

Fishery Conservation and Management

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§ 660.131 Pacific whiting fishery management measures.

(a) *Sectors.* In order for a vessel to fish in a particular whiting fishery sector after May 11, 2009, that vessel must be registered for use with a sector-specific Pacific whiting vessel license under § 660.26, subpart C.

(1) The catcher/processor sector is composed of catcher/processors, which are vessels that harvest and process whiting during a calendar year.

(2) The mothership sector is composed of motherships and catcher vessels that harvest whiting for delivery to motherships. Motherships are vessels that process, but do not harvest, whiting during a calendar year.

(3) The shorebased sector is composed of vessels that harvest whiting for delivery to Pacific whiting shoreside first receivers. Notwithstanding the other provisions of 50 CFR part 660, subpart C or D, a vessel that is 75 feet or less LOA that harvests whiting and, in addition to heading and gutting, cuts the tail off and freezes the whiting, is not considered to be a catcher/processor nor is it considered to be processing fish. Such a vessel is considered a participant in the shorebased whiting sector, and is subject to regulations and allocations for that sector.

(b) *Pacific whiting seasons.*

(1) *Primary seasons.* The primary seasons for the whiting fishery are:

(i) For the shorebased sector, the period(s) when the large-scale target fishery is conducted (when trip limits under paragraph (b) of this section are not in effect);

(ii) For catcher/processors, the period(s) when at-sea processing is allowed and the fishery is open for the catcher/processor sector; and

(iii) For vessels delivering to motherships, the period(s) when at-sea processing is allowed and the fishery is open for the mothership sector.

(2) *Before and after the primary seasons.* Before and after the primary seasons, trip landing or frequency limits may be imposed under § 660.60(c). The sectors are defined at § 660.60(a).

(3) *Different primary season start dates.* North of 40°30' N. lat., different starting dates may be established for the catcher/processor sector, the mothership sector, catcher vessels delivering to shore-

side processors north of 42° N. lat., and catcher vessels delivering to shoreside processors between 42° N. lat. through 40°30' N. lat.

(i) *Procedures.* The primary seasons for the whiting fishery north of 40°30' N. lat. generally will be established according to the procedures of the PCGFMP for developing and implementing harvest specifications and apportionments. The season opening dates remain in effect unless changed, generally with the harvest specifications and management measures.

(ii) *Criteria.* The start of a 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) *Primary whiting season start dates and duration.* After the start of a primary season for a sector of the whiting fishery, the season remains open for that sector until the quota is taken or a bycatch limit is reached and the fishery season for that sector is closed by NMFS. The starting dates for the primary seasons for the whiting fishery are as follows:

(A) Catcher/processor sector—May 15.

(B) Mothership sector—May 15.

(C) Shorebased sector

(1) North of 42° N. lat.—June 15;

(2) Between 42°–40°30' N. lat.—April 1; and

(3) South of 40°30' N. lat.—April 15.

(4) *Trip limits in the whiting fishery.* The “per trip” limit for whiting before and after the regular (primary) season for the shorebased sector is announced in Table 1 of this subpart, and is a routine management measure under § 660.60(c). This trip limit includes any whiting caught shoreward of 100-fm (183-m) in the Eureka, CA area. The “per trip” limit for other groundfish species before, during, and after the

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regular (primary) season are announced in Table 1 (North) and Table 1 (South) of this subpart and apply as follows:

(i) During the groundfish cumulative limit periods both before and after the primary whiting season, vessels may use either small and/or large footrope gear, but are subject to the more restrictive trip limits for those entire cumulative periods.

(ii) If, during a primary whiting season, a whiting vessel harvests a groundfish species other than whiting for which there is a midwater trip limit, then that vessel may also harvest up to another footrope-specific limit for that species during any cumulative limit period that overlaps the start or end of the primary whiting season.

(5) *Bycatch limits in the whiting fishery.* The bycatch limits for the whiting fishery may be established, adjusted, and used inseason to close a sector or sectors of the whiting fishery to achieve the rebuilding of an overfished or depleted stock. These limits are routine management measures under § 660.60(c), subpart C, and, as such, may be adjusted inseason or may have new species added to the list of those with bycatch limits. Closure of a sector or sectors when a bycatch limit is projected to be reached is an automatic action under § 660.60(d), subpart C.

