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The Commission will send a copy of this *Report and Order* in a report to be sent to Congress and the Government Accountability Office pursuant to the Congressional review Act, see 5 U.S.C. 801(a)(1)(A).

#### List of Subjects in 47 CFR Part 73

Television, Television broadcasting.  
 ■ For the reasons discussed in the preamble, the Federal Communications Commission amends 47 CFR part 73 as follows:

#### PART 73—RADIO BROADCAST SERVICES

■ 1. The authority citation for part 73 continues to read as follows:

**Authority:** 47 U.S.C. 154, 303, 334, 336.

##### § 73.622 [Amended]

■ 2. Section 73.622(i), the Post-Transition Table of DTV Allotments under Pennsylvania, is amended by adding DTV channel 50 and removing DTV channel 49 at Scranton.

Federal Communications Commission.

**Clay C. Pendarvis,**

*Associate Chief, Video Division, Media Bureau.*

[FR Doc. E9-5059 Filed 3-9-09; 8:45 am]

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## DEPARTMENT OF COMMERCE

### National Oceanic and Atmospheric Administration

#### 50 CFR Part 660

[Docket No. 071003556-81194-02]

RIN 0648-AW08

### Fisheries Off West Coast States; Pacific Coast Groundfish Fishery; Amendment 15

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

**ACTION:** Final rule.

**SUMMARY:** NMFS issues this final rule to implement Amendment 15 to the Pacific Coast Groundfish Fishery Management Plan (FMP) which was approved by NMFS on June 18, 2008. Amendment 15 revised the FMP to include provisions for a vessel license limitation program for the non-tribal sectors of the Pacific whiting fishery. Amendment 15 is intended to serve as an interim measure to limit potential participation in the Pacific whiting fishery within the U.S. West Coast Exclusive Economic Zone until implementation of a trawl rationalization program under Amendment 20 to the Groundfish FMP.

**DATES:** Effective April 9, 2009.

**ADDRESSES:** Amendment 15 is available on the Pacific Fishery Management Council's (Council's or Pacific Council's) website at: <http://www.pcouncil.org/groundfish/gffmp.html>.

Written comments regarding the burden hour estimates or other aspects of the collection of information requirements contained in this final rule may be submitted to Barry A. Thom, Acting Regional Administrator, Northwest Region, NMFS, 7600 Sand Point Way NE, Seattle, WA 98115 0070, or by e-mail to [DavidRostker@omb.eop.gov](mailto:DavidRostker@omb.eop.gov), or by fax to (202) 395-7285.

#### FOR FURTHER INFORMATION CONTACT:

Becky Renko, phone: 206-526-6110, fax: 206-526-6736, or e-mail: [becky.renko@noaa.gov](mailto:becky.renko@noaa.gov), or for permitting information, Kevin Ford, phone: 206-526-6115, fax: 206-526-6736, or e-mail: [kevin.ford@noaa.gov](mailto:kevin.ford@noaa.gov).

#### SUPPLEMENTARY INFORMATION:

#### Electronic Access

This final rule is accessible via the Internet at the Office of the Federal Register's Web site at [http://www.access.gpo.gov/su\\_docs/aces/aces140.html](http://www.access.gpo.gov/su_docs/aces/aces140.html). Background information

and documents are available at the NMFS Northwest Region Web site at <http://www.nwr.noaa.gov/Groundfish-Halibut/Groundfish-Fishery-Management/index.cfm>.

#### Background

Amendment 15 to the FMP created a vessel license limitation program for the three non-tribal sectors of the Pacific whiting fishery off the U.S. West Coast. Under current Federal regulations, catcher vessels in the Pacific whiting shoreside fishery, catcher vessels in the mothership fishery, and catcher/processor vessels, must be registered to a groundfish limited entry permit that has a trawl gear endorsement. Mothership vessels are not required to be registered to a groundfish limited entry permit because the process only and do not harvest. The limited entry program has been in place since 1994 and allows appropriately registered vessels to participate in groundfish fisheries targeting any of the 90+ species managed under the Pacific Coast Groundfish FMP. This action implements Amendment 15 to the FMP by establishing regulations that require vessels to qualify for a Pacific whiting vessel license limitation program to harvest and/or process in the non-tribal Pacific whiting fishery. This is in addition to the requirement for harvesting vessels to be registered to a groundfish limited entry permits. Amendment 15 and the implementing regulations are intended to serve as an interim measure that will be discontinued when the Pacific Fishery Management Council adopts and the National Marine Fisheries Service implements a trawl rationalization program under Amendment 20 to the Pacific Groundfish FMP. Amendment 20 is currently under development by the Council, which adopted its preliminary preferred alternative at the June 2008 Council meeting. The Council anticipates taking final action on the trawl rationalization program in November 2008. If NMFS approves Amendment 20, implementation is scheduled for late 2010, at which time the regulations implementing Amendment 15 would be replaced by those implementing Amendment 20. If development and implementation of Amendment 20 is delayed beyond that point, NMFS intends to request that the Council reconsider the provisions of Amendment 15.

