

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 660

[Docket No. 141222999-5114-01]

RIN 0648-BE72

Fisheries off West Coast States; Pacific Coast Groundfish Fishery; Trawl Rationalization Program; Midwater Trawl Fishery Season Date Change

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

ACTION: Proposed rule; request for comments.

SUMMARY: This action would implement revisions to the Pacific Coast Groundfish Trawl Rationalization Program affecting the limited entry midwater trawl fisheries managed under the Pacific Coast Groundfish Fishery Management Plan (FMP). This action would revise the Shorebased Individual Fishing Quota (IFQ) Program regulations to change the primary season opening date for the shorebased whiting fishery and the shorebased non-whiting midwater trawl fishery to May 15 north of 40°30' N. lat. to the U.S./Canada border. This moves the season a month earlier off Washington and Oregon, and a month and half later off northern California (north of 40°30' N. lat.), increasing consistency in the season start date along the coast and between the shorebased and at-sea midwater trawl fleets.

DATES: Comments on this proposed rule must be received on or before [Insert date 30 days after date of publication in the FEDERAL REGISTER].

ADDRESSES: You may submit comments on this document, identified by NOAA-NMFS-

2015-0016, by any of the following methods:

- Electronic Submission: Submit all electronic public comments via the Federal e-Rulemaking Portal. Go to www.regulations.gov#!docketDetail;D=NOAA-NMFS-2015-0016, click the “Comment Now!” icon, complete the required fields, and enter or attach your comments.
- Mail: Submit written comments to William W. Stelle, Jr., Regional Administrator, West Coast Region, NMFS, 7600 Sand Point Way NE, Seattle, WA 98115-0070; Attn: Jamie Goen.
- Fax: 206-526-6426; Attn: Jamie Goen.

Instructions: Comments sent by any other method, to any other address or individual, or received after the end of the comment period, may not be considered by NMFS. All comments received are a part of the public record and will generally be posted for public viewing on www.regulations.gov without change. All personal identifying information (e.g., name, address, etc.), confidential business information, or otherwise sensitive information submitted voluntarily by the sender will be publicly accessible. 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, or Adobe PDF file formats only.

FOR FURTHER INFORMATION CONTACT: Jamie Goen, 206-526-4656;

jamie.goen@noaa.gov.

SUPPLEMENTARY INFORMATION:

Background

In January 2011, NMFS implemented a trawl rationalization program, a type of catch share program, for the Pacific coast groundfish fishery’s trawl fleet. The program was adopted

through Amendment 20 to the FMP and consists of three sectors: an IFQ program for the shorebased trawl fleet (including vessels targeting whiting and non-whiting with midwater trawl gear); and cooperative (coop) programs for the at-sea mothership (MS) and catcher/processor (C/P) trawl fleets (whiting only).

Since implementation, the Pacific Fishery Management Council (Council) and NMFS have been working to implement additional regulatory changes to further improve the trawl rationalization program and respond to industry requests. Changing the midwater trawl fishery season date would further increase consistency in the season start date along the coast and between the shorebased and at-sea midwater trawl fleets. This rule would revise the Shorebased IFQ Program regulations to change the primary season opening date for the midwater trawl fishery (whiting and non-whiting) to May 15 north of 40°30' N. lat. to the U.S./Canada border. This would move the season a month earlier off Washington and Oregon and a month and half later off northern California (north of 40°30' N. lat.).

The Council discussed the season date change at its March and April 2012 meetings, with final Council recommendations to NMFS during the September 2012 Council meeting. In addition, NMFS received further clarification on these issues from the Council at its November 2014 meeting.

