DC. The complete text of this decision may also be purchased from the Commission's copy contractors, International Transcription Services, Inc., 2100 M Street, NW., Suite 140, Washington, DC 20037, (202) 857–3800.

Provisions of the Regulatory Flexibility Act of 1980 do not apply to this proceeding.

Members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. See 47 CFR 1.1204(b) for rules governing permissible *ex parte* contact.

For information regarding proper filing procedures for comments, see 47 CFR 1.415 and 1.420.

List of Subjects in 47 CFR Part 73

Television broadcasting.

Federal Communications Commission. John A. Karousos.

Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 96–5901 Filed 3–12–96; 8:45 am] BILLING CODE 6712–01–F

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 642

[I.D. 022996C]

South Atlantic Fishery Management Council; Public Hearings

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

ACTION: Public hearings; requests for comments.

SUMMARY: The South Atlantic Fishery Management Council (South Atlantic Council) will hold three public hearings on Draft Amendment 8 to the Fishery Management Plan for Coastal Migratory Pelagic Resources of the Gulf of Mexico and South Atlantic (FMP) and its draft supplemental environmental impact statement (draft SEIS).

DATES: Written comments will be accepted until 5 p.m., March 26, 1996. The hearings are scheduled as follows:

1. March 18, 1996, 7 p.m. until business is completed, Ronkonkoma, NY

2. March 19, 1996, 7 p.m. until business is completed, Toms River, NJ 3. March 20, 1996, 7 p.m. until business is completed, Salisbury, MD ADDRESSES: Copies of the draft amendment are available from Susan Buchanan, Public Information Officer (803) 571–4366.

Written comments may be sent by U.S. mail, e-mail or fax to Bob Mahood, Executive Director, SAFMC, One Southpark Circle, Suite 306, Charleston, SC 29407. Fax: 803–769–4520, E-Mail: safmc@safmc.nmfs.gov. The draft amendment will be available to the public at the hearings.

The hearings will be held at the following locations:

1. Ronkonkoma—Holiday Inn, 3845 Veterans Memorial Highway, Ronkonkoma, NY 11799; telephone: 516–585–9500

2. Tom's River—Holiday Inn, 290 Route 37 East, Tom's River, NJ 08753; telephone; 908–244–4000

3. Salisbury—Holiday Inn, 2625 N Salisbury Blvd., Salisbury, MD 21801; telephone: 410–742–7194

FOR FURTHER INFORMATION CONTACT:

Susan Buchanan, 803-571-4366.

SUPPLEMENTARY INFORMATION:

Background

The South Atlantic and Mid-Atlantic Fishery Management Councils (Councils) will hold public hearings on Draft Amendment 8 to the FMP and its draft SEIS. Draft Amendment 8 includes management measures for the fisheries for king and Spanish mackerel, cobia, and dolphin (fish). These measures would apply only in the South Atlantic and Mid-Atlantic Council's (Mid-Atlantic Council) jurisdiction, apply only in the Gulf of Mexico Fishery Management Council's (Gulf Council) jurisdiction, or apply in all three Councils' jurisdictions.

Proposed actions that would affect only the stocks and area under the jurisdiction of the South Atlantic and Mid-Atlantic Councils are as follows: Harvest Spanish mackerel only with hook and line, run-around nets, stab nets, and cast nets (along Florida's east coast nets are limited to run-around gillnets, 800 yd (732 m) in length, and a 1-hour soak time); harvest king mackerel in the South Atlantic Council's area of jurisdiction, south of Cape Lookout, NC, with hook-and-line gear (multigear trips consisting of mixed species, including king mackerel, are allowed north of Cape Lookout NC, but are not to exceed 3,500 lbs (1.6 mt));allow the harvest of other directed coastal pelagics with surface longline, hook-and-line including manual, electric, or hydraulic rod and reels, and bandit gear only; allow the use of cast