(i) The whiting fishery bycatch limit is apportioned among the sectors identified in paragraph (a) of this section based on the same percentages used to allocate whiting among the sectors, established in § 660.55(i)(2), subpart C. The sector specific bycatch limits are: For catcher/processors 4.8 mt of canary rockfish, 95 mt of widow rockfish, and 8.5 mt of darkblotched rockfish; for motherships 3.3 mt of canary rockfish, 67 mt of widow rockfish, and 6.0 mt of darkblotched rockfish; and for shorebased 5.9 mt of canary rockfish, 117 mt of widow rockfish, and 10.5 mt of darkblotched rockfish.

(ii) The Regional Administrator may make available for harvest to the other sectors of the whiting fishery identified in § 660.131(a) of this subpart, the amounts of a sector's bycatch limit species remaining when a sector is closed because its whiting allocation or

a bycatch limit has been reached or is projected to be reached. The remaining bycatch limit species shall be redistributed in proportion to each sector's initial whiting allocation. When considering redistribution of bycatch limits between the sectors of the whiting fishery, the Regional Administrator will take into consideration the best available data on total projected fishing impacts on the bycatch limit species, as well as impacts on other groundfish species.

(iii) If a bycatch limit is reached or is projected to be reached, the following action, applicable to the sector may be taken.

(A) Catcher/processor sector. Further taking and retaining, receiving, or at-sea processing of whiting by a catcher/processor is prohibited. No additional unprocessed whiting may be brought on board after at-sea processing is prohibited, but a catcher/processor may continue to process whiting that was on board before at-sea processing was prohibited.

(B) Mothership sector. Further receiving or at-sea processing of whiting by a mothership is prohibited. No additional unprocessed whiting may be brought on board after at-sea processing is prohibited, but a mothership may continue to process whiting that was on board before at-sea processing was prohibited. Whiting may not be taken and retained, possessed, or landed by a catcher vessel participating in the mothership sector.

(C) Shorebased sector. Whiting may not be taken and retained, possessed, or landed by a catcher vessel participating in the shorebased sector except as authorized under a trip limit specified under § 660.60(c), subpart C.

(iv) The Regional Administrator will announce in the FEDERAL REGISTER when a bycatch limit is reached, or is projected to be reached, specifying the action being taken as specified under paragraph (b)(5) of this section. The Regional Administrator will announce in the FEDERAL REGISTER any reapportionment of bycatch limit species. In order to prevent exceeding the bycatch limits or to avoid underutilizing the Pacific whiting resource, prohibitions against further taking and retaining,

receiving, or at-sea processing of whiting, or reapportionment of bycatch limits species may be made effective immediately by actual notice to fishers and processors, by e-mail, Internet (<http://www.nwr.noaa.gov/Groundfish-Halibut/Groundfish-Fishery-Management/Whiting-Management/index.cfm>), phone, fax, letter, press release, and/or USCG Notice to Mariners (monitor channel 16 VHF), followed by publication in the FEDERAL REGISTER.

(6) *Pacific whiting allocation attainment and inseason allocation reapportionment.* (i) *Reaching an allocation.* If the whiting harvest guideline, commercial harvest guideline, or a sector's allocation is reached, or is projected to be reached, the following action(s) for the applicable sector(s) may be taken as provided under paragraph (b)(6)(iv) of this section and will remain in effect until additional amounts are made available the next calendar year or under paragraph (b)(6)(ii) of this section.

(A) *Catcher/processor sector.* Further taking and retaining, receiving, or at-sea processing of whiting by a catcher/processor is prohibited. No additional unprocessed whiting may be brought on board after at-sea processing is prohibited, but a catcher/processor may continue to process whiting that was on board before at-sea processing was prohibited.

(B) *Mothership sector.* Further receiving or at-sea processing of whiting by a mothership is prohibited. No additional unprocessed whiting may be brought on board after at-sea processing is prohibited, but a mothership may continue to process whiting that was on board before at-sea processing was prohibited. Whiting may not be taken and retained, possessed, or landed by a catcher vessel participating in the mothership sector.

(C) *Shore-based sector coastwide.* Whiting may not be taken and retained, possessed, or landed by a catcher vessel participating in the shore-based sector except as authorized under a trip limit specified under § 660.60(c).