Evolution of Seasons

While this action would affect the season start date for shorebased midwater trawl fisheries that target whiting or other groundfish (“non-whiting”), historically the season start dates were for midwater fisheries targeting whiting. However, since 2011 and the start of the trawl rationalization program, the Pacific whiting start date applies to the use of all midwater trawl gear regardless of the target species. In 1991, foreign fishing in U.S. waters ended and

whiting became a fully domestic fishery with both at-sea and shorebased vessels. The season started on January 1 but fishing did not start until late spring when the fish were more available. In 1992, the season start date was set at April 15. In 1996, the at-sea sectors (mothership and catcher/processor) and the shorebased sector north of 42° N. lat. (northern fishery off Washington and Oregon) all started on May 15, the shorebased sector between 42° and 40°30' N. lat. (central fishery off northern California) started on March 1, and the shorebased sector south of 40°30' N. lat. (southern fishery off central and southern California) continued to start on April 15. Since 1997, the whiting seasons have started as follows: May 15 for the at-sea sectors, June 15 for the northern shorebased sector, April 1 for the central shorebased sector, and April 15 for the southern shorebased sector.

The 1997 delay in the season start date for the northern shorebased fishery to June 15 allowed shorebased vessels to deliver whiting to at-sea motherships for a full month or until the at-sea allocation was met and then to switch their delivery strategy to shorebased facilities until the shorebased allocation was met for the year. The delay for the northern shorebased fishery from May 15 to June 15 also allowed shorebased vessels to complete their May-June DTS (Dover sole, thornyhead, sablefish complex) cumulative limits before the start of the whiting fishery (it was not permissible to land more than 60 percent of the DTS limit in a particular month). The shift from a May 15 to a June 15 opening (and from March 1 to April 1 for the central area) was expected to allow the whiting to grow to a larger size prior to harvest. These date changes also affected bycatch of other species caught with midwater trawl gear. Bycatch rates of rockfish were expected to increase with the later northern start date because more of the whiting stock biomass would be in northern areas, where rockfish such as yellowtail and widow are more available to midwater gear. Bycatch of salmon was expected to be difficult to predict,

but presumed to be lower in the summer months for the shorebased fishery and higher later in the year for the at-sea fishery.

The 1997 season date change also included an allocation decision to limit the California fisheries to taking a total of 5 percent of the shorebased allocation prior to the start of the northern fishery to prevent further expansion in that area. In addition to modifying the season dates and establishing a California early season allocation, the 1997 action also established a framework in the regulations for modifying the season opening dates on an annual basis (50 CFR 660.131(b)(2)). This action to change the northern and central shorebased season start dates for midwater fisheries (whiting and non-whiting) to May 15 would not change the framework regulation at § 660.131(b)(2) nor would it change the California early season allocation, other than to limit it to the southern shorebased fishery.

Re-Emerging Non-Whiting Midwater Trawl Fishery

Prior to 2001, a shorebased midwater trawl fishery existed, primarily targeting widow, yellowtail, and chilipepper rockfishes. In 2001 and 2002, catches in the non-whiting midwater fishery were drastically reduced by management measures to protect widow and other overfished rockfish. Widow rockfish was declared overfished in 2001, reducing the amount that could be harvested to bycatch. In addition, large coastwide closed areas, called rockfish conservation areas, were implemented in 2002 to reduce the catch of several overfished rockfish species. These changes eliminated the shorebased non-whiting midwater trawl fishery. Since implementation of the trawl rationalization program in 2011 and the declaration of widow rockfish as rebuilt, there are increasing opportunities for non-whiting midwater trawl fisheries. With implementation of the trawl rationalization program, the regulatory distinctions between the shorebased whiting and the non-whiting fishery were blurred. The season start date for the

whiting fishery was interpreted to apply to all midwater fishing (whiting and non-whiting). The season date change in this action would also affect the non-whiting midwater trawl fishery.

Expected Impacts

Changing the season opening date for the midwater trawl fishery (whiting and non-whiting) to May 15 north of 40°30' N. lat. to the U.S./Canada border would move the season a month earlier off Washington and Oregon, and a month and half later off northern California (north of 40°30' N. lat.). This action would not change the areas open to groundfish fishing or the total amount of groundfish available for harvest, but it would shift when those fish can be caught. A single coastwide opening north of 40°30' N. lat. would simplify the regulations. This change would align the northern and central shorebased fisheries with the at-sea fisheries, increase flexibility for the northern shorebased fishery, and equalize opportunity among most of the midwater sectors (except the southern shorebased fishery which would remain at April 15). With implementation of the trawl rationalization program in 2011, it is no longer necessary to stagger seasons in the whiting fishery to increase access to groundfish. While moving the season start date for the central shorebased fishery would result in a shortened season for the central area, no impact to this fishery is expected because there has not been harvest in northern California since implementation of the trawl rationalization program.

