

meeting planned for April 25. The Service will consider all comments received during the comment period, as well as all other available information, in developing a negotiating position on each of the species proposals. These positions will be announced in the **Federal Register** in early June just prior to COP10. Also, in this pre-COP10 notice the Service plans to request comments on any reservations that should be taken on any species amendments (i.e., species changes to the CITES appendices) adopted by the Parties. Immediately after COP10, the Service will announce the species amendments to the appendices adopted by the Parties; in accordance with CITES, all such amendments will become effective on September 18, 1997 (90 days after their adoption by the Parties).

The primary authors of this notice are Dr. Marshall A. Howe, Zoologist, Dr. Bruce MacBryde, Botanist, and Dr. Charles W. Dane, Chief, Office of Scientific Authority.

This document is issued under authority of the Endangered Species Act of 1973 (16 U.S.C. 1531 *et seq.*; 87 Stat. 884, as amended).

#### **Lists of Subjects in 50 CFR Part 23**

Endangered and threatened species, Exports, Imports, Treaties.

Dated: April 8, 1997.

**John G. Rogers,**

*Acting Director, U.S. Fish and Wildlife Service.*

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#### **DEPARTMENT OF COMMERCE**

##### **National Oceanic and Atmospheric Administration**

##### **50 CFR Part 660**

[Docket No. 970403076-7076-0; I.D. 030397B]

RIN 0648-A180

##### **Fisheries off West Coast States and in the Western Pacific; Pacific Coast Groundfish Fishery; Whiting Allocation Among Nontribal Sectors**

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

**ACTION:** Proposed rule; request for comments.

**SUMMARY:** This rule proposes: Allocation of the commercial harvest guideline of Pacific whiting (whiting) among

nontribal sectors; a framework procedure for annually choosing the starting dates of the primary whiting seasons for the nontribal sectors; and allowing the processing of fish waste at sea when at-sea processing of whiting is otherwise prohibited. This rule also proposes starting dates for the 1997 primary seasons under the proposed framework. These actions are intended to provide equitable allocation of the whiting resource and to provide flexibility in harvesting and processing opportunities.

**DATES:** Comments will be accepted on or before April 30, 1997.

**ADDRESSES:** Comments may be mailed to William Stelle, Jr., Administrator, Northwest Region, NMFS, 7600 Sand Point Way NE., Seattle, WA 98115. Comments on the information collection requirements that would be imposed by this rule should be sent to Mr. William Stelle at the address above, and to the Office of Information and Regulatory Affairs of the Office of Management and Budget, Washington DC, 20503. Other information relevant to this proposed rule is available for public review during business hours at the Office of the Administrator, Northwest Region, NMFS. Copies of the environmental assessment/regulatory impact review also are available from that address.

**FOR FURTHER INFORMATION CONTACT:** William L. Robinson at 206-526-6140.

**SUPPLEMENTARY INFORMATION:** NMFS is issuing a proposed rule, based on the agency's authority under the Pacific Coast Groundfish Fishery Management Plan (PCGFMP) and the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act). At the same time, NMFS is seeking public comment on the starting dates for the primary whiting seasons in 1997 and on several housekeeping measures. These actions were recommended by the Pacific Fishery Management Council (Council) at its October 1996 meeting in San Francisco, CA and at meetings of its ad hoc whiting allocation subcommittee that were held in 1996.

#### **Background**

##### *Whiting allocation*

Whiting is the largest groundfish resource managed by the Council, and makes up over 50 percent of the potential annual groundfish harvest. Until the early 1980's, whiting off Washington, Oregon, and California were harvested predominantly by foreign fisheries. Between 1982-88, foreign fishing was displaced by joint venture operations in which U.S. vessels fished for whiting and delivered

it to foreign processing vessels at sea. By 1989, joint ventures were displaced by domestic harvesting and processing operations, as contemplated by the Magnuson-Stevens Act. (The Magnuson-Stevens Act established priorities for allocating fish in the EEZ, giving domestic fishing and processing operations first priority, joint ventures second priority, and foreign fishing lowest priority.) The shift away from joint ventures occurred abruptly with the introduction of domestic at-sea processing vessels: Catcher/processors (also called factory trawlers) that both harvest and process fish; and motherships that process fish delivered from other catcher vessels. Consequently, the joint venture catcher vessels that had harvested and delivered almost all of the whiting harvest guidelines in 1989-90 to foreign processing vessels lost their foreign markets in 1991. The joint venture markets were only partly replaced by new markets with mothership and shore-based processors. Generally, the shore-based fishery operates at a slower pace and has a more limited fishing range, and catcher vessels are smaller than catcher/processors and can take a much smaller amount of whiting in the same amount of time. Therefore, to avoid extensive preemption of shore-based operations by the high-capacity at-sea processing fleet, whiting has been allocated among domestic sectors since 1991.