(D) *Shore-based south of 42° N. lat.* If 5 percent of the shore-based allocation for whiting is taken and retained south of 42° N. lat. before the primary season for the shore-based sector begins north

of 42° N. lat., then a trip limit specified under § 660.60(c) may be implemented south of 42° N. lat. until the northern primary season begins, at which time the southern primary season would resume.

(ii) *Reapportionments.* That portion of a sector's allocation that the Regional Administrator determines will not be used by the end of the fishing year shall be made available for harvest by the other sectors, if needed, in proportion to their initial allocations, on September 15 or as soon as practicable thereafter. NMFS may release whiting again at a later date to ensure full utilization of the resource. Whiting not needed in the fishery authorized under § 660.50 may also be made available.

(iii) *Estimates.* Estimates of the amount of whiting harvested will be based on actual amounts harvested, projections of amounts that will be harvested, or a combination of the two. Estimates of the amount of Pacific whiting that will be used by shore-based processors by the end of the calendar year will be based on the best information available to the Regional Administrator from state catch and landings data, the testimony received at Council meetings, and/or other relevant information.

(iv) *Announcements.* The Regional Administrator will announce in the FEDERAL REGISTER when a harvest guideline, commercial harvest guideline, or an allocation of whiting is reached, or is projected to be reached, specifying the appropriate action being taken under paragraph (b)(6)(i) of this section. The Regional Administrator will announce in the FEDERAL REGISTER any reapportionment of surplus whiting to others sectors on September 15, or as soon as practicable thereafter. In order to prevent exceeding the limits or to avoid underutilizing the resource, prohibitions against further taking and retaining, receiving, or at-sea processing of whiting, or reapportionment of surplus whiting may be made effective immediately by actual notice to fishers and processors, by e-mail, internet (<http://www.nwr.noaa.gov/Groundfish-Halibut/Groundfish-Fishery-Management/Whiting-Management/index.cfm>), phone, fax, letter, press release, and/or USCG Notice to Mariners (monitor

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channel 16 VHF), followed by publication in the FEDERAL REGISTER, in which instance public comment will be sought for a reasonable period of time thereafter.

(c) *Closed areas.* Pacific whiting may not be taken and retained in the following portions of the fishery management area:

(1) *Klamath river salmon conservation zone.* The ocean area surrounding the Klamath River mouth bounded on the north by 41°38.80' N. lat. (approximately 6 nm north of the Klamath River mouth), on the west by 124°23' W. long. (approximately 12 nm from shore), and on the south by 41°26.80' N. lat. (approximately 6 nm south of the Klamath River mouth).

(2) *Columbia river salmon conservation zone.* The ocean area surrounding the Columbia River mouth bounded by a line extending for 6 nm due west from North Head along 46°18' N. lat. to 124°13.30' W. long., then southerly along a line of 167 True to 46°11.10' N. lat. and 124°11' W. long. (Columbia River Buoy), then northeast along Red Buoy Line to the tip of the south jetty.

(3) *Ocean salmon conservation zone.* All waters shoreward of a boundary line approximating the 100 fm (183 m) depth contour. Latitude and longitude coordinates defining the boundary line approximating the 100 fm (183 m) depth contour are provided at §660.73, subpart C. This closure will be implemented through automatic action, defined at §660.60(d), subpart C, when NMFS projects the Pacific whiting fishery may take in excess of 11,000 Chinook within a calendar year.

(4) *Pacific whiting bycatch reduction areas (BRAs).* Vessels using limited entry midwater trawl gear during the primary whiting season may be prohibited from fishing shoreward of a boundary line approximating the 75-fm (137-m), 100-fm (183-m) or 150-fm (274-m) depth contours. Latitude and longitude coordinates for the boundary lines approximating the depth contours are provided at §660.73, subpart C. Closures may be implemented inseason for a sector(s) through automatic action, defined at §660.60(d), subpart C, when NMFS projects that a sector will exceed a bycatch limit specified for that

sector before the sector's whiting allocation is projected to be reached.