nets and another nets with mesh sizes no larger than 2 1/2 inch (6.35 cm) stretch mesh and no longer than 50 yd (46 m) for the purpose of catching bait; allow the introduction of experimental gear; provide that non-conforming gear be limited to the bag limit for species with a bag limit (no limit for species without a bag limit); establish a 5-year moratorium, beginning on October 16, 1995, on the issuance of commercial vessel permits with a king mackerel endorsement; provide for the transfer of vessel permits to other vessels; require that anyone applying for a commercial vessel permit demonstrate that 25 percent of annual income, or \$5,000, be from commercial fishing; and require, as a condition for a Federal commercial or charter vessel permit, that the applicant comply with the more restrictive of state or Federal rules when fishing in state waters; extend the range of cobia management North to the EEZ off New York; and, establish the following commercial trip limits for Atlantic king mackerel: 3,500 lb (l.6 mt) in the ocean area from Volusia/Flagler County, FL, to the New York/Connecticut border from April 1 to March 31, 3,500 lb (1.6 mt) in the ocean area from Brevard/Volusia County, FL, to Volusia/ Flagler, FL, from April 1 to October 31, 50 fish in the ocean area from Brevard/Volusia to Dade/Monroe, FL, from April 1 to October 31, and a 125 fish limit in the EEZ off Monroe County from April 1 to October 31.

Amendment 8 also includes the following measures that apply to the three Councils' jurisdictions: Require commercial dealer permits to buy and sell coastal pelagic fish managed under the FMP and require that dealers keep and make available records of purchase by vessel, recreational bag and commercial trip limit alternatives for cobia and dolphin (fish), retention of up to five damaged king mackerel not to be sold by vessels under commercial trip limits, changes to the procedure used to set total allowable catch, and changes to definitions of overfishing and optimum yield. Additional options are included in the draft amendment.

In December 1995, the Gulf Council held public hearings on proposed measures in Amendment 8 applying only to the area and stocks under its jurisdiction.

Special Accommodations

These hearings are physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to the Council office (see ADDRESSES) by March 13, 1996. Authority: 16 U.S.C. 1801 et seq.

Dated: March 6, 1996.

Donald J. Leedy,

Acting Director, Office of Fisheries Conservation and Management, National

Marine Fisheries Service. [FR Doc. 96–5893 Filed 3–12–96; 8:45 am]

BILLING CODE 3510-22-F

50 CFR Part 663

[Docket No. 960304057-6057-01; I.D. 020596A]

RIN 0648-AH84

Pacific Coast Groundfish Fishery; Framework for Treaty Tribe Harvest of Pacific Groundfish

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

ACTION: Proposed rule; request for comments.

SUMMARY: This rule proposes a framework that allows NMFS, acting on behalf of the Secretary of Commerce (Secretary), to implement the rights of the Washington coastal treaty Indian tribes to fish for groundfish in their usual and accustomed fishing areas (U&A area). The Secretary requests public comments on the proposed framework and on the amount of Pacific whiting to be set aside for the Makah Indian Tribe (Makahs) for 1996 under the provisions of this rule. The intent of this rule is to accommodate treaty fishing rights.

DATES: Comments will be accepted on or before April 12, 1996.

ADDRESSES: Comments may be mailed to William Stelle, Jr., Director, Northwest Region, NMFS, 7600 Sand Point Way NE., BIN C15700, Seattle, WA 98115. Information relevant to this proposed rule is available for public review during business hours at the Office of the Director, Northwest Region, NMFS.

FOR FURTHER INFORMATION CONTACT: William L. Robinson at 206-526-6140. SUPPLEMENTARY INFORMATION: NMFS is issuing a proposed rule, based on the agency's authority under the Pacific Coast Groundfish Fishery Management Plan (FMP) and the Magnuson Fishery Conservation and Management Act (Magnuson Act) to amend the FMP's implementing regulations to establish a clear procedure for implementing the Washington coastal treaty Indian tribes' rights to harvest Pacific groundfish. At the same time, NMFS is seeking public comment on the amount of Pacific whiting to set aside in 1996 for the

Makahs under the procedures of this rule. For purposes of this rule, Washington coastal treaty Indian tribes means the Hoh, Makah, and Quileute Indian Tribes and the Quinault Indian Nation.