The most recent allocation, which was in effect from 1994-96, was based on a 3-year industry agreement to provide 40 percent of the whiting harvest guideline to catcher vessels delivering to shore-based processors, plus any additional whiting taken while all sectors competed for the first 60 percent. In 1994 and 1995, the 40-percent reserve was applied to the entire whiting harvest guideline (50 CFR 663.23(b)(4), subsequently changed to 660.323(a)(4). In 1996, whiting was allocated to the Makah treaty Indian tribe for the first time (50 CFR 660.324). Thereafter, any allocation among domestic sectors was to be based on the "commercial harvest guideline," the harvest guideline minus any tribal allocation. Provisions were made for reapportioning the unused portion of the shorebased reserve later in the year, but this occurred only in 1994.

The allocations for 1997 and beyond were derived by industry agreement in a series of public meetings sponsored by the Council. The proposed allocations, which are within a few percent of the proportions harvested in 1994-96, are: 42 percent for the shoreside sector (catcher vessels delivering to shoreside

processors), 24 percent for the mothership sector (motherships and catcher vessels delivering to motherships), and 34 percent for the catcher/processor sector (catcher/processor vessels). When applied to the 1997 commercial harvest guideline of 207,000 metric tons (mt), these percentages result in whiting allocations of 86,900 mt for vessels that deliver shoreside, 49,700 mt for vessels that deliver to motherships, and 70,400 mt for catcher/processors. Surplus whiting would be reallocated (via notice in the **Federal Register**) to the other sectors, in proportion to their initial allocations, near September 15. As in 1994–96, only the framework process for determining the allocations would be codified. The allocations would be calculated and announced annually, generally with the annual cycle for announcing specifications and management measures for the groundfish fishery in January each year.

The proposed allocation, and intended effect on the fishery, differ from 1994–96 in several respects.

1. Three separate allocations are proposed, one for each sector (catcher/processors, mothership, and shoreside). In contrast, the only allocation in 1994–96 was the 40-percent set aside for catcher vessels delivering shoreside. The proposed allocation removes the uncertainty of amounts available for each sector and will be easier to monitor.

2. By eliminating the competition among sectors inherent in a first-come-first-served fishery (the no-action alternative), separate allocations would encourage each sector to operate at a more leisurely and safe pace and to move to other fishing grounds if necessary to lower bycatch levels, particularly of yellowtail rockfish and salmon. As a result, separate allocations would provide greater accountability and opportunity for each sector to minimize bycatch.

3. Separate allocations also would provide each sector the flexibility of starting at different times without losing any competitive advantage. Because whiting migrate from south to north during the fishing season, the shore-based fishery south of 42° N. lat. has been, and still would be, allowed to start earlier than north of 42° N. lat. However, to avoid effort shifts to the south early in the year, a 5-percent cap would be placed on the amount of the shore-based allocation that may be taken south of 42° N. lat. before the start of the shore-based primary season north of 42° N. lat. If the proposed 5-percent cap is reached, the routine trip limit under § 660.323(b) would be resumed until the

northern season begins, at which time the southern primary season also would resume. The routine trip limit (10,000 lb (4,536 kg) in 1997) provides for small bait, fresh fish, and bycatch fisheries, and cannot sustain a large-scale target fishery. The 5-percent cap (which would be 4,345 mt in 1997) is not intended or expected to be constraining on traditional operations. The annual whiting catch south of 42° N. lat. would have been below 5 percent of the shore-based allocation if these proposed allocations had been in effect in 1994–96.