NMFS published a Notice of Availability for Amendment 15 on March 19, 2008 (73 FR 14765), and requested public comment on it through May 19, 2008. No public comments were received on the amendment.

Amendment 15 was approved by NMFS on June 18, 2008. NMFS published a proposed rule on July 11, 2008 (73 FR 39930), which requested comments through August 11, 2008. During the proposed rule comment period, NMFS received 1 letter from another Federal agency in support of the rulemaking, and 2 letters from members of the industry. The letters are addressed later in the preamble to this final rule. The preamble to the proposed rule for this action provides additional background information on the fishery and on this final rule. Further detail on Amendment 15 also appears in the Environmental Assessment for this action, available via the NMFS website provided above under "Electronic Access."

### Comments and Responses

NMFS received 2 letters of comment from members of the fishing industry on the proposed rule to implement Amendment 15. These comments are addressed here:

*Comment 1:* Both commentors recommended implementation of the preferred alternative. One commentor believes that implementation of Amendment 15 is necessary to reduce the conservation risks to overfished stocks and ESA-listed species.

*Response:* NMFS agrees with the commentors.

*Comment 2:* One commentor requested clarification that the \$650 licensing application fee is a one-time expense and that there will be no annual renewal fee.

*Response:* The fee to process a Pacific Whiting Vessel License will be approximately \$650 and is a one-time fee. The regulation has been modified to reflect this. The owner of a vessel registered to a Pacific Whiting Vessel License will not be required to renew it on an annual basis.

*Comment 3:* One commentor identified an error in the regulatory text at 660.336 (a)(1) that would have required mothership processors to hold limited entry permits.

*Response:* Owners of harvesting vessels are currently required to hold a limited entry permit, registered for use with that vessel, with a trawl gear endorsement. Mothership vessels process, but do not harvest and are currently not required to hold a limited entry permit. This action does not change the existing requirements for groundfish limited entry permits, but does implement new requirements for a Pacific whiting vessel license for all vessels. The error has been corrected.

*Comment 4:* One commentor requested that clarification be provided

for the 2008 fishery qualifying criteria defined in regulation at 660.336 (a)(2)(i).

*Response:* At this time, qualifying criteria specified for the 2008 fishery is being removed from the regulatory text because the 2008 Pacific whiting fishery is expected to be completed or near completion when this final rule becomes effective. The application deadline announced in the final rule is April 9, 2009.

*Comment 5:* One commentor requested that NMFS make the following two updates to the environmental assessment that supports this action: (1) revise the Pacific whiting biomass projections using the results of the 2008 stock assessment to more accurately state the status of the stock biomass; and, (2) revise the deadline dates specified for submission of the Pacific whiting vessel license application to match the proposed rulemaking.

*Response:* In approving this rule, NMFS has considered the recent stock assessment information, but did not revise the EA which was finalized on June 18, 2008, following a 60 day period in which the EA was available to the public for comment. The stock assessment information considered is consistent with the Finding of No Significant Action prepared in June. The Pacific whiting vessel license application deadline that applies to fishery participants will be established in regulation by this action. Given delays in the effective date of this final rule the application deadline is being further revised to April 9, 2009.

*Comment 6:* One commentor did not believe that the EA fully expressed the benefits to the Pacific whiting stock and communities from the implementation of a limited access program in the Pacific Whiting fishery.

*Response:* The EA for this action was finalized on June 18, 2008, following a 60 day period in which the EA was available to the public for comment. No comments were received on the EA during the comment period. NMFS believes that the EA adequately expressed effects of the alternative actions on the biological and socio-economic environments and that the recommended revisions would not change the proposed action or the Finding of No Significant Action.

*Comment 7:* One commentor believes it is premature to remove existing regulatory text at § 660.373 (h) that constrains vessel mobility between the catcher/processor and mothership fisheries in the same year. Mobility between sectors is currently under consideration with Amendment 20 for a trawl rationalization program.

*Response:* NMFS agrees with this comment. Because the issue of mobility is being considered under Amendment 20 and was not specifically addressed by the Council with Amendment 15, NMFS has modified the proposed language and is not removing regulatory text at § 660.373 (h) at this time.

