permit owner that would require registering with and approval by NMFS,

including but not limited to: Selling the permit to another individual or entity; adding an individual or entity to the legal name on the permit; or removing an individual or entity from the legal name on the permit. A change in vessel owner includes any changes to the name(s) of any or all vessel owners, as registered with U.S. Coast Guard (USCG) or a state. The new owner(s) of a vessel registered to a limited entry permit must report any change in vessel ownership to NMFS within 30 calendar days after such change has been registered with the USCG or a state licensing agency.

\* \* \* \* \*

- (vii) \* \* \*

(C) *Limited entry permits with an MS/CV endorsement.* Limited entry permits with an MS/CV endorsement may be registered to another vessel up to two times during the calendar year as long as the second change in vessel registration is back to the original vessel. The original vessel is either the vessel registered to the permit as of January 1, or if no vessel is registered to the permit as of January 1, the original vessel is the first vessel to which the permit is registered after January 1. After the original vessel has been established, the first change in vessel registration would be to another vessel, but any second change in vessel registration must be back to the original vessel. On the second change in vessel registration back to the original vessel, that vessel must be used to fish exclusively in the MS Co-op Program described at § 660.150 for the remainder of the calendar year, and declare into the limited entry mid water trawl, Pacific whiting mothership sector as specified at § 660.13(d)(4)(iv).

(D) *Limited entry MS permits and limited entry permits with a catcher/processor (C/P) endorsement.* Vessels registered to both a MS permit and a C/P endorsed permit may operate in both the at-sea MS sector and C/P sector during the same calendar year, but not on the same trip. Prior to leaving port, a vessel registered under both a MS permit and a C/P endorsed permit must declare through VMS the sector in which it will participate for the duration of the trip, as specified at § 660.13(d)(4)(iv)(A).

- (viii) \* \* \*

(C) For a request to change a vessel registration and/or change a permit owner or vessel owner for a MS/CV-endorsed limited entry permit, an Identification of Ownership Interest Form must be completed and included with the application form.

\* \* \* \* \*

■ 3. Amend § 660.111 as follows:

- a. Under the definition “Accumulation limits”, remove paragraph (2)(i) and redesignate paragraphs (2)(ii) and (iii) as paragraphs (2)(i) and (ii);
- b. Under the definition “Ex-vessel value”, revise paragraphs (2) and (3); and
- c. Remove the definitions of “Mutual agreement exception” and “Processor obligation”.

The revisions read as follows:

**§ 660.111 Trawl fishery—definitions.**

\* \* \* \* \*

*Ex-vessel value* \* \* \*

(2) For the MS Co-op Program, the value of Pacific whiting delivered by a catcher vessel to an MS-permitted vessel.

(3) For the C/P Co-op Program, the value as determined by the aggregate pounds of Pacific whiting retained on board by the vessel registered to a C/P-endorsed limited entry trawl permit, multiplied by the MS Co-op Program average price per pound as announced pursuant to § 660.115(b)(2).

\* \* \* \* \*

**§ 660.112 [Amended]**

- 4. Amend § 660.112 as follows:
  - a. Remove paragraph (d)(3);
  - b. Redesignate paragraphs (d)(4) through (6) as paragraphs (d)(3) through (5);
  - c. Remove paragraph (d)(7);
  - d. Redesignate paragraphs (d)(8) through (16) as paragraphs (d)(6) through (14);
  - e. Remove paragraph (e)(3); and
  - f. Redesignate paragraphs (e)(4) through (10) as paragraphs (e)(3) through (9).
- 5. Amend § 660.113 by revising paragraphs (c)(3) introductory text, (c)(5)(ii)(A) introductory text, (c)(5)(ii)(A)(3), (5), (6), and (9), (d)(3) introductory text, (d)(5)(ii)(A) introductory text, (d)(5)(ii)(A)(2), (4), (5), and (6), (e)(3), and (e)(6)(i) to read as follows:

**§ 660.113 Trawl fishery—recordkeeping and reporting.**

\* \* \* \* \*

- (c) \* \* \*

(3) *Annual co-op report.* The designated co-op manager for the mothership co-op must submit an annual report to NMFS and the Council by March 17 each year, before a co-op permit is issued for that year. The annual co-op report will contain information about the previous year’s fishery, including:

\* \* \* \* \*

- (5) \* \* \*

(ii) \* \* \*
(A) For all deliveries of Pacific whiting that the fish buyer buys from each fish seller:

(3) The weight of Pacific whiting delivered;

(5) The ex-vessel value of Pacific whiting;

(6) The net ex-vessel value of Pacific whiting;

(9) The total fee amount collected as a result of all Pacific whiting.