(d) *Eureka area trip limits.* Trip landing or frequency limits may be established, modified, or removed under §660.60, subpart C, or §660.131, subpart D, specifying the amount of Pacific whiting that may be taken and retained, possessed, or landed by a vessel that, at any time during a fishing trip, fished in the fishery management area shoreward of the 100 fathom (183 m) contour (as shown on NOAA Charts 18580, 18600, and 18620) in the Eureka area (from 43 00' to 40 30' N. lat.). Unless otherwise specified, no more than 10,000-lb (4,536 kg) of whiting may be taken and retained, possessed, or landed by a vessel that, at any time during a fishing trip, fished in the fishery management area shoreward of the 100 fm (183 m) contour (as shown on NOAA Charts 18580, 18600, and 18620) in the Eureka management area (defined at §660.11, subpart C).

(e) *At-sea processing.* Whiting may not be processed at sea south of 42°00' N. lat. (Oregon-California border), unless by a waste-processing vessel as authorized under paragraph (i) of this section.

(f) *Time of day.* Pacific whiting may not be taken and retained by any vessel in the fishery management area south of 42°00' N. lat. between 0001 hours to one-half hour after official sunrise (local time). During this time south of 42°00' N. lat., trawl doors must be on board any vessel used to fish for whiting and the trawl must be attached to the trawl doors. Official sunrise is determined, to the nearest 5° lat., in The Nautical Almanac issued annually by the Nautical Almanac Office, U.S. Naval Observatory, and available from the U.S. Government Printing Office.

(g) *Additional restrictions on catcher/processors.* (1) A catcher/processor may receive fish from a catcher vessel, but that catch is counted against the catcher/processor allocation unless the catcher/processor has been declared as a mothership under paragraph (g)(3) of this section.

(2) A catcher/processor may not also act as a catcher vessel delivering unprocessed whiting to another processor in the same calendar year.

(3) When renewing its limited entry permit each year under § 660.25, subpart C, the owner of a catcher/processor used to take and retain whiting must declare if the vessel will operate solely as a mothership in the whiting fishery during the calendar year to which its limited entry permit applies. Any such declaration is binding on the vessel for the calendar year, even if the permit is transferred during the year, unless it is rescinded in response to a written request from the permit holder. Any request to rescind a declaration must be made by the permit holder and granted in writing by the Regional Administrator before any unprocessed whiting has been taken on board the vessel that calendar year.

(h) *Pacific whiting first receivers.* (1) Pacific whiting shoreside first receivers and processors may receive groundfish species, other than Pacific Whiting, that is in excess of trip limits from a Pacific whiting shoreside vessel that is fishing under an EFP that authorizes the vessel to possess the catch.

(i) *Bycatch reduction and full utilization program for at-sea processors (optional).* If a catcher/processor or mothership in the whiting fishery carries more than one NMFS-approved observer for at least 90 percent of the fishing days during a cumulative trip limit period, then groundfish trip limits may be exceeded without penalty for that cumulative trip limit period, if the conditions in paragraph (h)(2) of this section are met. For purposes of this program, "fishing day" means a 24-hour period, from 0001 hours through 2400 hours, local time, in which fishing gear is retrieved or catch is received by the vessel, and will be determined from the vessel's observer data, if available. Changes to the number of observers required for a vessel to fish under in the bycatch reduction program will be announced prior to the start of the fishery, generally concurrent with the harvest specifications and management measures. Groundfish consumed on board the vessel must be within any applicable trip limit and recorded as retained catch in any applicable logbook or report. [NOTE: For a mothership, non-whiting groundfish landings are limited by the cumulative

landings limits of the catcher vessels delivering to that mothership.]

(ii) [Reserved]

(2) *Conditions.* Conditions for participating in the voluntary full utilization program are as follows:

(i) All catch must be made available to the observers for sampling before it is sorted by the crew.

(ii) Any retained catch in excess of cumulative trip limits must either be: Converted to meal, mince, or oil products, which may then be sold; or donated to a bona fide tax-exempt hunger relief organization (including food banks, food bank networks or food bank distributors), and the vessel operator must be able to provide a receipt for the donation of groundfish landed under this program from a tax-exempt hunger relief organization immediately upon the request of an authorized officer.

(iii) No processor or catcher vessel may receive compensation or otherwise benefit from any amount in excess of a cumulative trip limit unless the overage is converted to meal, mince, or oil products. Amounts of fish in excess of cumulative trip limits may only be sold as meal, mince, or oil products.

