

determine how much fishing can be allowed and the time the fishery must open and close in order to harvest the appropriate amount of fish while they are available.

Moreover, such prior notice and opportunity for public comment is impracticable because not closing the fishery upon attainment of the quota would allow the quota to be exceeded and thus compromise the conservation objectives established preseason, and it does not allow fishers appropriately controlled access to the available fish at the time they are available.

The AA also finds good cause to waive the 30-day delay in the effective date, required under 5 U.S.C. 553(d)(3), of the inseason orders. A delay in the effective date of the inseason orders would not allow fishers appropriately controlled access to the available fish at that time they are available.

This action is authorized by 50 CFR 300.97, and is exempt from review under Executive Order 12866.

**Authority:** 16 U.S.C. 3636(b).

Dated: February 9, 2009.

**Emily H. Menashes,**

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

[FR Doc. E9-3055 Filed 2-11-09; 8:45 am]

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## DEPARTMENT OF COMMERCE

### National Oceanic and Atmospheric Administration

#### 50 CFR Part 648

[Docket No. 0809251266-81485-02]

RIN 0648-XM86

#### Fisheries of the Northeastern United States; Summer Flounder Fishery; Quota Transfer

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

**ACTION:** Temporary rule; inseason quota transfer.

**SUMMARY:** NMFS announces that the State of North Carolina is transferring a portion of its 2009 commercial summer flounder quota to the Commonwealth of Virginia and the State of New Jersey. By this action, NMFS adjusts the quotas and announces the revised commercial quota for each state involved.

**DATES:** Effective February 9, 2009 through December 31, 2009.

**FOR FURTHER INFORMATION CONTACT:** Emily Bryant, Fishery Management

Specialist, (978) 281-9244, FAX (978) 281-9135.

#### SUPPLEMENTARY INFORMATION:

Regulations governing the summer flounder fishery are found at 50 CFR part 648. The regulations require annual specification of a commercial quota that is apportioned among the coastal states from North Carolina through Maine. The process to set the annual commercial quota and the percent allocated to each state are described in § 648.100.

The final rule implementing Amendment 5 to the Summer Flounder, Scup, and Black Sea Bass Fishery Management Plan, which was published on December 17, 1993 (58 FR 65936), provided a mechanism for summer flounder quota to be transferred from one state to another. Two or more states, under mutual agreement and with the concurrence of the Administrator, Northeast Region, NMFS (Regional Administrator), can transfer or combine summer flounder commercial quota under § 648.100(d). The Regional Administrator is required to consider the criteria set forth in § 648.100(d)(3) in the evaluation of requests for quota transfers or combinations.

North Carolina has agreed to transfer 28,952 lb (13,132 kg) of its 2009 commercial quota to Virginia to cover the summer flounder landings of three North Carolina vessels granted safe harbor in Virginia due to mechanical issues between January 2 and January 6, 2009. In addition, North Carolina has agreed to transfer 1,033 lb (469 kg) of its 2009 commercial quota to New Jersey to cover the summer flounder landings of one North Carolina vessel granted safe harbor in New Jersey due to mechanical issues on December 18, 2008. Although this event occurred at the end of the previous fishing year, both states have agreed to apply their transfer amounts to the 2009 quota allocations. The Regional Administrator has determined that the criteria set forth in § 648.100(d)(3) have been met. The revised quotas for calendar year 2009 are: North Carolina, 2,917,924 lb (1,323,184 kg); Virginia, 2,317,924 lb (1,051,393 kg); and New Jersey, 1,796,946 (1,051,393 kg).

#### Classification

This action is taken under 50 CFR part 648 and is exempt from review under Executive Order 12866.

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

Dated: February 9, 2009

**Emily H. Menashes,**

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

[FR Doc. E9-3021 Filed 2-9-09; 4:15 pm]

**BILLING CODE 3510-22-S**

## DEPARTMENT OF COMMERCE

### National Oceanic and Atmospheric Administration

#### 50 CFR Part 660

[Docket No. 080408542-8615-01]

RIN 0648-XM20

#### Fisheries off West Coast States; Pacific Coast Groundfish Fishery; Pacific Whiting Allocation

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

**ACTION:** Reapportionment of surplus Pacific whiting allocation; request for comments.

**SUMMARY:** NMFS has determined that 4,000 metric tons (mt) of the shore-based sector allocation and 6,000 mt of the mothership sector allocation would not be used by December 31, 2008. Therefore, NMFS has reapportioned the surplus whiting to the catcher/processor sector of the fishery.

**DATES:** Effective from 1400 local time (l.t.) November 26, 2008, until December 31, 2008, unless modified, superseded or rescinded. Comments will be accepted through February 27, 2009.

**ADDRESSES:** You may submit comments, identified by the RIN number 0648-XM20, by any one 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: Barry A. Thom, Acting Regional Administrator, Northwest Region, NMFS, 7600 Sand Point Way NE, Seattle, WA 98115-0070, Attn: Becky Renko

Instructions: All comments received are a part of the public record and will generally be posted to <http://www.regulations.gov> without change. All personal identifying information (for example, name, address, etc.) voluntarily submitted by the commenter may be publicly accessible. Do not submit confidential business information, or otherwise sensitive or protected information.

NMFS will accept anonymous comments (enter N/A in the required fields, if you wish to remain anonymous). Attachments to electronic comments will be accepted in Microsoft Word, Excel, WordPerfect, or Adobe PDF file formats only.

**FOR FURTHER INFORMATION CONTACT:**

Becky Renko, telephone: 206 526 6110; fax: 206 526 6736; or, e-mail: [becky.renko@noaa.gov](mailto:becky.renko@noaa.gov).