In addition to the expected impacts on groundfish, NMFS must also consider the impacts on salmon. Salmon, predominately Chinook, are caught as bycatch in groundfish midwater trawl fisheries. Some of the Chinook caught with midwater trawl gear are listed as endangered or threatened under the Endangered Species Act (ESA). NMFS considered the effects of ongoing implementation of the groundfish FMP on listed salmonid species in a biological opinion issued on December 15, 1999. That opinion noted that steelhead, sockeye, and cutthroat trout are

rarely, if ever, encountered in the groundfish fishery. Coho and chum are caught in relatively low numbers in the whiting fishery with average catch per year coastwide on the order of tens to a few hundred fish and in the bottom trawl fishery on the order of tens of fish per year. The 1999 opinion focused on bycatch of Chinook salmon, which comprises the largest portion of salmonid bycatch in the whiting fishery.

The 1999 opinion determined that the fishery was not likely to jeopardize any of the ESA-listed Chinook and provided an incidental take statement estimating that total Chinook bycatch (listed and unlisted fish) for the whiting fishery (MS, C/P, shorebased, and tribal combined), would likely be 11,000 Chinook per year or 0.05 fish per metric ton (mt) of whiting catch. The 1999 opinion indicated consultation must be reinitiated if Chinook bycatch rates exceed these amounts. For the bottom trawl fishery, the 1999 biological opinion estimated that 6,000 to 9,000 Chinook salmon would be taken annually. The biological opinion concluded that if the bottom trawl fishery changes substantially in magnitude or character or if bycatch exceeds 9,000 Chinook, consultation must be reinitiated.

In 2013, NMFS reinitiated section 7 consultation on the FMP to address the effects on salmonids caused by the re-emerging use of midwater trawl gear to target non-whiting groundfish species such as yellowtail and widow rockfish. The request was made due to the evolution of the trawl fishery under the trawl rationalization framework and improving conditions for species such as widow rockfish that were expected to change the characteristics of the fishery. In addition, West Coast Groundfish Observer Program data reports showed new estimates of Chinook and coho salmon bycatch in the nearshore fixed gear fisheries (open access and limited entry fisheries), limited entry sablefish fishery, and open access California Halibut fishery. In October 2014, the whiting fishery exceeded the 11,000 Chinook and 0.05 Chinook

salmon/mt whiting reinitiation triggers stated in the 1999 biological opinion. Given this, NMFS determined that the reinitiation should address the effects on listed salmonids of all fishing under the FMP.

In the interim, NMFS will be monitoring the take of salmon inseason and expects industry to take measures to reduce salmon bycatch, if needed. All midwater trawl fisheries have 100 percent monitoring and are required to track the catch of prohibited and protected species, such as salmon.

NMFS and the Council estimated the bycatch of Chinook in 2015 based on the amount of target species (whiting, widow, and yellowtail rockfish) available to harvest. While the allowable harvest amounts for these target species will not be determined until the spring, they are expected to increase in 2015 and 2016. However, catch of salmon in groundfish trawl fisheries is highly variable from year to year, including in years when the season was as early as April 15 and as late as June 15. For salmon listed under the ESA, NMFS expects the bycatch of Chinook to remain within the amounts considered in the 1999 biological opinion for all groundfish trawl fisheries combined (20,000 Chinook) even if harvest limits for target groundfish species increases. For more information, see the draft environmental assessment at the website provided or the ESA information listed in the Classification section of this preamble.

Classification

Pursuant to section 304(b)(1)(A) of the MSA, the NMFS Assistant Administrator has determined that this proposed rule is consistent with the Pacific Coast Groundfish FMP, other provisions of the MSA, and other applicable law, subject to further consideration after public comment.

