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PUBLIC NOTICE

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PACIFIC COAST GROUND FISH FISHERY

Trawl Rationalization Program: **Maintaining Existing Whiting Allocations for IFQ and MS fisheries, Related Regulatory Changes, and Expectations for 2013 Whiting Season**

After further consideration of more recent information and the record as a whole, the National Marine Fisheries Service (NMFS) announces the existing initial allocations for Pacific whiting of quota share in the shorebased individual fishing quota (IFQ) fishery and of mothership catcher vessel catch history assignments in the at-sea mothership (MS) fishery will remain in place. **NMFS' decision and related regulatory changes are effective April 1, 2013**, and published as a final rule in the *Federal Register* on March 28, 2013 (78 FR 18879). This public notice further describes NMFS' decision, the regulatory changes, and expectations for the start of the 2013 whiting season. The final rule, along with other useful information, is posted on NMFS Trawl Program website (listed in the box).

Maintaining Existing Whiting Allocations

NMFS reconsidered initial whiting allocations in the shorebased IFQ and MS coop programs in response to the court's order in *Pacific Dawn v. Bryson*, No. C10-4829 TEH (N.D. Cal.) (*Pacific Dawn*). These initial allocations of whiting take the form of quota share (QS) for both harvesters and processors in the shorebased IFQ program, and catch history assignments (CHAs) for harvesters in the MS fishery.

After reviewing the entire record, including the Pacific Fishery Management Council's (Council's) record and comments received on the proposed rule (78 FR 72, January 2, 2013), NMFS has determined that the existing initial whiting allocations provide for a fair and equitable allocation and are consistent

with the Magnuson-Stevens Act, the groundfish fishery management plan, the court's order in *Pacific Dawn*, and other applicable law.

In the context of the relatively narrow remand ordered by the court in *Pacific Dawn*, NMFS concluded that the reasons supporting maintaining the existing allocations for the shorebased IFQ and MS whiting fisheries outweigh the reasons supporting alternatives that favor more recent history. Maintaining the initial whiting allocations supports the Council's and NMFS' efforts to reduce overcapitalization and end the race for fish consistent with the goals and policies of Amendment 20. The existing whiting allocations also support the importance of the control date for this and future rationalization programs, minimize the concentration of harvester quota, and provide for a wider initial geographic distribution of the program benefits along the coast and the corresponding fishing communities.

More detailed discussion of NMFS' rationale and decision is available in the proposed and final rules,

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NMFS Trawl Program Website

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which can be found on our website [http://www.nwr.noaa.gov/fisheries/groundfish_trawl_catch_share/groundfish_trawl_catch_share_program.html].

Related Regulatory Changes

Although the final rule did not make any changes to initial allocations, it does revise several provisions of the trawl rationalization program and supersedes regulatory delays and/or revisions established through temporary emergency action published on August 1, 2012 (77 FR 45508), and extended on January 17, 2013 (78 FR 3848). Specifically, the regulatory changes will:

1. Allow transfer of QS or individual bycatch quota (IBQ) (except for widow rockfish QS) between QS permit holders in the shorebased IFQ fishery beginning January 1, 2014;
2. Require QS permit holders in the shorebased IFQ fishery holding QS or IBQ in excess of the accumulation limits to divest themselves of excess QS (except for widow rockfish QS) or IBQ by November 30, 2015;
3. Allow limited entry trawl permit holders in the MS fishery to request a change (or transfer) of mothership/catcher vessel (MS/CV) endorsement and its CHA beginning September 1, 2014;
4. Require MS/CV endorsed limited entry trawl permit owners to divest themselves of ownership in permits in excess of the accumulation limits by August 31, 2016; and
5. Extend the divestiture period delay and moratorium on transfer of widow rockfish QS in the shorebased IFQ fishery indefinitely.

Each of these elements, along with additional background information, were described in detail in the proposed rule.