4. Additional constraints were agreed to by the industry to assure that each sector has the opportunity to take its allocation by assuring that high-capacity catcher/processors do not participate in more than one sector in a given year. Within the same calendar year, a catcher/processor may not also act as a catcher vessel that delivers shoreside or to another at-sea processor. A catcher/processor may operate solely as a mothership for that calendar year, but only if this has been requested and so designated on renewal of its limited entry permit for the Pacific coast groundfish fishery (Office of Management and Budget (OMB) #0648–0203). A catcher/processor may receive codends over-the-side from a catcher vessel, but any such catch would be counted toward the catcher/processor allocation and would end when the catcher/processor allocation is taken. Catcher vessels that do not process may deliver to any or all of the processing sectors as long as the season for that sector is open.

#### *Seasons*

A framework for setting separate starting dates for each sector's primary season and the starting dates for 1997, also are proposed. The framework procedures for determining the starting dates would be codified, and the starting dates would be announced annually, generally with the annual cycle for announcing specifications and management measures for the groundfish fishery in January each year. However, because the annual cycle for 1997 has passed, the starting dates for the 1997 fishery would be announced with the final rule for this action. The primary seasons for the whiting fishery are: For the shore-based sector, the period(s) when the large-scale target fishery is conducted (when trip limits under § 660.323(b) are not in effect); for catcher/processors, the period(s) when at-sea processing is allowed and the fishery is open for the catcher/processor sector; and for vessels delivering to motherships, the period(s) when at-sea

processing is allowed and the fishery is open for the mothership sector.

Separate starting dates enable each sector to accommodate its operational needs. However, other factors also must be considered during the Council's two-meeting process. Consideration of the following factors, if applicable, would be included: The size of the harvest guidelines for whiting and bycatch species; status of whiting and bycatch stocks; age/size structure of the whiting population; expected harvest of bycatch and prohibited species; availability and stock status of prohibited species; expected participation by catchers and processors; environmental conditions; timing of alternate or competing fisheries; industry agreement; fishing or processing rates; and other relevant information.

The starting dates also are constrained by the incidental take statement dated May 14, 1996, issued pursuant to § 7 (b)(4) of the Endangered Species Act (ESA) to protect threatened or endangered species of salmon. The incidental take statement in that biological opinion requires that the large-scale at-sea processing fishery north of 42° N. lat. not begin before May 15. This constraint remains in effect unless changed in a subsequent incidental take statement.

In 1997, the proposed starting dates are May 15 for the catcher/processor and mothership sectors and June 15 for the shore-based sector north of 42° N. lat. The shore-based fleet operating in California between 42° and 40° 30' N. lat. would start on March 1, as in the past, in recognition that this rule would not be implemented by that time. The season south of 40° 30' N. lat. remains unchanged at April 15 as stated at § 660.323(a)(3)(i), and would not be subject to the proposed framework provisions for changing the starting date primarily due to concerns over potential salmon bycatch and harvest of juvenile whiting.

#### *Processing waste products at sea*

The quantity of waste from shore-based processing has been so high as to sometimes exceed the capacity of existing facilities. A solution to this problem is to provide for processing fish waste at sea, even at times when at-sea processing of whiting by catcher/processors or motherships is prohibited. These are completely different operations. A vessel processing whiting waste at sea, and not otherwise involved in the target fishery for whiting, would have very few whole whiting on board, although they may occasionally be found. To be considered a "waste-processing vessel," the vessel must

make only meal, oil, or minced product and cannot make or have on board surimi, fillet, or headed and gutted fish. To assure that no fishing or receipt of whole fish is occurring while at-sea processing of whiting is prohibited, the following restrictions on processing whiting waste are proposed: (1) The vessel must be incapable of fishing for whiting, which would be accomplished by stowing any trawl gear on board and making it inoperable; (2) receipt of codends containing any species of fish would be prohibited; (3) the amount of whole whiting on board must be less than any trip limit for whiting authorized under 50 CFR 660.323(b); and the vessel could not operate as a waste-processing vessel within 48 hours immediately before and after any primary season in which it operates as a catcher/processor or mothership.