The Council prepared an environmental assessment (EA) for this action. The draft EA is

available on the Council's website at <http://www.pcouncil.org/> or on NMFS' website at <http://www.nwr.noaa.gov/Groundfish-Halibut/Groundfish-Fishery-Management/Trawl-Program/index.cfm>.

Pursuant to the procedures established to implement section 6 of Executive Order 12866, the Office of Management and Budget has determined that this proposed rule is not significant.

An initial regulatory flexibility analysis (IRFA) was prepared, as required by section 603 of the Regulatory Flexibility Act (RFA). The IRFA describes the economic impact this proposed rule, if adopted, would have on small entities. A description of the action, why it is being considered, and the legal basis for this action are contained at the beginning of this section in the preamble and in the SUMMARY section of the preamble. A Regulatory Impact Review (RIR) was also prepared on the action and is included as part of the IRFA. A copy of the IRFA is available from NMFS (see ADDRESSES) and a summary of the IRFA, per the requirements of 5 U.S.C. 604(a) follows:

As described above, this action would revise the Shorebased IFQ Program regulations to change the primary season opening date for the whiting and non-whiting midwater trawl fisheries to May 15 north of 40°30' N. lat. to the U.S./Canada border. This would move the season a month earlier off Washington and Oregon, and a month and half later off northern California (north of 40°30' N. lat.), increasing consistency in the season start date along the coast and between the shorebased and at-sea midwater trawl fleets.

This action would affect shorebased midwater trawlers in the trawl rationalization program and the processors that receive their product. During the 2011 to 2014 period, 30 midwater trawl vessels delivered to 10 shoreside processing plants in this fishery. Some vessels share common ownership, other vessels are owned by processing companies, and some

companies own multiple processing plants. After accounting for these relationships, there are 26 entities that have participated in the fishery, 22 of which are small entities, based on NMFS' review of available information.

The alternatives considered changing the season start date for the northern fishery, off Washington and Oregon from 42° N. lat. to the U.S./Canada border, from June 15 to May 15 and for the central fishery, off northern California from 40°30' N. lat. to 42° N. lat., from April 1 to May 15. The April 15 start date for the southern fishery, south of 40°30' N. lat., would remain unchanged.

Under the Action Alternative (May 15 season start from 40°30' N. lat. to the U.S./Canada border), the same amount of whiting and non-whiting groundfish species will be available for harvest using midwater trawl gear as under the No Action Alternative (April 1 between 40°30' N. lat. to 42° N. lat., June 15 from 42° N. lat. to the U.S./Canada border). The proposed season opening date change will give fishers in the northern fishery greater flexibility in maximizing net operating profits and social benefits from fixed amounts of fish (for which quota share is required to cover impacts), thus a positive change in impact to the harvest sector is projected under the Action Alternative compared to the No Action Alternative. No change in impact is expected in the central fishery in the near term under the Action Alternative because the fishery in that area has been inactive with the Shorebased IFQ Program in place.

The main impact to the harvest sector from the Action Alternative, (as compared to the No Action Alternative) in the northern fishery will be to increase the flexibility that individual vessel operators have in using their IFQ with midwater gear by adding one month to the duration of their season. This additional time in the northern fishery should allow vessels and processors more opportunity to adjust their operations to changing market conditions and to changes in

other fisheries. Increasing the time available to fish in the northern fishery may lead to increased harvests. During 2014, the total IFQ fishery (fixed gear, midwater, and bottom trawl) left 1.6 million lbs of chilipepper rockfish (70% of the total IFQ quota), 46 million lbs of Pacific whiting (17%), 750,000 lbs of widow rockfish (37%), and 3.9 million lbs of yellowtail rockfish (60%) unharvested. Increasing the time available to fish in the northern fishery may allow fishermen and processors to adjust their operations to increase participation in other fisheries such as the crab, shrimp, or mothership fishery for whiting. One of the reasons for the staggered opening (May 15 for at-sea and June 15 for shorebased) was to reduce the conflict between the catcher vessels fishing for motherships and those in the shorebased fishery. Both fisheries were managed through season closures, which resulted in a race for fish (as “derby” fisheries). The trawl rationalization program, however, reserves for each quota holder a specific amount of fish, eliminating the race for fish and reducing the potential for conflicting opportunities. With the trawl rationalization program in place, a common opening date for these fisheries would not force quota holders to choose between them (i.e. participation in one fishery would not preclude participation in the other). The mothership is now managed by a single coop that plans participation preseason. Increasing the season length may allow the co-op to consider allowing alternative vessels to participate in the coop.