Expectations for 2013 Whiting Season

Several steps must still occur for NMFS to implement the existing whiting allocations for the 2013 season. NMFS intends to complete these steps prior to May 15, 2013, which is the start of the whiting primary season for the mothership sector and the catcher processor sector. The start of the whiting primary season for the Shorebased IFQ sector varies depending on latitude, and is as early as April 1, 2013 in some areas. However, based on

available information from 2011 and 2012, NMFS does not anticipate a directed whiting fishery in the shorebased IFQ fishery will occur prior to May 15, 2013. Accordingly, NMFS anticipates completing the steps discussed below by May 15th.

First, NMFS must announce the U.S. portion of the total allowable catch of Pacific whiting for 2013. Under the bilateral process with Canada, the Joint Management Committee makes recommendations on the total allowable catch no later than March 25th of each year. The decision on whether to accept or reject the recommendations will be announced in the *Federal Register* along with the final rule announcing the overall allocations of the total allowable catch to the IFQ, MS, and catcher-processor sectors, and the tribal allocation. NMFS expects the 2013 final rule to be effective in early May. (In 2012, this happened on May 11).

Second, for the IFQ fishery, NMFS must “top-up” whiting quota pounds in QS accounts. In order to do this, NMFS must use the 2013 total allowable catch and final whiting allocation to the IFQ sector to calculate how much additional whiting quota pounds to issue to QS accounts. Recall that the IFQ fishery was allocated an interim, conservative amount of whiting at the start of the year because this sector does incidentally catch small amounts of whiting while fishing for other groundfish species. When the final whiting allocation for the IFQ fishery is known, NMFS must subtract the amount issued to the IFQ fishery at the start of the year from the final allocation. The resulting difference is used to adjust or “top-up” whiting quota pounds in QS accounts. The MS fishery would not be subject to a similar top-up because fishing does not begin in that sector until May 15 each year and they do not receive interim amounts at the start of the year. For the MS fishery, when the final whiting allocation is known, the CHAs from all MS/CV-endorsed permits that are members of a coop are combined and allocated to the coop. Before May 15th each year, NMFS announces the resulting amount to the MS coop in the cover letter that accompanies their 2013 MS coop permit.

Third, for the IFQ fishery, there are other adjustments to consider in the spring in addition to whiting. To streamline administrative burden of the IFQ allocation adjustment process for NMFS and to

allow for better business planning and reduced complexity for the participants, NMFS plans to adjust the IFQ allocation for whiting and halibut in QS accounts, and credit surplus carryover to vessel accounts at the same time. Pacific halibut is similar to whiting in that the IFQ fishery starts the year with an interim, conservative amount which is topped-up once the final amount of halibut is known. The final halibut amount was decided by the International Pacific Halibut Commission in late January 2013. The U.S. Secretary of State must then approve the resulting amounts for the U.S. fishery and NMFS must calculate the amount available to the IFQ fishery (final halibut amount minus the interim amount issued at the start of the year), and adjust or top-up halibut quota pounds in QS accounts. For

surplus carryover, NMFS will make a decision once 2012 catch data is final, including final discard data from the observer program. NMFS expects to have final data in April. When making our decision based on final data, NMFS will consider the Council's recommendation from its March 2013 meeting to issue surplus carryover for all IFQ species, except whiting.

In sum, NMFS intends to have fully implemented the whiting allocations for all sectors, and also completed issuance of surplus carryover and halibut quota pounds by May 15, 2013 so that fishery can proceed accordingly.

This public notice serves as a Small Entity Compliance Guide for the final rule (78 FR 18879; March 28, 2013) which reconsidered the allocation of whiting in the federal Pacific coast groundfish fishery. This public notice was prepared pursuant to section 212 of the Small Business Regulatory Enforcement Fairness Act of 1996, Pub. L. 104-121. The statements in this document are intended solely as guidance. This document provides a plain-language summary of how small businesses can comply with these final regulations.
