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Ray LaHood,

Secretary of Transportation.

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DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 660

[Docket No. 090428799-9802-01]

RIN 0648-XP43

Fisheries off West Coast States; Pacific Coast Groundfish Fishery; Suspension of the Primary Pacific Whiting Season for the Shore-based Sector South of 42° North Latitude

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

ACTION: Fishing restrictions.

SUMMARY: NMFS announces the suspension of the primary season for Pacific whiting (whiting) fishery for the shore-based sector south of 42° N. lat. at noon local time (l.t.) May 14, 2009. "Per trip" limits for whiting were reinstated until 0001 hours June 15, 2009, at which time the primary season for the shore-based sector opens coastwide. This action is authorized by regulations implementing the Pacific Coast Groundfish Fishery Management Plan (FMP), which governs the groundfish fishery off Washington, Oregon, and California. This action is intended to keep the harvest of whiting at the 2009 allocation levels.

DATES: Effective from noon l.t. May 14, 2009, until 0001 hours June 15, 2009.

FOR FURTHER INFORMATION CONTACT: Becky Renko at 206-526-6110.

SUPPLEMENTARY INFORMATION: The regulations at 50 CFR 660.323(a) established separate allocations for the catcher/processor, mothership, and shore-based sectors of the whiting fishery. The 2009 commercial Optimum Yield (OY) for Pacific whiting is 81,939 mt. This is calculated by deducting the 50,000-mt tribal set-aside and 4,000-mt for research catch and bycatch in non-groundfish fisheries from the 135,939 mt total catch OY. Each sector receives a portion of the commercial OY, with the catcher/processors getting 34 percent (27,859 mt), motherships getting 24 percent (19,665 mt), and the shore-based sector getting 42 percent (34,414

mt). The regulations further divide the shore-based allocation so that no more than 5 percent (1,721 mt) of the shore-based allocation may be taken in waters off the State of California before the primary season begins north of 42° N. lat.

The primary season for the shore-based sector is the period or periods when the large-scale target fishery is conducted, and when "per trip" limits are not in effect for vessels targeting Pacific whiting with mid-water gear. Because whiting migrate from south to north during the fishing year, the shore-based primary whiting season begins earlier south of 42° N. lat. than north. For 2009: the primary season for the shore-based sector between 42°-40°30' N. lat. began on April 1; south of 40°30' N. lat., the primary season began on April 15; and the fishery north of 42° N. lat. is scheduled to begin June 15. Although the fishery opened in April, the vessels choose to delay fishing until May 1, 2009.

Because the 1,721 mt allocation for the early season fishery off California was estimated to be reached, NMFS is announcing the suspension of the primary whiting season south of 42° N. lat. Regulations at 50 CFR 660.323 (b)(4) allow this action to be taken. The 20,000-lb (9,072 kg) trip limit that was in place before the start of the southern primary season was reinstated remains in effect until the primary June 15. A trip limit of 10,000 lb (4,536 kg) of whiting is in effect year-round (unless landings of whiting are prohibited) for vessels that fish in the Eureka area shoreward of the 100-fm(183-m) contour at any time during a fishing trip. This smaller limit is intended to minimize incidental catch of Chinook salmon, which are more likely to be caught shallower than 100 fm (183 m) in the Eureka area.

To prevent an allocation from being exceeded, regulations at 50 CFR 660.323 (e) allow closure of the commercial whiting fisheries by actual notice to the fishery participants. Actual notice includes e-mail, internet, phone, fax, letter or press release. NMFS provided actual notice by e-mail, internet, and fax on May 13, 2009.

NMFS Action

This action announces achievement of the shore-based sector allocation specified at 50 CFR 660.323(a) for the fishery south of 42° N. lat. The best available information on May 13, 2009, indicated that 1,119 metric tons (mt) of whiting was taken through May 11, 2009 and that the 1,721 mt shore-based allocation for the early season fishery south of 42° N. lat would be reached by

noon May 14, 2009. For the reasons stated here and in accordance with the regulations at 50 CFR 660.323(b)(4), NMFS herein announces: Effective noon May 14, 2009 until 0001 l.t., June 15, 2009, the primary whiting season south of 42° N. lat is suspended. No more than 20,000-lb (9,072 kg) of whiting may be taken and retained, possessed or landed by a catcher vessel participating in the shore-based sector of the whiting fishery. If a vessel fishes shoreward of the 100 fm (183 m) contour in the Eureka area (43° - 40° 30' N. lat.) at any time during a fishing trip, the 10,000-lb (4,536 kg) trip limit applies.

Classification

This action is authorized by the regulations implementing the groundfish FMP. The determination to take these actions is based on the most recent data available. The aggregate data upon which the determinations are based are available for public inspection at the office of the Regional Administrator (see **ADDRESSES**) during business hours. The Assistant Administrator for Fisheries (AA), NMFS, finds good cause to waive the requirement to provide prior notice and opportunity for comment on this action pursuant to 5 U.S.C. 553 (3)(b)(B), because providing prior notice and opportunity would be impracticable. It would be impracticable because if this restriction were delayed in order to provide notice and comment, it would allow the allocation for the shore-based fishery south of 42° N. lat. to be exceeded. Similarly, the AA finds good cause to waive the 30-day delay in effectiveness requirement of 5 U.S.C. 553 (d)(3), as such a delay would cause the fishery south of 42° N. lat. to exceed its allocation. Allowing the early season fishery to continue would result in a disproportionate shift in effort, which could result in greater impacts on Endangered Species Act listed Chinook salmon and overfished groundfish species that had been considered when the 2009 Pacific Coast groundfish harvest specifications were established.

This action is taken under the authority of 50 CFR 660.323(b)(4), and is exempt from review under Executive Order 12866.

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

Dated: May 29, 2009.

Kristen C. Koch,

Acting Director, Office of Sustainable Fisheries, National Marine Fisheries Service.
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