(d) \* \* \*
(3) Annual co-op report. The designated co-op manager for the C/P co-op must submit an annual report to NMFS and the Council by March 17 each year, before a co-op permit is issued for that year. The annual co-op report will contain information about the previous year's fishery, including:

(5) \* \* \*
(ii) \* \* \*
(A) For all Pacific whiting:

(2) The weight of Pacific whiting retained on board;

(4) The ex-vessel value of Pacific whiting retained on board;
(5) The net ex-vessel value of Pacific whiting retained on board; and
(6) The total fee amount collected as a result of all Pacific whiting.

(e) \* \* \*
(3) Deadline for proposed SMP. A proposed SMP must be submitted between February 1 and March 17 of the year in which it intends to be in effect to NMFS at: NMFS, West Coast Region, ATTN: Fisheries Permit Office, Bldg. 1, 7600 Sand Point Way NE, Seattle, WA 98115.

(6) \* \* \*
(i) Submission deadline. The SMP postseason report must be received by NMFS and the Council no later than March 17 of the year following that in which the SMP was approved.

■ 6. Amend § 660.131 by revising paragraphs (b)(2)(ii), (b)(2)(iii)(A) and (B), and (b)(2)(iii)(C)(1) to read as follows:

§ 660.131 Pacific whiting fishery management measures.

\* \* \* \* \*
(b) \* \* \*
(2) \* \* \*

(ii) Criteria. The start of a Pacific whiting primary season may be changed based on a recommendation from the Council and consideration of the following factors, if applicable: Size of the harvest guidelines for whiting and bycatch species; age/size structure of the whiting population; expected harvest of bycatch and prohibited species; availability and stock status of prohibited species; expected participation by catchers and processors; environmental conditions; timing of alternate or competing fisheries; industry agreement; fishing or processing rates; and other relevant information.

(iii) \* \* \*
(A) Catcher/processor sector—May 1.
(B) Mothership sector—May 1.
(C) \* \* \*

(1) North of 40° 30' N lat.—May 1; and

- \* \* \* \* \*
■ 7. Amend § 660.150 as follows:
■ a. Revise the section heading;
■ b. Add the word “and” following the semicolon at the end of paragraph (b)(1)(i)(A);
■ c. Remove “; and” at the end of paragraph (b)(1)(i)(B) and add a period in its place;
■ d. Remove paragraphs (b)(1)(i)(C) and (b)(2)(i)(A)(3);
■ e. Redesignate paragraph (b)(2)(i)(A)(4) as paragraph (b)(2)(i)(A)(3);
■ f. Revise paragraph (c)(6)(i)(A);
■ g. Remove paragraph (c)(7);
■ h. Revise paragraph (d)(1)(ii) and the introductory text of paragraph (d)(1)(iii);
■ i. Remove paragraph (d)(1)(iii)(A)(1)(iii);
■ j. Redesignate paragraphs (d)(1)(iii)(A)(1)(iv) through (xii) as paragraphs (d)(1)(iii)(A)(1)(iii) through (xi);
■ k. Remove paragraph (f)(3);
■ l. Redesignate paragraphs (f)(4) through (6) as paragraphs (f)(3) through (5); and
■ m. Revise paragraph (g)(2)(i) introductory text.

The revisions read as follows:

§ 660.150 Mothership (MS) Co-op Program.

\* \* \* \* \*
(c) \* \* \*
(6) \* \* \*
(i) \* \* \*

(A) Through an inter-co-op agreement, the designated co-op managers of permitted MS co-ops may distribute Pacific whiting allocations among one or more permitted MS co-ops.

(d) \* \* \*
(1) \* \* \*
(ii) Annual registration and deadline. Each year, a co-op entity intending to

participate as a co-op under the MS Co-op Program must submit an application for a MS co-op permit between January 17 and March 17 of the year in which it intends to fish. NMFS will not consider any applications received after March 17. An MS co-op permit expires on December 31 of the year in which it was issued.