**SUPPLEMENTARY INFORMATION:** 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.

The 2008 non-tribal commercial OY for Pacific whiting is 232,545 mt. Regulations at 50 CFR 660.323(a)(2) divide the commercial Pacific whiting optimum yield (OY) into separate allocations for the catcher/processor, mothership, and shore-based sectors. The catcher/processor sector is composed of vessels that harvest and process Pacific whiting. The mothership sector is composed of catcher vessels that harvest Pacific whiting and mothership vessels that process, but do not harvest. The shore-based sector is composed of vessels that harvest Pacific whiting for delivery to land-based processors. Each commercial sector receives a portion of the commercial OY. For 2008 the catcher/processors initially received 34 percent (79,065 mt), the motherships received 24 percent (55,811 mt), and the shore-based sector received 42 percent (97,669 mt).

On November 5, 2008, 20,000 mt of the 97,669 mt shore-based sector's allocation was reapportioned to the catcher/processor and mothership sectors (73 FR 72739, December 1, 2008). The revised Pacific whiting allocations by sector as of November 6, 2008 were: catcher/processor 90,789 mt, mothership 64,087 mt, and shore-based 77,669 mt. On November 18, 2008, an additional 15,000 mt of the shore-based sector's allocation was reapportioned to the catcher/processor sector (73 FR 72739, December 1, 2008). The revised Pacific whiting allocations by sector as of November 18, 2008 were: catcher/processor 105,789 mt, mothership 64,087 mt, and shore-based 62,669 mt.

The best available information on November 26, 2008, indicated that 4,000 mt of the shore-based sector allocation and 6,000 mt of mothership sector allocation would not be used by December 31, 2008. Therefore the surplus Pacific whiting was reapportioned from the shore-based and mothership sectors to the catcher/processor sector on November 26, 2008. Facsimiles directly to fishing businesses and postings on the Northwest Regions internet site were used to provide actual notice to the affected fishers.

**NMFS Action**

This action announces the reapportionment of 4,000 mt of Pacific whiting from the shore-based sector and 6,000 mt of Pacific whiting from the mothership sector to the catcher/processor sector at 1400 local time November 26, 2008. As of November 26, 2008, the revised Pacific whiting allocations by sector for 2008 were: catcher/processor 115,789 mt, mothership 64,087 mt, and shore-based 77,669 mt.

**Classification**

The determinations to take these actions were based on the most recent data available. The aggregate data upon which the determinations were based are available for public inspection at the Office of the Regional Administrator (see **ADDRESSES**) during business hours.

This action is authorized by the regulations implementing the FMP. The Assistant Administrator for Fisheries, NMFS, finds good cause to waive the requirement to provide prior notice and opportunity for comment on these actions pursuant to 5 U.S.C. 553 (3)(b)(B), because providing prior notice and opportunity would be impracticable. It would be impracticable because of the need for immediate action. NMFS has determined that providing an opportunity for prior notice and comment would be impractical and contrary to public interest. Delay of this action would leave Pacific whiting unharvested. In addition, the catcher/processors needed an immediate reallocation if they were to keep their workers employed. For these same reasons the agency finds good cause to waive the 30-day delay in effectiveness. These actions are taken under the authority of 50 CFR 660.323(c), and are exempt from review under Executive Order 12866. Actual notice of the reapportionments was provided to the affected fishers.

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

Dated: February 9, 2009.

**Emily H. Menashes,**

*Acting Director, Office of Sustainable Fisheries, National Marine Fisheries Service.*  
[FR Doc. E9-3022 Filed 2-11-09; 8:45 am]

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**DEPARTMENT OF COMMERCE****National Oceanic and Atmospheric Administration****50 CFR Part 665**

[Docket No. 0811281532-9086-02]

RIN 0648-XL64

**Fisheries in the Western Pacific; Bottomfish and Seamount Groundfish Fisheries; 2008-09 Main Hawaiian Islands Bottomfish Total Allowable Catch**

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

**ACTION:** Final specification.

**SUMMARY:** NMFS specifies a total allowable catch (TAC) for the 2008-09 fishing year of 241,000 lb (109,316 kg) of Deep 7 bottomfish in the main Hawaiian Islands (MHI).

**DATES:** This final specification is effective March 16, 2009.

**ADDRESSES:** Copies of the Fishery Management Plan for Bottomfish and Seamount Groundfish Fisheries of the Western Pacific Region (Bottomfish FMP) and related Environmental Impact Statement are available from the Western Pacific Fishery Management Council (Council), 1164 Bishop St., Suite 1400, Honolulu, HI 96813, tel 808-522-8220, fax 808-522-8226, or [www.wpcouncil.org](http://www.wpcouncil.org).

An environmental assessment (EA), including a Regulatory Impact Review (RIR), was prepared that describes the impact on the human environment that would result from this action. Copies of the EA are available from [www.regulations.gov](http://www.regulations.gov), or William L. Robinson, Regional Administrator, NMFS Pacific Islands Region (PIR), 1601 Kapiolani Blvd. 1110, Honolulu, HI 96814.

**FOR FURTHER INFORMATION CONTACT:** Toby Wood, Sustainable Fisheries Division, NMFS PIR, 808-944-2234.

**SUPPLEMENTARY INFORMATION:** This final specification is also accessible at [www.gpoaccess.gov/fr](http://www.gpoaccess.gov/fr).

NMFS specifies a TAC for the 2008-09 fishing year of 241,000 lb (109,316 kg) of Deep 7 bottomfish in the MHI, as recommended by the Western Pacific Fishery Management Council (Council). The Council recommended that TAC based on the best available scientific, commercial, and other information, taking into account the associated risk of overfishing. The MHI Management Subarea refers to the portion of U.S. EEZ