

Management Plan for the Reef Fish Resources of the Gulf of Mexico (FMP). The FMP was prepared by the Gulf of Mexico Fishery Management Council and is implemented under the authority of the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act) by regulations at 50 CFR part 622. Those regulations set the commercial quota for deepwater grouper in the Gulf of Mexico at 1.02 million lb (463,636 kg) for the current fishing year, January 1 through December 31, 2009.

Under 50 CFR 622.43(a), NMFS is required to close the commercial fishery for a species or species group when the quota for that species or species group is reached, or is projected to be reached, by filing a notification to that effect with the Office of the Federal Register. Based on current statistics, NMFS has determined that the available commercial quota of 1.02 million lb (463,636 kg) for deepwater grouper will be reached on or before June 27, 2009. Accordingly, NMFS is closing the commercial deepwater grouper fishery in the Gulf of Mexico EEZ from 12:01 a.m., local time, on June 27, 2009, until 12:01 a.m., local time, on January 1, 2010. The operator of a vessel with a valid commercial vessel permit for Gulf reef fish having deepwater grouper aboard must have landed and bartered, traded, or sold such deepwater grouper prior to 12:01 a.m., local time, June 27, 2009.

During the closure, the bag and possession limits specified in 50 CFR 622.39(b) apply to all harvest or possession of deepwater grouper in or from the Gulf of Mexico EEZ, and the sale or purchase of deepwater grouper taken from the EEZ is prohibited. Vessels with commercial quantities of reef fish on board are prohibited from retaining a recreational bag limit. Thus a vessel may only have a commercial quantity of reef fish or a recreational bag limit of reef fish. The prohibition on sale or purchase does not apply to sale or purchase of deepwater grouper that were harvested, landed ashore, and sold prior to 12:01 a.m., local time, June 27, 2009, and were held in cold storage by a dealer or processor.

#### 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 prior notice and opportunity for public comment is

unnecessary and contrary to the public interest. Such procedures would be unnecessary because the rule itself has already been subject to notice and comment, and all that remains is to notify the public of the closure. Allowing prior notice and opportunity for public comment is contrary to the public interest because of the need to immediately implement this action to protect the fishery since the capacity of the fishing fleet allows for rapid harvest of the quota. Prior notice and opportunity for public comment would require time and would potentially result in a harvest well in excess of the established quota.

For the aforementioned reasons, the AA also finds good cause to waive the 30-day delay in the effectiveness of this action under 5 U.S.C. 553(d)(3).

This action is taken under 50 CFR 622.43(a) and is exempt from review under Executive Order 12866.

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

Dated: June 17, 2009.

**Alan D. Risenhoover,**

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

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## DEPARTMENT OF COMMERCE

### National Oceanic and Atmospheric Administration

#### 50 CFR Part 660

[Docket No. 090428799-9802-01]

RIN 0648-XP82

#### Fisheries off West Coast States; Pacific Coast Groundfish Fishery; Closure of the Pacific Whiting Primary Fishery for the Mothership Sector

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

**ACTION:** Fishing restrictions.

**SUMMARY:** NMFS announces closure of the primary season for the mothership sector of the Pacific whiting fishery at 10:00 p.m. local time (l.t.) June 1, 2009. The closure was necessary because the mothership sector was projected to reach its Pacific whiting harvest guideline. 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 Pacific whiting at the 2009 allocation levels.

**DATES:** Effective from 10:00 p.m. l.t. June 1, 2009, until the start of the 2010 primary season for the mothership sector, unless modified, superseded or rescinded.

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

**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 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).

Regulations at 50 CFR 660.323 (c) provide that if the Regional Administrator determines that a portion of the tribal set-aside or another sector's allocation will not be used during the year, the Regional Administrator can reapportion that Pacific whiting to other sectors in proportion to their initial allocations. At the Pacific Fishery Management Council's March 2009 meeting, the Makah Tribal representatives stated their intent to harvest only 23,789 mt of their 42,000 mt set-aside and asked that the remaining 18,211 mt be reapportioned to the non-tribal sectors of the fishery. Therefore, the mothership sector received an additional 5,823 mt, resulting in a harvest guideline of 24,034 mt.

When each sector's Pacific whiting harvest allocation or harvest guideline is reached, the primary season for that sector is ended. 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. The regulations at 50 CFR 600.323 (a)(3)(i) describe the primary season for vessels delivering to motherships as the period(s) when at-sea processing is allowed and the fishery is open for the mothership sector.

To prevent an allocation from being exceeded, regulations at 50 CFR 660.323

(e) allows 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 on June 1, 2009 by fax and internet.

#### NMFS Action

This action announces the closure of the Pacific whiting primary season for the mothership sector only. The best available information on June 1, 2009, indicated that the mothership harvest guideline would be reached by 10:00 p.m. l.t. (2200 hours), June 1, 2009, at which time the primary season for the mothership sector ended and further at-sea processing and receipt of whiting by a mothership, or taking and retaining, possessing, or landing of whiting by a catcher boat in the mothership sector, was prohibited. For the reasons stated above, and in accordance with the regulations at 50 CFR 660.323(b)(2), NMFS herein announces that effective 10:00 p.m. l.t. June 1, 2009—(1) 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, and (2) whiting may not be taken and retained, possessed, or landed by a catcher vessel participating in the mothership sector.

#### 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 mothership sector of the fishery to be greatly exceeded.

A delay to provide a cooling off period also would be expected to cause the fishery to exceed its allocation. Therefore, good cause also exists to waive the 30-day delay in effectiveness requirement of 5 U.S.C. 553 (d)(3).

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: June 16, 2009.

**Kristen C. Koch,**

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

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