(iii) Application for MS co-op permit. The designated co-op manager, on behalf of the co-op entity, must submit a complete application form and include each of the items listed in paragraph (d)(1)(iii)(A) of this section. Only complete applications will be considered for issuance of a MS co-op permit. An application will not be considered complete if any required application fees and annual co-op reports have not been received by NMFS. NMFS may request additional supplemental documentation as necessary to make a determination of whether to approve or disapprove the application. Application forms and instruction are available on the NMFS West Coast Region (WCR) website (https://www.fisheries.noaa.gov/permit/groundfish-mothership-cooperative-permit) or by request from NMFS. The designated co-op manager must sign the application acknowledging the responsibilities of a designated co-op manager defined in paragraph (b)(3) of this section. For permit owners with more than one MS/CV endorsement and associated CHA, paragraph (g)(2)(iv)(D) of this section specifies how to join an MS co-op(s).

\* \* \* \* \*
(g) \* \* \*
(2) \* \* \*

(i) Renewal. An MS/CV-endorsed permit must be renewed annually consistent with the limited entry permit regulations given at § 660.25(b)(4). During renewal, all MS/CV-endorsed limited entry permit owners must make a preliminary declaration regarding their intent to participate in the co-op or non-co-op portion of the MS Co-op Program for the following year. MS/CV-endorsed permits not obligated to a permitted MS co-op by March 17 of the fishing year will be assigned to the non-co-op fishery. For an MS/CV-endorsed permit that is not renewed, the following occurs:

- \* \* \* \* \*
■ 8. Amend § 660.160 as follows:
■ a. Remove paragraph (b)(1)(i)(C); and
■ b. Revise paragraphs (d)(1)(ii), (e)(1)(iii), and (e)(2)(i).

The revisions read as follows:

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

\* \* \* \* \*



(d) \* \* \*

(1) \* \* \*

(ii) *Annual registration and deadline.*

Each year, the co-op entity must submit a complete application to NMFS for a C/P co-op permit. The application must be submitted to NMFS by between January 17 and March 17 of the year in which it intends to participate. NMFS will not consider any applications received after March 17. A C/P co-op permit expires on December 31 of the year in which it was issued.

\* \* \* \* \*

(e) \* \* \*

(1) \* \* \*

(iii) *Restriction on C/P vessel*

*operating as mothership.* A vessel registered to a C/P-endorsed permit may operate as a mothership during the same calendar year it participates in the C/P sector but not on the same trip.

\* \* \* \* \*

(2) \* \* \*

(i) *Renewal.* A C/P-endorsed permit must be renewed annually consistent with the limited entry permit regulations given at § 660.25(b)(4).

\* \* \* \* \*

■ 9. Amend § 660.604 by revising paragraph (e) introductory text and paragraph (i) to read as follows:

**§ 660.604 Vessel and first receiver responsibilities.**

\* \* \* \* \*

(e) *Electronic Monitoring (EM) Authorization.* To obtain an EM Authorization, a vessel owner must submit an initial application to the NMFS West Coast Region Fisheries Permit Office, and then a final application that includes an EM system certification and a vessel monitoring plan (VMP). NMFS will only review complete applications. NMFS will issue a public notice at least 90 calendar days prior to when it will begin accepting applications for EM Authorizations for the first year of the Program. Once NMFS begins accepting applications, vessel owners that want to have their EM Authorizations effective for January 1 of the following calendar year must submit their complete application to NMFS by October 1. Vessel owners that want to have their EM Authorizations effective for the primary whiting season

start date must submit their complete application to NMFS by February 1 of the same year.

\* \* \* \* \*

(i) *Renewing an EM Authorization.* To maintain a valid EM Authorization, vessel owners must renew annually prior to the permit expiration date. NMFS will mail EM Authorization renewal forms to existing EM Authorization holders each year on or about: September 1 for non-trawl shorebased IFQ vessels and January 1 for Pacific whiting IFQ and MS/CV vessels. Vessel owners who want to have their EM Authorizations effective for January 1 of the following calendar year must submit their complete renewal form to NMFS by October 15. Vessel owners who want to have their EM Authorizations effective for the primary whiting season start date of the following calendar year must submit their complete renewal form to NMFS by February 1.

\* \* \* \* \*

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