

**DEPARTMENT OF COMMERCE****National Oceanic and Atmospheric Administration****50 CFR Part 648**

[Docket No. 060418103-6181-02]

RIN 0648-XD92

**Fisheries of the Northeastern United States; Spiny Dogfish Fishery; Commercial Period 2 Quota Harvested**

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

**ACTION:** Closure of spiny dogfish fishery.

**SUMMARY:** NMFS announces that the spiny dogfish commercial quota available to the coastal states from Maine through Florida for the semi-annual quota period, November 1, 2007 - April 30, 2008, has been harvested. Therefore, effective 0001 hours, November 16, 2007, federally permitted commercial vessels may not fish for, possess, transfer, or land spiny dogfish until May 1, 2008, when the 2008 Period 1 quota becomes available. Federally permitted dealers are also advised that they may not purchase spiny dogfish from federally permitted spiny dogfish vessels through April 30, 2007. Regulations governing the spiny dogfish fishery require publication of this notification to advise the coastal states from Maine through Florida that the quota has been harvested and to advise vessel permit holders and dealer permit holders that no Federal commercial quota is available for landing spiny dogfish in these states. This action is necessary to prevent the fishery from exceeding its Period 2 quota and to allow for effective management of this stock.

**DATES:** Effective at 0001 hr local time, November 16, 2007, through 2400 hr local time April 30, 2008.

**FOR FURTHER INFORMATION CONTACT:** Don Frei, Fisheries Management Specialist, at (978) 281-9221, or [Don.Frei@noaa.gov](mailto:Don.Frei@noaa.gov).

**SUPPLEMENTARY INFORMATION:**

Regulations governing the spiny dogfish fishery are found at 50 CFR part 648. The regulations require annual specification of a commercial quota, which is allocated into two quota periods based upon percentages specified in the fishery management plan. The commercial quota is distributed to the coastal states from Maine through Florida, as described in § 648.230.

The initial total commercial quota for spiny dogfish for the 2007 fishing year is 4 million lb (1.81 million kg) (71 FR 40436, July 17, 2006). The commercial quota is allocated into two periods (May 1 through October 31, and November 1 through April 30). Vessel possession limits are intended to preclude directed fishing, and they are set at 600 lb (272 kg) for both quota Periods 1 and 2. Quota Period 1 is allocated 2.3 million lb (1.05 million kg), and quota Period 2 is allocated 1.7 million lb (763,849 kg) of the commercial quota. The total quota cannot be exceeded, so landings in excess of the amount allocated to quota Period 1 have the effect of reducing the quota available to the fishery during quota Period 2.

The Administrator, Northeast Region, NMFS (Regional Administrator) monitors the commercial spiny dogfish quota for each quota period and, based upon dealer reports, state data, and other available information, determines when the total commercial quota will be harvested. NMFS is required to publish a notification in the **Federal Register** advising and notifying commercial vessels and dealer permit holders that, effective upon a specific date, the Federal spiny dogfish commercial quota has been harvested and no Federal commercial quota is available for landing spiny dogfish for the remainder of that quota period.

Section 648.4(b) provides that Federal spiny dogfish permit holders agree, as a condition of the permit, not to land spiny dogfish in any state after NMFS has published notification in the **Federal Register** that the commercial quota has been harvested and that no commercial quota for the spiny dogfish fishery is available. Therefore, effective 0001 hr local time, November 16, 2007, landings of spiny dogfish in coastal states from Maine through Florida by vessels holding commercial Federal fisheries permits are prohibited through April 30, 2008, 2400 hr local time. The 2008 Period 1 quota will be available for commercial spiny dogfish harvest on May 1, 2008. Effective November 16, 2007, federally permitted dealers are also advised that they may not purchase spiny dogfish from vessels issued Federal spiny dogfish permits that land in coastal states from Maine through Florida.

**Classification**

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

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

Dated: November 13, 2007.

