

flounder be deducted from the TAC in the following fishing year. Accordingly, the action being taken by this temporary rule is non-discretionary. Since this is a non-discretionary action, based on numerous records solely in the possession of NMFS, public comment would not serve to inform the agency calculation of the overage and its deduction from the appropriate TAC.

The rate of harvest of GB yellowtail flounder by groundfish vessels and scallop vessels fishing in the Scallop Access Areas in the U.S./Canada Management Area as reported from Vessel Monitoring Systems is updated weekly on the internet at <http://www.nero.noaa.gov>. Accordingly, the public is able to obtain information that would provide at least some advanced notice of a potential action as a result of a GB yellowtail flounder TAC being exceeded during FY 2007. Further, the potential that one or more of the FY 2007 TACs for the U.S./Canada stocks could be exceeded was considered and open to public comment during the proposed rule stage of the temporary rule setting the U.S./Canada TACs for FY 2008. Therefore, any negative effect the waiving of public comment may have on the public is mitigated by these factors.

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

Dated: July 3, 2008.

**Emily H. Menashes,**

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

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## DEPARTMENT OF COMMERCE

### National Oceanic and Atmospheric Administration

#### 50 CFR Part 660

**RIN 0648-XI87**

**[Docket No. 080408542-8615-01]**

#### **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; request for comments.

**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 21, 2008. "Per trip" limits for whiting were reinstated until 0001 hours June 15, 2008, at which time the primary season for the shore-based sector opened 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 2008 allocation levels.

**DATES:** Effective from noon l.t. May 21, 2008, until 0001 hours June 15, 2008. Comments will be accepted through August 8, 2008.

**ADDRESSES:** You may submit comments, identified by RIN 0648-XI87 by any of the following methods:

- Electronic Submissions: Submit all electronic public comments via the Federal eRulemaking Portal <http://www.regulations.gov>.
- 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) established separate allocations for the catcher/processor, mothership, and shore-based sectors of the whiting fishery. The 2008 commercial Optimum Yield (OY) for Pacific whiting is 232,545 mt. This is calculated by deducting the 35,000-mt tribal allocation and 2,000-mt for research catch and bycatch in non-groundfish fisheries from the 269,545 mt total catch OY. Each sector receives a portion of the commercial OY, with the catcher/processors getting 34 percent (79,065 mt), motherships getting 24 percent (55,810 mt), and the shore-based sector getting 42 percent (97,669 mt). The regulations further divide the shore-based allocation so that no more than 5 percent (4,883 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. 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 2008: 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 4,883 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 remained 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 20, 2008.

#### **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 20, 2008, indicated that 4,521 metric tons (mt) of whiting was taken through May 19, 2008 and that the 4,883 mt shore-based allocation for the early season fishery south of 42° N. lat would be reached by noon May 21, 2008. For the reasons stated here and in accordance with the regulations at 50 CFR 660.323(b)(4), NMFS herein announces: Effective noon l.t. May 21, 2008 until 0001 l.t., June 15, 2008, 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 2008 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: July 7, 2008.

**Emily H. Menashes,**

*Acting Director, Office of Sustainable Fisheries, National Marine Fisheries Service.*  
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## DEPARTMENT OF COMMERCE

### National Oceanic and Atmospheric Administration

#### 50 CFR Part 679

[Docket No. 071106671-8010-02]

RIN 0648-XI93

#### Fisheries of the Exclusive Economic Zone Off Alaska; Northern Rockfish in the Western Regulatory Area of the Gulf of Alaska

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

**ACTION:** Temporary rule; closure.

**SUMMARY:** NMFS is prohibiting directed fishing for northern rockfish in the Western Regulatory Area of the Gulf of Alaska (GOA). This action is necessary to prevent exceeding the 2008 total allowable catch (TAC) of northern rockfish in the Western Regulatory Area of the GOA.

**DATES:** Effective 1200 hrs, Alaska local time (A.l.t.), July 7, 2008, through 2400 hrs, A.l.t., December 31, 2008.

#### FOR FURTHER INFORMATION CONTACT:

Jennifer Hogan, 907-586-7228.

**SUPPLEMENTARY INFORMATION:** NMFS manages the groundfish fishery in the GOA exclusive economic zone according to the Fishery Management Plan for Groundfish of the Gulf of Alaska (FMP) prepared by the North Pacific Fishery Management Council under authority of the Magnuson-Stevens Fishery Conservation and Management Act. Regulations governing fishing by U.S. vessels in accordance with the FMP appear at subpart H of 50 CFR part 600 and 50 CFR part 679.

The 2008 TAC of northern rockfish in the Western Regulatory Area of the GOA is 2,141 metric tons (mt) as established by the 2008 and 2009 harvest specifications for groundfish of the GOA (73 FR 10562, February 27, 2008).

In accordance with § 679.20(d)(1)(i), the Administrator, Alaska Region, NMFS (Regional Administrator), has determined that the 2008 TAC of northern rockfish in the Western Regulatory Area of the GOA will soon

be reached. Therefore, the Regional Administrator is establishing a directed fishing allowance of 2,121 mt, and is setting aside the remaining 20 mt as bycatch to support other anticipated groundfish fisheries. In accordance with § 679.20(d)(1)(iii), the Regional Administrator finds that this directed fishing allowance has been reached. Consequently, NMFS is prohibiting directed fishing for northern rockfish in the Western Regulatory Area of the GOA.

After the effective date of this closure the maximum retainable amounts at § 679.20(e) and (f) apply at any time during a trip.

#### Classification

This action responds to the best available information recently obtained from the fishery. The Assistant Administrator for Fisheries, NOAA (AA), finds good cause to waive the requirement to provide prior notice and opportunity for public comment pursuant to the authority set forth at 5 U.S.C. 553(b)(B) as such requirement is impracticable and contrary to the public interest. This requirement is impracticable and contrary to the public interest as it would prevent NMFS from responding to the most recent fisheries data in a timely fashion and would delay the closure of northern rockfish in the Western Regulatory Area of the GOA. NMFS was unable to publish a notice providing time for public comment because the most recent, relevant data only became available as of July 2, 2008.

The AA also finds good cause to waive the 30-day delay in the effective date of this action under 5 U.S.C. 553(d)(3). This finding is based upon the reasons provided above for waiver of prior notice and opportunity for public comment.

This action is required by § 679.20 and is exempt from review under Executive Order 12866.

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

Dated: July 3, 2008.

**Emily H. Menashes**

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