With an increase in the fishing season, the number of shorebased processors and vessels participating in the fishery are not expected to change. The midwater fishery is predominantly a Pacific whiting fishery where major investments in equipment would be needed by a processor to enter the fishery. Vessels participation is also not expected to change. Given that large portions of the IFQ allocations are unharvested, improvements in the basic markets for midwater trawl species will determine participation. Changing the season length will provide increased

opportunities to take advantage of these improvements.

In summary, an extended shorebased season will increase the choices available for the northern fishery (off Oregon and Washington), providing an opportunity to improve business decisions and potential profits from the fishery. For the central fishery, there would be a contraction in flexibility to harvest from April 1 to May 15. Reducing the season in the central fishery may have a chilling effect on the potential growth in the fishery. However, data for 2011 through 2014 shows no midwater trawl gear harvest is occurring in this area under the IFQ program.

NMFS believes this rule, if finalized in this form, would not have a significant difference in impacts when comparing small versus large businesses in terms of disproportionality and profitability, given available information. Through this rulemaking process, we are specifically requesting comments on this conclusion.

There are no Federal reporting and recordkeeping requirements associated with this action. There are no relevant Federal rules that may duplicate, overlap, or conflict with this action.

NMFS issued Biological Opinions under the Endangered Species Act (ESA) on August 10, 1990, November 26, 1991, August 28, 1992, September 27, 1993, May 14, 1996, and December 15, 1999 pertaining to the effects of the Groundfish FMP fisheries on Chinook salmon (Puget Sound, Snake River spring/summer, Snake River fall, upper Columbia River spring, lower Columbia River, upper Willamette River, Sacramento River winter, Central Valley spring, California coastal), coho salmon (Central California coastal, southern Oregon/northern California coastal), chum salmon (Hood Canal summer, Columbia River), sockeye salmon (Snake River, Ozette Lake), and steelhead (upper, middle and lower Columbia River, Snake

River Basin, upper Willamette River, central California coast, California Central Valley, south/central California, northern California, southern California). These biological opinions have concluded that implementation of the FMP is not expected 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.

NMFS issued a Supplemental Biological Opinion on March 11, 2006, concluding that neither the higher observed bycatch of Chinook in the 2005 whiting fishery nor new data regarding salmon bycatch in the groundfish bottom trawl fishery required a reconsideration of its prior “no jeopardy” conclusion. NMFS also reaffirmed its prior determination that implementation of the FMP is not likely to jeopardize the continued existence of any of the affected ESUs. Lower Columbia River coho (70 FR 37160, June 28, 2005) and Oregon Coastal coho (73 FR 7816, February 11, 2008) were relisted as threatened under the ESA. The 1999 biological opinion concluded that the bycatch of salmonids in the Pacific whiting fishery were almost entirely Chinook salmon, with little or no bycatch of coho, chum, sockeye, and steelhead.

NMFS has reinitiated section 7 consultation on the Pacific Coast Groundfish FMP with respect to its effects on listed salmonids. In the event the consultation identifies either reasonable and prudent alternatives to address jeopardy concerns, or reasonable and prudent measures to minimize incidental take, NMFS would coordinate with the Council to put additional alternatives or measures into place, as required. After reviewing the available information, NMFS has concluded that, consistent with sections 7(a)(2) and 7(d) of the ESA, this action will not jeopardize any listed species, would not adversely modify any designated critical habitat, and will not result in any irreversible or irretrievable commitment of resources that would have the effect of foreclosing the formulation or implementation of any reasonable and prudent alternative

measures.