**Emily H. Menashes,**

*Acting Director, Office of Sustainable Fisheries, National Marine Fisheries Service.*  
[FR Doc. 07-5731 Filed 11-14-07; 1:17 pm]

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**DEPARTMENT OF COMMERCE****National Oceanic and Atmospheric Administration****50 CFR Part 660**

RIN 0648-AV57

[Docket No. 070510101-7101-01]

**Fisheries off West Coast States; Pacific Coast Groundfish Fishery; Emergency Rule Extension**

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

**ACTION:** Temporary rule; emergency action extended.

**SUMMARY:** NMFS is extending the temporary rule to prohibit vessels without sector-specific participation history in the directed Pacific whiting (whiting) fishery off the West Coast from participating in the whiting fishery. This emergency rule extension is necessary to prevent serious conservation and management problems that could be caused by new entrants and to maintain status quo participation while the Pacific Fishery Management Council (Council) completes its efforts to develop a vessel license limitation program through an amendment to the Pacific Coast Groundfish Fishery Management Plan (FMP.)

**DATES:** Effective from November 14, 2007, through May 13, 2008.

**ADDRESSES:** Copies of the Finding of No Significant Impact (FONSI) and its supporting Environmental Assessment (EA) for the emergency rule are available from Frank D. Lockhart, Assistant Regional Administrator for Sustainable Fisheries, Northwest Region, NMFS 7600 Sand Point Way, NE, Seattle, WA 98115-0070.

**FOR FURTHER INFORMATION CONTACT:** Frank Lockhart (Northwest Region, NMFS,) phone: 206-526-6142; fax: 206-526-6736; and email: [frank.lockhart@noaa.gov](mailto:frank.lockhart@noaa.gov).

**SUPPLEMENTARY INFORMATION:****Electronic Access**

The temporary rule also is accessible via the Internet at the Office of the **Federal Register's** website at <http://>

[www.gpoaccess.gov/fr/index.html](http://www.gpoaccess.gov/fr/index.html). Background information and documents, including the EA, are available at the Council's website at <http://www.pcouncil.org>.

On May 17, 2007, NMFS published a temporary rule (72 FR 27759) to prohibit any vessel from participating in either the mothership, catcher-processor, or shoreside delivery sector of the directed whiting fishery off the West Coast in 2007 if it did not have a history of sector-specific participation in the whiting fishery between January 1, 1997 and January 1, 2007 (72 FR 27759.) The Council had requested that NMFS implement this rule in order to prevent new entrants from accelerating the pace of the fishery and potentially increasing the rate at which bycatch species are taken in the fishery. The Council had requested this emergency rule in order to prevent conservation and management problems in the 2007 fishery while it worked to develop a vessel license limitation program for the whiting fishery in 2008 and beyond. The emergency rule published on May 17, 2007, went into effect on May 14, 2007, and was made effective for 180 days, or until November 13, 2007. Under the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act) at section 305(c), an emergency rule may be made effective for up to 180 days and may be extended for up to 186 additional days. In most fishing years, the whiting fishery has taken its full allocation and the whiting fishery is closed by mid-November. As of publication of this document, however, 2007 whiting quota remains available and the fishery remains open. In order to prevent the "race for fish" that the Council had feared for the 2007 whiting fishery, and to ensure that the accelerated race for fish does not occur in the early 2008 whiting season, the emergency rule must be extended through the additional allowable 186 days to May 13, 2008. NMFS anticipates that Amendment 15, if approved, will be implemented by that time.

NMFS notes that the May 17, 2007 temporary rule included a provision (amendment to § 660.333) allowing disaggregation of permits that had been aggregated in early 2007, and did not specify the end of the effective date for this disaggregation provision. NMFS has determined that it was an oversight to leave the provision effective indefinitely. NMFS is leaving the disaggregation in place and effective through the effective date of the extension of the emergency rule as originally planned to provide parties time to complete any desired

disaggregation. If Amendment 15 to the Groundfish FMP is approved and implemented, NMFS intends to consider, through notice and comment rulemaking, termination of the option to disaggregate.