Background

The FMP generally acknowledges that certain treaty Indian tribes have secured rights to harvest fish from their U&A area. However, the FMP's implementing regulations currently do not explicitly provide a process by which NMFS can set aside, from the annual harvest guideline or quota, amounts of Pacific groundfish for exclusive harvest by treaty Indian tribes. Since 1989 NMFS, at the recommendation of the Pacific Fishery Management Council (Council), has set aside, through the annual groundfish management process, a specific amount of sablefish for harvest by the Pacific Coast treaty Indian tribes. In 1992, NMFS first imposed black rockfish trip limits on commercial hook and line vessels fishing in certain areas off the Washington coast. The same regulation created a process for establishing a tribal rockfish harvest guideline during the annual groundfish management process. Tribal fishermen fishing under this harvest guideline are not subject to the black rockfish trip limit.

In June of 1995, the Makahs informed NMFS and the Council that they would seek to exercise their treaty rights to harvest Pacific whiting, *Merluccius productus*. At the August 1995 Council meeting, the Makahs requested that 25,000 metric tons (mt) of whiting be set aside from the 1996 U.S. harvest guideline for exclusive harvest by the Makahs.

At the October 1995 Council meeting, NMFS and NOAA General Counsel advised the Council that the Federal Government recognizes that Washington coastal treaty Indian tribes, by virtue of their treaties with the United States, have harvest rights to Pacific coast groundfish.

NMFS believes the Makahs have a treaty right to harvest one-half of the harvestable surplus of the Pacific whiting stocks found in their U&A area, in accordance with treaty fishing rights elaborated by a U.S. District Court in the case United States v. Washington. NMFS believes that the allocation principles applicable to the tribal treaty right to Pacific whiting and all other groundfish found in the treaty tribes' U&A areas are those established in *State* of Washington v. Washington State Commercial Passenger Fishing Vessel Association, 443 U.S. 658, 99 S.Ct. 3055, 3074 (1979), and Makah Indian Tribe v.

Brown, No. C-85-1606R, and United States v. Washington, Civil No. 9213— Phase I, Subproceeding No. 92-1 (W.D. Wash., Order on Five Motions Relating to Treaty Halibut Fishing dated December 29, 1993). Passenger Fishing Vessel establishes the rule that "an equitable measure of the common right would initially divide the harvestable portion of each run that passes through a 'usual and accustomed' place into approximately equal treaty and nontreaty shares." Makah v. Brown held that:

In formulating his allocation decisions, the Secretary must accord treaty fishers the opportunity to take 50 percent of the harvestable surplus of halibut in their usual and accustomed fishing grounds, and the harvestable surplus must be determined according to the conservation necessity principle.

In the shellfish subproceeding (89–3) in *United States* v. *Washington*, the court found that the right to take fish that was reserved in the treaties must be read to apply to all fish, without any species limitation. The court found:

The fact that some species were not taken before treaty time—either because they were inaccessible or the Indians chose not to take them—does not mean that their *right* to take such fish was limited.

At the October Council meeting, NMFS and NOAA Northwest General Counsel advised the Council that Indian treaty rights were "other applicable law" under the Magnuson Act that required NMFS to set aside an amount of whiting for harvest by the Makahs in 1996 consistent with their treaty rights. NMFS advised the Council that discussions between NMFS and the Makahs to determine the appropriate amount of whiting to be set aside in 1996 had not yet been completed, and that some disagreement between NMFS and the Makahs as to the proper method of determining the amount still existed. Despite the advice by NMFS and NOAA Northwest General Counsel, the Council voted 7-4 against recommending that NOAA/NMFS recognize that the Washington coastal treaty tribes have treaty rights to Pacific whiting and set aside any amount of whiting for harvest by the Makahs in 1996. The Council voted after consideration of testimony from the State of Oregon's Attorney General's Office that a treaty tribe's right to harvest fish from its U&A area only exists for those species to which the tribe can show historical catch or access at the time that the treaty was signed.

NMFS cannot accept the Council's recommendation because it is contrary to treaty fishing rights law. Consequently, NMFS proposes to