On December 7, 2012, NMFS completed a biological opinion concluding that the groundfish fishery is not likely to jeopardize non-salmonid marine species, including listed eulachon, the southern distinct population segment (DPS) of green sturgeon, humpback whales, the eastern DPS of Steller sea lions, and leatherback sea turtles. The opinion also concluded that the fishery is not likely to adversely modify critical habitat for green sturgeon and leatherback sea turtles. An analysis included in the same document as the opinion concludes that the fishery is not likely to adversely affect green sea turtles, olive ridley sea turtles, loggerhead sea turtles, sei whales, North Pacific right whales, blue whales, fin whales, sperm whales, Southern Resident killer whales, Guadalupe fur seals, or the critical habitat for Steller sea lions. Since that biological opinion, the eastern DPS of Steller sea lions was delisted on November 4, 2013 (78 FR 66140); however, this delisting did not change the designation of the codified critical habitat for the eastern DPS of Steller sea lions. On January 21, 2013, NMFS informally consulted on the fishery's effects on eulachon to consider whether the 2012 opinion should be reconsidered for eulachon in light of new information from the 2011 fishery and the proposed chafing gear modifications. NMFS determined that information about bycatch of eulachon in 2011 and chafing gear regulations did not change the effects that were analyzed in the December 7, 2012 biological opinion, or provide any other basis to reinitiate consultation.

On November 21, 2012, the U.S. Fish and Wildlife Service (FWS) issued a biological opinion concluding that the groundfish fishery will not jeopardize the continued existence of the short-tailed albatross. The FWS also concurred that the fishery is not likely to adversely affect the marbled murrelet, California least tern, southern sea otter, bull trout, nor bull trout critical habitat.

West Coast pot fisheries for sablefish are considered Category II fisheries under the Marine Mammal Protection Act (MMPA), indicating occasional interactions. All other West Coast groundfish fisheries, including the trawl fishery, are considered Category III fisheries under the MMPA, indicating a remote likelihood of or no known serious injuries or mortalities to marine mammals. MMPA section 101(a)(5)(E) requires that NMFS authorize the taking of ESA-listed marine mammals incidental to U.S. commercial fisheries if it makes the requisite findings, including a finding that the incidental mortality and serious injury from commercial fisheries will have a negligible impact on the affected species or stock. As noted above, NMFS concluded in its biological opinion for the 2012 groundfish fisheries that these fisheries were not likely to jeopardize Steller sea lions or humpback whales. The eastern distinct population segment of Steller sea lions was delisted under the ESA on November 4, 2013 (78 FR 66140). On September 4, 2013, based on its negligible impact determination dated August 28, 2013, NMFS issued a permit for a period of three years to authorize the incidental taking of humpback whales by the sablefish pot fishery (78 FR 54553). This proposed rule was developed after meaningful collaboration, through the Council process, with the tribal representative on the Council. The proposed regulations have no direct effect on the tribes; these proposed regulations were deemed by the Council as “necessary or appropriate” to implement the FMP as amended.

List of Subjects in 50 CFR Part 660

Fisheries, Fishing, and Indian fisheries.

Dated: February 10, 2015.

Samuel D. Rauch III,
Deputy Assistant Administrator for Regulatory Programs,
National Marine Fisheries Service.

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

PART 660--FISHERIES OFF WEST COAST STATES

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

Authority: 16 U.S.C. 1801 et seq., 16 U.S.C. 773 et seq., and 16 U.S.C. 7001 et seq.

2. In § 660.131, revise paragraph (b)(2)(iii)(C) to read as follows:

§ 660.131 Pacific whiting fishery management measures.

* * * * *

(b) * * *

(2) * * *

(iii) * * *

(C) Shorebased IFQ Program. The start of the Shorebased IFQ Program primary whiting season is:

(1) North of 40°30' N. lat.—May 15;

(2) South of 40°30' N. lat.—April 15.

* * * * *

[FR Doc. 2015-03079 Filed 02/13/2015 at 8:45 am; Publication Date: 02/17/2015]