#### Housekeeping

A revision to a current prohibition also is proposed. The current regulation at 50 CFR 660.306(m) makes it unlawful to: "Fish with groundfish trawl gear, or carry groundfish trawl gear on board a vessel that also has groundfish on board \* \* \* without having a limited entry permit valid for that vessel \* \* \*." This precludes a vessel from operating as a mothership in the whiting fishery if that vessel still has on board a trawl net from fishing in Alaska. It is not unusual for motherships to enter the whiting fishery directly after departing Alaskan fisheries. To accommodate these vessels, this regulation is proposed to be changed to allow a vessel to operate as a mothership in the whiting fishery as long as any trawl net on board is stowed and rendered inoperable.

A regulation was issued on June 6, 1996, (61 FR 28786) that provided for whiting authorized under old § 663.24, but not needed in the tribal fishery, to be made available to other users. This provision was inadvertently deleted when the regulations governing the Pacific Coast groundfish fisheries were consolidated at 61 FR 34570, July 2, 1996, with all other regulations governing the fisheries off the west coast states and in the Western Pacific, and therefore is included in this proposed rule. Also in the consolidation, an error was made in paragraph (b) of § 660.306 regarding the citation for the definition of prohibited species and a typo exists in paragraph (r) of § 660.306. The corrections are included in this proposed rule.

The Magnuson-Stevens Act requires that the public be provided with a comment period of 15 to 60 days to respond to proposed regulations. Without the final rule being in place by

May 15, the season north of 42° N. lat. will open on May 15 (50 CFR 660.323(a)(3)), but the fishery would open without any allocation between competing sectors because codified Pacific whiting allocation regulations for this area only applied from 1994 through 1996 (50 CFR 660.323(a)(4)). A derby fishery would ensue and a substantial portion of the harvest guideline could be taken before the final rule was made effective, thereby disrupting 1997 allocations that would be implemented by the final rule. Considering the urgency of completing rulemaking regarding these proposed measures, NMFS has provided for a 20-day public comment period.

#### Classification

The Assistant Administrator for Fisheries, NOAA (AA), has preliminarily determined that this proposed rule is necessary for management of the Pacific Coast groundfish fishery and that it is consistent with the Magnuson-Stevens Act and other applicable law.

This proposed rule has been determined by OMB to be not significant for purposes of E.O. 12866.

The Assistant General Counsel for Legislation and Regulation of the Department of Commerce certified to the Chief Counsel for Advocacy of the Small Business Administration that this proposed rule, if adopted, would not have a significant economic impact on a substantial number of small entities as follows:

The NMFS standards for determining if an action will have a significant economic impact on a substantial number of small entities are: (1) 5 percent loss of revenue for 20 percent of the participants; (2) 10 percent increase in compliance costs for 20 percent of the participants; and (3) 2 percent of the participants cease operations. In the whiting fishery, catcher/processor and mothership (at-sea processing) vessels are considered large businesses, and catcher vessels (that do not process) and shore-based processors are considered small businesses. The allocations, which were derived by industry consensus at a number of public meetings in 1996, are within 5 percent of the proportions taken in 1994–96.

The proposed action would result in shore-based catcher vessels harvesting, and shore-based processors receiving, 42 percent of the annual commercial harvest guideline for whiting, which is a 5 percent increase over their 1994–96 average proportion of catch. Catcher vessels delivering to motherships would realize a 4 percent decline compared to their 1994–96 average proportion of catch. Many catcher vessels deliver both on shore and to motherships at sea, and the impact on catcher vessels is most relevant by combining the impacts on all catcher vessels that do not process, whether delivering on shore or at

sea. The proposed rule would provide a net increase of 1 percent of the commercial harvest guideline (from 65 to 66 percent) for catcher vessels that do not process, an increase of 5 percent shoreside, and a decrease of 4 percent for at sea deliveries to motherships. The "no action alternative," that is to not make an allocation, would result in a derby style fishery (given that the 1994–96 allocation expired in 1996) with the shore-based sector taking as little as 16 percent of the commercial harvest guideline and nonprocessor catcher vessels taking as little as 49 percent. Therefore, the "no action alternative" could result in a significant adverse economic impact on these small businesses.

The proposed rule seeks to maintain approximate allocation percentages based on the 1994–96 averages, and thus to minimize disruption of current operations. The framework process for changing season dates and for allowing processing of fish waste at sea outside the primary season will provide flexibility in operations of both small and large businesses without changing the total amounts of whiting available to each sector. Therefore, these proposed actions will not have a significant impact on a substantial number of small entities.

