

general terms, the quantification of those rights is 50 percent of the harvestable surplus of groundfish that pass through the tribes' usual and accustomed ocean fishing areas (described at 60 CFR 660.324).

A tribal allocation is subtracted from the species OY before limited entry and open access allocations are derived. The tribal fisheries for sablefish, black rockfish, and whiting are separate fisheries, and are not governed by the limited entry or open access regulations or allocations. The tribes regulate these fisheries so as not to exceed their allocations.

The tribal allocation for black rockfish is the same in 2003 as in 2002. Also similar to 2002, the tribal sablefish allocation is 10 percent of the total catch OY (650 mt), less 3 percent for estimated discard mortality, or 631 mt.

In 1999 through 2002, the tribal whiting allocation has been based on a methodology originally proposed by the Makah Tribe in 1998. The methodology is an abundance-based sliding scale that determines the tribal allocation based on the level of the overall U.S. OY, up to a maximum 17.5 percent tribal harvest ceiling at OY levels below 145,000 mt. The tribes have proposed using the same methodology in 2003. In 2003, applying the sliding scale methodology to a 148,200-mt overall OY results in a 25,000-mt tribal whiting allocation, which will be taken by the Makah Tribe. No other tribes have proposed to harvest whiting in 2003.

The sliding scale methodology used to determine the treaty Indian share of Pacific whiting is the subject of ongoing litigation. In *United States v. Washington*, Subproceeding 96-2, the Court held that the methodology is consistent with the Magnuson-Stevens Act, and is the best available scientific method to determine the appropriate allocation of whiting to the tribes. *United States v. Washington*, 143 F.Supp.2d 1218 (W.D. Wash. 2001). This ruling was reaffirmed in July 2002. *Midwater Trawlers Cooperative v. Daley*, C96-1808R (W.D. Wash.) (Order Granting Defendants' Motion to Supplement Record, July 17, 2002). Additional briefing will occur in this case. However, at this time NMFS remains under a Court Order in Subproceeding 96-2 to continue use of the methodology unless the Secretary finds just cause for its alteration or abandonment, the parties agree to a permissible alternative, or further order issues from the Court. Therefore NMFS is obliged to continue to use the methodology unless one of the events identified by the Court occurs. Since NMFS finds no reason to change the

methodology, it has been used to determine the 2003 tribal allocation.

For some species on which the tribes have a modest harvest, no specific allocation has been determined. Rather than try to reserve specific allocations for the tribes, NMFS is establishing trip limits recommended by the tribes and the Council to accommodate modest tribal fisheries. For lingcod, all tribal fisheries are restricted to 300 lb (136 kg) per day and 900 lb (408 kg) per week cumulative limits. Tribal fisheries are expected to take about 5.2 mt of lingcod in 2003. For rockfish species, the 2003 tribal longline and trawl fisheries will operate under trip and cumulative limits. Tribal fisheries will operate under a 300-lb (136-kg) per trip limit each for canary rockfish, thornyheads, and the minor rockfish species groups (nearshore, shelf, and slope), and under a 100-lb (45-kg) trip limit for yelloweye rockfish. A 300-lb (136 kg) canary rockfish trip limit is expected to result in landings of 2.3 mt in 2003. A 300-lb (136-kg) thornyheads trip limit is expected to result in landings of 2.7 mt in 2003. Other rockfish limits are expected to result in the following landings levels: widow rockfish, 45 mt; yelloweye rockfish, 3.1 mt; yellowtail rockfish, 400 mt; minor nearshore rockfish, 2 mt; minor shelf rockfish excluding yelloweye, 4.5 mt; minor slope rockfish, 4 mt. Trace amounts (1 mt) of POP and darkblotched rockfish may also be landed in tribal commercial fisheries.

The Assistant Administrator (AA) announces the following tribal allocations for 2003, including those that are the same as in 2002. Trip limits for certain species were recommended by the tribes and the Council and are specified here with the tribal allocations.

A. Sablefish

The tribal allocation is 631 mt, 10 percent of the total catch OY, less 3 percent estimated discard mortality.

B. Rockfish

(1) For the commercial harvest of black rockfish off Washington State, a harvest guideline of: 20,000 lb (9,072 kg) north of Cape Alava, WA (48°09'30" N. lat.) and 10,000 lb (4,536 kg) between Destruction Island, WA (47°40'00" N. lat.) and Leadbetter Point, WA (46°38'10" N. lat.).

(2) Thornyheads are subject to a 300-lb (136-kg) trip limit.

(3) Canary rockfish are subject to a 300-lb (136-kg) trip limit.

(4) Yelloweye rockfish are subject to a 100-lb (45-kg) trip limit.

(5) Yellowtail rockfish taken in the tribal mid-water trawl fisheries are

subject to a cumulative limit of 30,000 lb (13,608 kg) per 2-month period.

Landings of widow rockfish must not exceed 10 percent of the weight of yellowtail rockfish landed in any two-month period. These limits may be adjusted by an individual tribe inseason to minimize the incidental catch of canary rockfish and widow rockfish.

(6) Other rockfish, including minor nearshore, minor shelf, and minor slope rockfish groups are subject to a 300-lb (136-kg) trip limit per species or species group, or to the non-tribal limited entry trip limit for those species if those limits are less restrictive than 300 lb (136 kg) per trip.

(7) Rockfish taken during open competition tribal commercial fisheries for Pacific halibut will not be subject to trip limits.

C. Lingcod

Lingcod are subject to a 300-lb (136-kg) daily trip limit and a 900-lb (408-kg) weekly limit.

D. Pacific whiting

The tribal allocation is 25,000 mt.

Classification

These proposed specifications and management measures for 2003 are issued under the authority of, and are in accordance with, the Magnuson-Stevens Act, the FMP, and 50 CFR parts 600 and 660 subpart G (the regulations implementing the FMP).

This proposed rule has been determined to be significant for purposes of Executive Order 12866.

Pursuant to Executive Order 13175, this rule was developed after meaningful consultation and collaboration with tribal officials from the area covered by the FMP. Under the Magnuson-Stevens Act at 16 U.S.C. 1852(b)(5), one of the voting members of the Pacific Council must be a representative of an Indian tribe with federally recognized fishing rights from the area of the Council's jurisdiction. In addition, regulations implementing the FMP establish a procedure by which the tribes with treaty fishing rights in the area covered by the FMP request new allocations or regulations specific to the tribes, in writing, before the first of the two fall groundfish meetings of the Council. The regulation at 50 CFR 660.324(d) further states "the Secretary will develop tribal allocations and regulations under this paragraph in consultation with the affected tribe(s) and, insofar as possible, with tribal consensus." The tribal management measures in this proposed rule have been developed following these procedures. The tribal representative on