### Changes From the Proposed Rule

This final rule includes the following changes from the proposed rule:

1. In § 660.336, (a)(1) has been revised to require mothership processors to hold only a Pacific whiting vessel license and not a limited entry permit.

2. In § 660.336 (a)(2)(i), vessel qualifying criteria for the 2008 fishery has been removed.

3. In § 660.306 (f), § 660.333 (a) and § 660.336(a), dates pertaining to application for Pacific whiting vessel licenses and effective dates for the license have been changed.

4. In § 660.339 paragraph (b) was added to clarify that there will be a one-time fee for the issuance of the original Pacific whiting vessel license.

5. In § 660.336 paragraph (a)(2)(i), NMFS has determined that the term "decommissioned" is too vague. The term has been replaced with the following: scrapped, or is rebuilt such that a new U.S.C.G. documentation number would be required.

### Classification

The Administrator, Northwest Region, NMFS, determined that Amendment 15 to the FMP is necessary for the conservation and management of the Pacific whiting fishery and that it is consistent with the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act) and other applicable laws.

This rule has been determined to be significant for purposes of Executive Order 12866.

A final regulatory flexibility analysis (FRFA) was prepared. The FRFA incorporates the IRFA, a summary of the significant issues raised by the public comments in response to the IRFA, NMFS responses to those comments, and a summary of the analyses completed to support the action. A copy of this analysis is available from NMFS (see ADDRESSES) and a summary follows here: Section 604 (a) of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) states that when an agency promulgates a final rule under section 553 of this title, after being required by that section or any other law to publish a general notice of proposed rulemaking, or promulgates a final interpretative rule involving the internal revenue laws of the United States as

described in section 603(a), the agency shall prepare an FRFA. Each FRFA shall contain: (1) a succinct statement of the need for, and objectives of, the rule; (2) a summary of the significant issues raised by the public comments in response to the IRFA, a summary of the assessment of the agency of such issues, and a statement of any changes made in the proposed rule as a result of such comments; (3) a description of and an estimate of the number of small entities to which the rule will apply or an explanation of why no such estimate is available; (4) a description of the projected reporting, recordkeeping and other compliance requirements of the rule, including an estimate of the classes of small entities which will be subject to the requirement and the type of professional skills necessary for preparation of the report or record; and (5) a description of the steps the agency has taken to minimize the significant economic impact on small entities consistent with the stated objectives of applicable statutes, including a statement of the factual, policy, and legal reasons for selecting the alternative adopted in the final rule and why each one of the other significant alternatives to the rule considered by the agency which affect the impact on small entities was rejected. Section 212 of the Small Business Regulatory Enforcement Fairness Act of 1996 states that, for each rule or group of related rules for which an agency is required to prepare a FRFA, the agency shall publish one or more guides to assist small entities in complying with the rule, and shall designate such publications as "small entity compliance guides." The agency shall explain the actions a small entity is required to take to comply with a rule or group of rules.

This action is necessary to satisfy the requirements of the 1996 Sustainable Fisheries Act amendments to the Magnuson-Stevens Act. In addition, this action will benefit fisheries conservation and management by reducing the race for fish by restricting entry into all sectors of the Pacific Whiting fishery.

Amendment 15 to the Pacific Coast Groundfish FMP is an interim step prior to the adoption of Amendment 20—Trawl rationalization for Pacific Groundfish which includes Pacific whiting which is scheduled to be completed in 2011 or as soon as possible thereafter. The objective of this rule is to prevent new entrants from entering the whiting fishery in order to provide conservation benefits. Current market conditions and the changing nature of Alaska fisheries are likely to bring new entrants to the fishery.

Increased vessel participation in the whiting fishery will likely accelerate the race for fish, reduce the per vessel revenues of existing participants, may have undesirable consequences on overfished and protected species, and could result in a fishery that is more costly and difficult to manage in an effective manner.