Notwithstanding any other provision of law, no person is required to respond to, nor shall a person be subject to, a penalty for failure to comply with a collection of information subject to the requirements of the Paperwork Reduction Act unless that collection of information displays a currently valid control number.

This rule contains a collection-of-information requirement subject to the Paperwork Reduction Act. This collection-of-information requirement has been submitted to OMB for approval (OMB #0648–0203). It involves, concurrent with renewal of a limited entry permit, checking a box to indicate if a catcher/processor will operate entirely as a mothership in the whiting fishery during the year covered by the permit. Fewer than 15 catcher/processors operate in this fishery, and even fewer are expected to exercise this option. Therefore the information collection is so minor as not to result in an increase in burden hours on the public.

Public comment is sought regarding: Whether this proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information has practical utility; the accuracy of the burden estimate; ways to enhance the quality, utility, and clarity of the information to be collected; and ways to minimize the burden of the collection techniques or other forms of information technology. Comments on the collection of information burden or any other aspect of the information

collection may be sent to OMB, listed in the ADDRESSES section above.

A formal section 7 consultation under the ESA was initiated for the groundfish fishery. In a biological opinion dated August 28, 1993, and subsequent biological opinions dated September 27, 1993, and May 14, 1996, resulting from reinitiations, the AA determined that fishing activities conducted under the PCGFMP and its implementing regulations are not likely to jeopardize the continued existence of any endangered or threatened species under the jurisdiction of NMFS or result in the destruction or adverse modification of critical habitat. This proposed rule is within the scope of those consultations.

#### List of Subjects in 50 CFR Part 660

Administrative practice and procedure, Fisheries, Fishing, Reporting and recordkeeping requirements.

Dated: April 9, 1997.

**Nancy Foster,**

*Deputy Assistant Administrator for Fisheries, National Marine Fisheries Service.*

For the reasons set out in the preamble, 50 CFR part 660 is proposed to be amended as follows:

#### PART 660—FISHERIES OFF WEST COAST STATES AND IN THE WESTERN PACIFIC

1. The authority citation for part 660 continues to read as follows:

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

2. In § 660.306, in paragraph (b), the reference to § 660.302 is changed to § 660.323(c), paragraphs (j), (k), (m), (q), and (r) are revised, and paragraphs (u), (v), and (w) are added, to read as follows:

##### § 660.306 Prohibitions.

\* \* \* \* \*

(j) Process whiting in the fishery management area during times or in areas where at-sea processing is prohibited for the sector in which the vessel participates, unless:

(1) The fish are received from a member of a Pacific Coast treaty Indian tribe fishing under § 660.324;

(2) The fish are processed by a waste-processing vessel according to § 660.323(a)(4)(vii); or

(3) The vessel is completing processing of whiting taken on board during that vessel's primary season.

(k) Take and retain or receive, except as cargo or fish waste, whiting on a vessel in the fishery management area that already possesses processed whiting on board, during times or in areas where at-sea processing is prohibited for the sector in which the

vessel participates, unless the fish are received from a member of a Pacific Coast treaty Indian tribe fishing under § 660.324.

\* \* \* \* \*

(m) Fish with groundfish trawl gear, or carry groundfish trawl gear on board a vessel that also has groundfish on board, without having a limited entry permit valid for that vessel affixed with a gear endorsement for trawl gear, unless:

(1) The vessel is in continuous transit from outside the fishery management area to a port in Washington, Oregon, or California; or

(2) The vessel is a mothership, in which case trawl gear must be stowed in a secured and covered manner, detached from all towing lines, so that it is rendered unusable for fishing.

\* \* \* \* \*

(q) Carry on board a vessel, or deploy, limited entry gear when the limited entry fishery for that gear is closed, except a vessel may carry on board limited entry gear as provided in paragraph (m) of this section.

(r) Refuse to submit fishing gear or fish subject to such person's control to inspection by an authorized officer, or to interfere with or prevent, by any means, such an inspection.

\* \* \* \* \*

(u) To participate in the mothership or shoreside sector as a catcher vessel that does not process fish, if that vessel operates in the same calendar year as a catcher/processor in the whiting fishery, according to § 660.323(a)(4)(ii)(B).