Further background information for this action is provided in the preamble text of the May 17, 2007 emergency rule and in the supporting documents for this action, and is not repeated here.

#### Comments and Responses

During the comment period on the initial emergency action, which ended on June 18, 2007, NMFS received one letter and eight emails of comment. All of the comments addressed the same subject and are summarized and addressed here:

Comments: When the Council requested that NMFS take emergency action to prohibit participation in the 2007 whiting fishery by vessels without sector-specific participation prior to January 1, 2007, it had not requested that NMFS set a beginning date for the vessel qualification period. NMFS first implemented sector-specific allocations to the non-tribal whiting sectors that operate today in 1997 (62 FR 27519, May 20, 1997). Therefore, in the emergency rule, NMFS implemented the Council's request for sector-specific participation history as a history of whiting catch between December 31, 1996 and January 1, 2007. Eight of the commenters wrote to state that they did not believe the Council had intended to exclude from the 2007 fisheries those vessels with fishery participation history prior to December 31, 1996. These commenters identified two vessels that would be excluded from participating in the shorebased whiting sector and which had already made financial arrangements to participate in the 2007 fishery based on their interpretation that the Council's request had been intended to include any vessels with whiting harvest prior to January 1, 2007, regardless of how far into the past that history had occurred. A dissenting commenter wrote to oppose revising the emergency rule to allow 2007 participation for vessels only with participation history prior to 1997 when the emergency rule was continuing to prohibit 2007 participation by vessels with limited entry permits but without a history of participation in the whiting fishery.

Response: NMFS reviewed the comments received and agreed that, although the Council's request did speak to sector-specific history, it did not set a start date for the qualification period for participation in 2007. Because NMFS did not have time to

revise the emergency rule prior to the June 15, 2007 start date of the shorebased whiting fishery, NMFS instead revised the exempted fishing permits (EFPs) issued to the two affected vessels so that they were permitted to participate in the 2007 shorebased whiting sector. Both of the affected vessels had long and consistent history participating as catcher vessels in the mothership whiting fishery; therefore, NMFS believed that the vessels could be expected to participate in the shorebased sector without causing conservation concerns. In contrast to these two vessels, there were other vessels that were also excluded by the emergency rule to which NMFS did not issue revised EFPs. They did not receive EFPs because they did not have any history in the whiting fishery between 1997 and 2007, and thus NMFS was concerned about their ability to participate in the fishery without causing conservation concerns.

#### Classification

This emergency rule extension is published under the authority of the Magnuson-Stevens Act.

This action has been determined to be not significant for the purposes of Executive Order 12866.

Because no general notice of proposed rulemaking is required to be published in the **Federal Register** for this emergency rule extension by 5 U.S.C. 553 or by any other law, the analytical requirements of the Regulatory Flexibility Act do not apply; thus, no Regulatory Flexibility Analysis was prepared.

The Assistant Administrator finds it is unnecessary and contrary to the public interest to provide for prior notice and an opportunity for public comment on this emergency rule extension. In the initial emergency rule published on May 17, 2007 (72 FR 27759), NMFS requested, and subsequently received, comments on the rulemaking. Therefore, the agency has the authority to extend the emergency action for up to 186 days beyond the November 13, 2007, expiration of the initial emergency action, which is May 13, 2008.

The measures of this emergency rule extension remain unchanged from the measures contained in the initial emergency rule that prohibited participation in the 2007 whiting fishery by vessels without sector-specific participation history prior to January 1, 2007. This extension must be in place by November 14, 2007 because the 2007 whiting fishery is still underway and failing to extend the emergency rule would be counter to the Council's efforts to constrain whiting fishery

participation in 2007 in order to constrain bycatch of co-occurring species within the whiting fishery. Extending the provisions of the emergency rule without notice and comment rule will ensure that the 2007 whiting fishery continues to operate with the same pool of participants that have been permitted to operate throughout the season, thereby preventing disruption of the fishery and unnecessary adverse economic impacts to fishery participants.