(iv) The vessel operator must contact the NMFS enforcement office nearest to the place of landing at least 24 hours before landing groundfish in excess of cumulative trip limits for distribution to a hunger relief agency. Cumulative trip limits and a list of NMFS enforcement offices are found on the NMFS, Northwest Region homepage at <http://www.nwr.noaa.gov>.

(v) If the meal plant on board the whiting processing vessel breaks down, then no further overages may be retained for the rest of the cumulative trip limit period unless the overage is donated to a hunger relief organization.

(vi) Prohibited species may not be retained.

(vii) Donation of fish to a hunger relief organization must be noted in the transfer log (Product Transfer/Offloading Log (PTOL)), in the column for total value, by entering a value of "0" or "donation," followed by the name of the hunger relief organization receiving the fish. Any fish or fish product that is retained in excess of trip limits

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under this rule, whether donated to a hunger relief organization or converted to meal, must be entered separately on the PTOL so that it is distinguishable from fish or fish products that are retained under trip limits. The information on the Mate's Receipt for any fish or fish product in excess of trip limits must be consistent with the information on the PTOL. The Mate's Receipt is an official document that states who takes possession of offloaded fish, and may be a Bill of Lading, Warehouse Receipt, or other official document that tracks the transfer of offloaded fish or fish product. The Mate's Receipt and PTOL must be made available for inspection upon request of an authorized officer throughout the cumulative limit period during which such landings occurred and for 15 days thereafter.

(j) *Processing fish waste at sea.* A vessel that processes only fish waste (a "waste-processing vessel") is not considered a whiting processor and therefore is not subject to the allocations, seasons, or restrictions for catcher/processors or motherships while it operates as a waste-processing vessel. However, no vessel may operate as a waste-processing vessel 48 hours immediately before and after a primary season for whiting in which the vessel operates as a catcher/processor or mothership. A vessel must meet the following conditions to qualify as a waste-processing vessel:

(1) The vessel makes meal (ground dried fish), oil, or minced (ground flesh) product, but does not make, and does not have on board, surimi (fish paste with additives), fillets (meat from the side of the fish, behind the head and in front of the tail), or headed and gutted fish (head and viscera removed).

(2) The amount of whole whiting on board does not exceed the trip limit (if any) allowed under § 660.60(c), subpart C, or Tables 1 (North) or 1 (South) in subpart D.

(3) Any trawl net and doors on board are stowed in a secured and covered manner, and detached from all towing lines, so as to be rendered unusable for fishing.

(4) The vessel does not receive codends containing fish.

(5) The vessel's operations are consistent with applicable state and Federal law, including those governing disposal of fish waste at sea.

(k) *Additional requirements for participants in the Pacific whiting shoreside fishery—(1) Pacific whiting shoreside first receiver responsibilities—(i) Weights and measures.* All groundfish weights reported on electronic fish tickets must be recorded from scales with appropriate weighing capacity that ensures accuracy for the amount of fish being weighed. For example: amounts of fish less than 1,000-lb (454 kg) should not be weighed on scales that have an accuracy range of 1,000-lb to 7,000-lb (454–3,175 kg) and are therefore not capable of accurately weighing amounts less than 1,000-lb (454 kg).

(ii) [Reserved]

(2) *Sorting requirements for the Pacific whiting shoreside fishery.* Fish delivered to Pacific whiting shoreside first receivers (including shoreside processing facilities and buying stations that intend to transport catch for processing elsewhere) must be sorted, prior to first weighing after offloading from the vessel and prior to transport away from the point of landing, to the species groups specified in § 660.60(h)(6), subpart C, for vessels with limited entry permits. Prohibited species must be sorted according to the following species groups: Dungeness crab, Pacific halibut, Chinook salmon, Other salmon. Non-groundfish species must be sorted as required by the state of landing.

§ 660.140 Shorebased IFQ Program.

(a) *General.* The Shorebased IFQ Program requirements in § 660.140 will be effective beginning January 1, 2011, except for paragraphs (d)(4), (d)(6), and (d)(8) of this section, which are effective immediately. The Shorebased IFQ Program applies to qualified participants in the Pacific Coast Groundfish fishery and includes a system of transferable QS for most groundfish species or species groups, IBQ for Pacific halibut, and trip limits or set-asides for the remaining groundfish species or species groups. The IFQ Program is subject to area restrictions (GCAs, RCAs, and EFHCAs) listed at §§ 660.70 through 660.79, subpart C. The