(v) Operate as a waste-processing vessel within 48 hours of a primary season for whiting in which that vessel operates as a catcher/processor or mothership, according to § 660.323(a)(4)(vii).

(w) Fail to keep the trawl doors on board the vessel and attached to the trawls on a vessel used to fish for whiting, when taking and retention is prohibited under § 660.323(a)(3)(v).

3. In § 660.323, paragraphs (a)(3)(i), (a)(3)(iv), and (a)(4) are revised to read as follows:

##### § 660.323 Catch restrictions.

\* \* \* \* \*

(a) \* \* \*

(3) *Pacific whiting (whiting)*—(i) *Seasons.* The primary seasons for the whiting fishery are: For the shore-based sector, the period(s) when the large-scale target fishery is conducted (when trip limits under paragraph (b) of this section are not in effect); for catcher/processors, the period(s) when at-sea processing is allowed and the fishery is open for the catcher/processor sector;

and for vessels delivering to motherships, the period(s) when at-sea processing is allowed and the fishery is open for the mothership sector. Before and after the primary seasons for the shore-based sector, trip landing or frequency limits may be imposed under paragraph (b) of this section. The sectors are defined at paragraph (a)(4) of this section.

(A) *North of 40°30' N. lat.* Different starting dates may be established for the catcher/processor sector, the mothership sector, and vessels delivering to shoreside processors north of 42° N. lat., and catcher vessels delivering to shoreside processors between 42°–40°30' N. lat.

(1) *Procedures.* The primary seasons for the whiting fishery north of 40°30' N. lat. generally will be established according to the procedures in the PCGFMP for developing and implementing annual specifications and apportionments. The season opening dates remain in effect unless changed, but will be announced annually, generally with the annual specifications and management measures.

(2) *Criteria.* The start of a primary season may be changed based on a recommendation from the Council and consideration of the following factors, if applicable: Size of the harvest guidelines for whiting and bycatch species; age/size structure of the whiting population; expected harvest of bycatch and prohibited species; availability and stock status of prohibited species; expected participation by catchers and processors; environmental conditions; timing of alternate or competing fisheries; industry agreement; fishing or processing rates; and other relevant information.

(B) *South of 40°30' N. lat.* The primary season starts on April 15 south of 40°30' N. lat.

\* \* \* \* \*

(iv) *At-sea processing.* Whiting may not be processed at sea south of 42°00' N. lat. (Oregon-California border), unless authorized under paragraph (a)(4)(vii) of this section.

\* \* \* \* \*

(4) *Whiting—allocation.* (i) *Sectors and allocations.* The commercial harvest guideline for whiting is allocated among three sectors, as follows.

(A) *Sectors.* The catcher/processor sector is composed of catcher/processors, which are vessels that harvest and process whiting during a calendar year. 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 during a calendar year. The shoreside sector is composed of vessels that harvest whiting for delivery to shore-based processors.

(B) *Allocations.* The allocations are: 34 percent for the catcher/processor sector; 24 percent for the mothership sector; and 42 percent for the shoreside sector. No more than 5 percent of the shoreside allocation may be taken and retained south of 42° N. lat. before the start of the primary season north of 42° N. lat. These allocations are harvest guidelines unless otherwise announced in the **Federal Register**.

(ii) *Additional restrictions on catcher/processors.*

(A) A catcher/processor may receive fish from a catcher vessel, but that catch is counted against the catcher/processor allocation unless the catcher/processor has been declared as a mothership under paragraph (a)(4)(ii)(C) of this section.

(B) A catcher/processor may not also act as a catcher vessel delivering unprocessed whiting to another processor in the same calendar year.

(C) When renewing its limited entry permit each year under § 660.333, the owner of a catcher/processor used to take and retain whiting must declare if the vessel will operate solely as a mothership in the whiting fishery during the calendar year to which its limited entry permit applies. Any such declaration is binding on the vessel for the calendar year, even if the permit is transferred during the year, unless it is rescinded by written request from the permit holder. The request to rescind a declaration must be granted in writing by the Regional Administrator before the vessel can take whiting on board.