NMFS solicited public comment during the 30-day post-promulgation comment period on the measures contained in the initial emergency action and extended by this action. The comments received were considered and are addressed in the preamble to this rule; however, no change to the emergency action measures were enacted as a result of the comments received. The Council developed a vessel license limitation program for 2008 and beyond under Amendment 15 to the FMP, which would be considered and implemented through notice and comment rulemaking. Therefore, for the reasons outlined above, the Assistant Administrator finds it is unnecessary and contrary to the public interest to provide any additional notice and opportunity for public comment under 5 U.S.C. 553(b)(B) prior to publishing the emergency rule extension.

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

Fisheries, Fishing, Indian fisheries.

Dated: November 13, 2007.

**John Oliver,**

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

■ For the reasons set out in the preamble, 50 CFR part 660 is 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.*

■ 2. In § 660.306, paragraph (f)(7) is added to read as follows:

##### § 660.306 Prohibitions.

\* \* \* \* \*

(f) \* \* \*

(7) Fish for or land whiting, or process whiting at sea, while participating in a specific sector (as defined at § 660.373(a)), from May 14, 2007 through May 13, 2008 with a vessel that has no history of participation within that specific sector of the whiting fishery in the period after December 31, 1996, and prior to January 1, 2007, as specified in § 660.373(j).

\* \* \* \* \*

■ 3. In § 660.373, paragraph (k) is added to read as follows:

##### § 660.373 Pacific whiting (whiting) fishery management.

\* \* \* \* \*

(k) *2007 Pacific Whiting Fishery.* (1) In general, a person may fish for or land whiting or process whiting at sea in a sector of the whiting fishery (as defined at § 660.373(a)) between May 14, 2007, and May 13, 2008, only with a vessel that has history of participation in that sector of the whiting fishery in the period after December 31, 1996, and prior to January 1, 2007. Specifically:

(i) To harvest whiting in the shore-based sector between May 14, 2007 and May 13, 2008, a vessel must have harvested for delivery to a shore-based processor at least 4,000 lb (1.81 mt) of whiting in a single trip during the primary season (as defined at § 660.373(b)) in the period after December 31, 1996, and prior to January 1, 2007. State fish ticket data collected

by the states and maintained by Pacific States Marine Fisheries Commission's Pacific Fishery Information System is the sole evidence to demonstrate participation in this sector.

(ii) To harvest whiting in the mothership sector between May 14, 2007 and May 13, 2008, a vessel must have harvested whiting for delivery to motherships in the period after December 31, 1996, and prior to January 1, 2007. Observer data collected by the Northwest Fisheries Science Center and by North Pacific Groundfish Observer Program as organized under the Alaska Fisheries Science Center's NORPAC database is the sole evidence to demonstrate participation in this sector.

(iii) To process whiting in the mothership sector between May 14, 2007 and May 13, 2008, a vessel must have processed at sea, but not harvested, whiting in the period after December 31, 1996, and prior to January 1, 2007. Observer data collected by the Northwest Fisheries Science Center and by North Pacific Groundfish Observer Program as organized under the Alaska Fisheries Science Center's NORPAC database is the sole evidence to demonstrate participation in this sector.

(iv) To harvest and process whiting in the catcher-processor sector between May 14, 2007 and May 13, 2008, a vessel must have harvested and processed whiting in the period after December 31, 1996, and prior to January 1, 2007. Observer data collected by Northwest Fisheries Science Center and by North Pacific Groundfish Observer Program as organized under the Alaska Fisheries Science Center's NORPAC database is the sole evidence to demonstrate participation in this sector.

(2) [Reserved]

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