

DEPARTMENT OF COMMERCE**National Oceanic and Atmospheric Administration****50 CFR Part 660**

[Docket No. 031216314-4118-03; I.D. 052004B]

RIN 0648-AR54

Fisheries off West Coast States and in the Western Pacific; Pacific Coast Groundfish Fishery; Temporary Closure for the Shore-Based Whiting Sector

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

ACTION: Fishing restrictions; request for comments.

SUMMARY: NMFS announces a temporary closure of the primary season for Pacific whiting (whiting) south of 42° N. lat. at noon local time (l.t.) May 22, 2004. "Per trip" limits for whiting will be reinstated until 0001 hours June 15, 2004, at which time the primary season south of 42° N. lat. will re-open. 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 2004 allocation levels.

DATES: Effective from noon l.t. May 22, 2004, until 0001 hours June 15, 2004. Comments will be accepted through June 10, 2004.

ADDRESSES: You may submit comments, identified by (docket number and/or RIN number), by any of the following methods:

- E-mail:

WhitingCAclosure.nwr@noaa.gov. Include (docket number and/or RIN number) in the subject line of the message.

- Federal eRulemaking Portal: <http://www.regulations.gov>. Follow the instructions for submitting comments.

- Fax: 206-526-6736, Attn: Becky Renko.

- Mail: D. Robert Lohn, Administrator, Northwest Region, NMFS, 7600 Sand Point Way NE, Seattle, WA 98115-0070, Attn: Becky Renko.

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

SUPPLEMENTARY INFORMATION: The regulations at 50 CFR 660.323(a) (3) and (4) establish separate allocations for the

catcher/processor, mothership, and shore-based sectors of the whiting fishery. For 2004, the 215,500 mt commercial OY for whiting is divided with the catcher/processor sector receiving 73,270 mt (34 percent); the mothership sector receiving 51,720 mt (24 percent); and the shore-based sector receiving 90,510 mt (42 percent). The regulations further divide the shore-based allocation so that no more than 5 percent (4,526 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(s) when the large-scale target fishery is conducted, and when "per trip" limits are not in effect. Because whiting migrate from south to north during the fishing year, the shore-based primary season begins earlier south of 42° N. lat. than north. For 2004, 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.

Because the 4,526-mt allocation for the early season fishery off California is estimated to be reached, NMFS is announcing the closure of the primary whiting season south of 42° N. lat. The 20,000-lb (9,072-kg) trip limit that was in place before the start of the southern primary season is being reinstated and will remain in effect until the primary season north of 42° N. lat. opens on 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.

The best available information on May 20, 2004, indicates that 3,999 mt of whiting have been taken by the shore-based fishery south of 42° N. lat. through May, 16, 2004 and that the 4,526 mt allocation is projected to be taken by noon May 22, 2004. Therefore, the 20,000-lb (9,072-kg) per-trip limits announced in the 2004 specifications and management measures (69 FR 11064, March 9, 2004 as amended at 69 FR 23667, April 30, 2004) will resume until the primary season begins north of 42° N. lat.

NMFS Action

For the reasons stated above, and in accordance with the regulations at 50 CFR 660.323 (a)(4)(i)(B) and

(a)(4)(iii)(D), NMFS revises paragraph B. of Section IV. of the 2004 harvest specification and management measures (69 FR 11064, March 9, 2004, as amended at 69 FR 23667 (April 30, 2004), by adding a new paragraph.

IV. NMFS Actions

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B. * * *

(3) * * *

(b) * * *

(iv) Closure of shore-based sector south of 42° N. lat. Effective noon May 22, 2004, to 0001 hours June 15, 2004 l.t. the primary whiting season south of 42° N. lat. is closed. Landing and frequency limits imposed under paragraph (b) of this section are in effect until the primary whiting season reopens on June 15, 2004.

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Classification

This action is authorized by the regulations implementing the 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, NOAA, (AA) 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 (b)(B), because providing prior notice and opportunity would be impracticable and contrary to the public interest. It would be impracticable and contrary to the public interest because if this closure were delayed in order to provide prior notice and opportunity for public comment, the fishery would exceed the early season sector allocation for whiting south of 42° N. lat. 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° S. 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 2004 Pacific Coast groundfish harvest specifications were established. This action is taken under the authority of 50 CFR 660.323(a)(4)(i)(B) and (a)(4)(iii)(D), and is exempt from review under Executive Order 12866.

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

Dated: May 21, 2004.

Bruce C. Morehead,

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

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