NMFS received no comments on the IRFA. Other comments were received and are addressed above, including Comment 2, which clarifies the economic impacts of the rule. Specifically, the regulations would limit participation in the non-tribal Pacific Whiting fishery to those vessels that meet the qualification criteria discussed elsewhere in this rule. These vessels include catcher/processors, mothership processors, catcher vessels in the Pacific whiting shoreside fishery, and catcher vessels in the mothership fishery. The Small Business Administration (SBA) guidelines for fishing firms use a \$4,000,000 gross revenue threshold to separate small from large operations. In the application to any one firm, the \$4,000,000 threshold considers income to all affiliated operations. NMFS records suggest the gross annual revenue for each of the catcher/processor and mothership operations operating in the WOC exceeds \$4,000,000 and they are therefore not considered small businesses. NMFS records also show that 10–43 catcher vessels have taken part in the mothership fishery yearly since 1994. These companies are all assumed to be small businesses (although some of these vessels may be affiliated to larger processing companies). Since 1994, 26–31 catcher vessels participated in the shoreside fishery annually. These companies are all assumed to be small businesses (although some of these vessels may be affiliated to larger processing companies). This rulemaking is expected to have minimal impacts on the mothership and shoreside catcher vessels. It is also expected to have minimal impact on vessels in the catcher/processor and mothership processors. If anything, this rule maintains the economics of the existing small businesses participating in the fishery as it prevents new vessels, potentially the larger vessels from Alaska, from entering the fishery. To qualify for a license, entities need only provide a logbook report, an observer report, or a fish ticket or a mothership receipt that demonstrates that qualification criteria have been met. These documents should be fairly easy to submit as they should be within existing business files or be readily

obtained by directly contacting NMFS or the appropriate state agencies. Given the ease of documentation, separate requirements based on size of business were not developed. As part of this rulemaking process, a small entity compliance guide (the guide) has been prepared. The guide and final rule will be sent to the address of record for all the known potential entities that are directly affected by this final rule.

This final rule contains a collection of information requirement subject to the Paperwork Reduction Act (PRA) and which has been approved by OMB under control number 0648–0583. The public reporting burden for preparing and submitting a Pacific whiting vessel license application is a one-time estimate expected to average 60 minutes per response. In subsequent years, approximately six respondents are expected to average 30 minutes per response to submit information on changes to the license records maintained by NMFS. The estimated time includes the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding these burden estimates or any other aspect of this data collection, including suggestions for reducing the burden, to NMFS (see **ADDRESSES**) and by e-mail to *David\_Rostker@omb.eop.gov*, or fax to 202 395 7285.

Notwithstanding any other provision of the law, no person is required to respond to, and no person shall be subject to penalty for failure to comply with, a collection of information subject to the requirements of the PRA, unless that collection of information displays a currently valid OMB control number.

NMFS issued Biological Opinions under the 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 Pacific Coast 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, and Oregon 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, southern California).

NMFS reinitiated a formal section 7 consultation under the ESA in 2005 for both the Pacific whiting midwater trawl fishery and the groundfish bottom trawl fishery. The December 19, 1999, Biological Opinion had defined an 11,000 Chinook incidental take threshold for the Pacific whiting fishery. During the 2005 Pacific whiting season, the 11,000–fish Chinook incidental take threshold was exceeded, triggering reinitiation. Also in 2005, new data from the West Coast Groundfish Observer Program became available, allowing NMFS to do a more complete analysis of salmon take in the bottom trawl fishery.

NMFS completed its reinitiation consultation and prepared a Supplemental Biological Opinion dated March 11, 2006. In its 2006 Supplemental Biological Opinion, NMFS concluded that catch rates of salmon in the 2005 Pacific whiting fishery were consistent with expectations considered during prior consultations. Chinook bycatch has averaged about 7,300 over the last 15 years and has only occasionally exceeded the reinitiation trigger of 11,000. Since 1999, annual Chinook bycatch has averaged about 8,450. The Chinook ESUs most likely affected by the Pacific whiting fishery have generally improved in status since the 1999 section 7 consultation. Although these species remain at risk, as indicated by their ESA listing, NMFS concluded that the higher observed bycatch in 2005 does not require a reconsideration of its prior “no jeopardy” conclusion with respect to the fishery. For the groundfish bottom trawl fishery, NMFS concluded that incidental take in the groundfish fisheries is within the overall limits articulated in the Incidental Take Statement of the 1999 Biological Opinion. The groundfish bottom trawl limit from that opinion was 9,000 fish annually. NMFS will continue to monitor and collect data to analyze take levels. NMFS also reaffirmed its prior determination that implementation of the Groundfish 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) were recently listed and Oregon Coastal coho (73 FR 7816, February 11, 2008) were recently 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. The Southern Distinct Population Segment (DPS) of green sturgeon (71 FR 17757, April 7, 2006) were also recently listed as threatened under the ESA. As a consequence, NMFS has reinitiated its Section 7 consultation on the Council’s Groundfish FMP.

After reviewing the available information, NMFS concluded that, in keeping with Sections 7(a)(2) and 7(d) of the ESA, the proposed action would 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.

Under the Magnuson-Stevens Act at 16 U.S.C. 1852(b)(5), one of the voting members of the Council must be a representative of an Indian tribe with federally recognized fishing rights from the area of the Council’s jurisdiction. Pursuant to Executive Order 13175, this action was developed through the Council process with meaningful collaboration with tribal officials from the area covered by the FMP. The tribal representative on the Council did not make a motion on this action for tribal fisheries.