(iii) *Reaching an allocation.* If the whiting harvest guideline, commercial harvest guideline, or a sector's allocation is reached, or is projected to be reached, the following action(s) for the applicable sector(s) may be taken as provided under paragraph (a)(4)(vi) and will remain in effect until additional amounts are made available the next fishing year or under paragraph (a)(4)(iv) of this section.

(A) *Catcher/processor sector.* Further taking and retaining, receiving, or at-sea processing of whiting by a catcher/processor is prohibited. No additional unprocessed whiting may be brought on board after at-sea processing is prohibited, but a catcher/processor may continue to process whiting that was on board before at-sea processing was prohibited.

(B) *Mothership sector.* (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 already was on board before at-sea processing was prohibited.

(2) Whiting may not be taken and retained, possessed, or landed by a catcher vessel participating in the mothership sector.

(C) *Shoreside sector.* Whiting may not be taken and retained, possessed, or landed by a catcher vessel participating in the shoreside sector except as authorized under a trip limit specified under § 660.323(b).

(D) *Shoreside south of 42° N. lat.* If 5 percent of the shoreside allocation for whiting is taken and retained south of 42° N. lat. before the primary season for the shoreside sector begins north of 42° N. lat., then a trip limit specified under paragraph (b) of this section may be implemented south of 42° N. lat. until the northern primary season begins, at which time the southern primary season would resume.

(iv) *Reapportionments.* That portion of a sector's allocation that the Regional Administrator determines will not be used by the end of the fishing year shall be made available for harvest by the other sectors, if needed, in proportion to their initial allocations, on September 15 or as soon as practicable thereafter. NMFS may release whiting again at a later date to ensure full utilization of the resource. Whiting not needed in the fishery authorized under § 660.324 also may be made available.

(v) *Estimates.* Estimates of the amount of whiting harvested will be based on actual amounts harvested, projections of amounts that will be harvested, or a combination of the two. Estimates of the amount of whiting that will be used by shoreside processors by the end of the fishing year will be based on the best information available to the Regional Administrator from state catch and landings data, the survey of domestic processing capacity and intent, testimony received at Council meetings, and/or other relevant information.

(vi) *Announcements.* The Assistant Administrator will announce in the **Federal Register** when a harvest guideline, commercial harvest guideline, or an allocation of whiting is reached, or is projected to be reached, specifying the appropriate action being taken under paragraph (a)(4)(iii) of this section. The Regional Administrator

will announce in the **Federal Register** any reapportionment of surplus whiting to other sectors on September 15, or as soon as practicable thereafter. In order to prevent exceeding the limits or to avoid underutilizing the resource, prohibitions against further taking and retaining, receiving, or at-sea processing of whiting, or reapportionment of surplus whiting may be made effective immediately by actual notice to fishermen and processors, by phone, fax, Northwest Region computerized bulletin board (contact 206-526-6128), letter, press release, and/or U.S. Coast Guard Notice to Mariners (monitor channel 16 VHF), followed by publication in the **Federal Register**, in which instance public comment will be sought for a reasonable period of time thereafter. If insufficient time exists to consult with the Council, the Regional Administrator will inform the Council in writing of actions taken.

(vii) *Processing fish waste at sea.* A vessel that processes only fish waste (a "waste-processing vessel") is not considered a whiting processor and therefore is not subject to the allocations, seasons, or restrictions for catcher/processors or motherships while it operates as a waste-processing vessel. However, no vessel may operate as a waste-processing vessel 48 hours immediately before and after a primary season for whiting in which the vessel operates as a catcher/processor or mothership. A vessel must meet the following conditions to qualify as a waste-processing vessel:

(A) The vessel makes meal (ground dried fish), oil, or minced (ground flesh) product, but does not make, and does not have on board, surimi (fish paste with additives), fillets (meat from the side of the fish, behind the head and in front of the tail), or headed and gutted fish (head and viscera removed).

(B) The amount of whole whiting on board does not exceed the trip limit (if any) allowed under paragraph (b) of this section.

(C) Any trawl gear on board is stowed in a secured and covered manner, detached from all towing lines, so that it is rendered unusable for fishing.

(D) The vessel does not receive codends containing fish.

(E) The vessel's operations are consistent with applicable state and Federal law, including those governing disposal of fish waste at sea.

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