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

Fisheries, Fishing, Indian fisheries.

Dated: February 27, 2009.

**James W. Balsiger,**

*Acting Assistant Administrator for Fisheries, 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, paragraphs (f)(1) through (f)(6) are redesignated as paragraphs (f)(2) through (f)(7), respectively, and a new paragraph (f)(1) is added to read as follows:

#### § 660.306 Prohibitions.

\* \* \* \* \*

(f) \* \* \*

(1) Fish in any of the sectors of the whiting fishery described at § 660.373(a) after April 9, 2009 using a vessel that is not registered for use with a sector-appropriate Pacific whiting vessel license under § 660.336. April 9, 2009, vessels are prohibited from fishing, landing, or processing primary season Pacific whiting with a catcher/processor, mothership or mothership

catcher vessel that has no history of participation within that specific sector of the whiting fishery during the period from January 1, 1997, through January 1, 2007, or with a shoreside catcher vessels that has no history of participation within the shore-based sector of the whiting fishery during the period from January 1, 1994 through January 1, 2007, as specified in § 660.373(j). For the purpose of this paragraph, “historic participation” for a specific sector is the same as the qualifying criteria listed in § 660.336 (a)(2).

(i) If a Pacific whiting vessel license is registered for use with a vessel, fail to carry that license onboard the vessel registered for use with the license at any time the vessel is licensed. A photocopy of the license may not substitute for the license itself.

(ii) [Reserved]

\* \* \* \* \*

■ 3. In § 660.333, paragraph (f) is removed and paragraph (a) is revised to read as follows:

#### § 660.333 Limited entry fishery eligibility and registration.

(a) General. A limited entry permit confers a conditional privilege of participating in the Pacific coast groundfish limited entry fishery, in accordance with Federal regulations in 50 CFR part 660. In order for a vessel to participate in the limited entry fishery, the vessel owner must hold a limited entry permit and, through SFD, must register that vessel for use with a limited entry permit. When participating in the limited entry fishery, a vessel is authorized to fish with the gear type endorsed on the limited entry permit registered for use with that vessel. There are three types of gear endorsements: trawl, longline, and pot (or trap). All limited entry permits have size endorsements and a vessel registered for use with a limited entry permit must comply with the vessel size requirements of this subpart. A sablefish endorsement is also required for a vessel to participate in the primary season for the limited entry fixed gear sablefish fishery, north of 36° N. lat. After April 9, 2009, a catcher vessel participating in either the whiting shore-based or mothership sector must, in addition to being registered for use with a limited entry permit, be registered for use with a sector-appropriate Pacific whiting vessel license under § 660.336. After April 9, 2009, a vessel participating in the whiting catcher/processor sector must, in addition to being registered for use with a limited entry permit, be registered for use with a sector-appropriate Pacific whiting vessel

license under § 660.336. After April 9, 2009, although a mothership vessel participating in the whiting mothership sector is not required to be registered for use with a limited entry permit, such vessel must be registered for use with a sector-appropriate Pacific whiting vessel license under § 660.336.

\* \* \* \* \*

■ 4. In § 660.335, paragraph (f)(3) is removed and paragraph (a)(2) is revised to read as follows:

**§ 660.335 Limited entry permits renewal, combination, stacking, change of permit ownership or permit holdership, and transfer.**

(a) \* \* \*

(2) Notification to renew limited entry permits will be issued by SFD prior to September 15 each year to the most recent address of the permit owner. The permit owner shall provide SFD with notice of any address change within 15 days of the change.

\* \* \* \* \*

■ 5. A new § 660.336 is added to read as follows:

**§ 660.336 Pacific whiting vessel licenses.**

(a) *Pacific whiting vessel license*—(1) *General.* After April 9, 2009, participation in the non-tribal primary whiting season described in § 660.373(b) requires:

(i) An owner of any vessel that catches Pacific whiting must hold a limited entry permit, registered for use with that vessel, with a trawl gear endorsement; and, a Pacific whiting vessel license registered for use with that vessel and appropriate to the sector or sectors in which the vessel intends to participate;

(ii) An owner of any mothership vessel that processes Pacific whiting to hold a Pacific whiting vessel license registered for use with that vessel and appropriate to the sector or sectors in which the vessel intends to participate.

(iii) Pacific whiting vessel licenses are separate from limited entry permits and do not license a vessel to harvest whiting in the primary whiting season unless that vessel is also registered for use with a limited entry permit with a trawl gear endorsement.

(2) *Pacific whiting vessel license qualifying criteria.*

(i) *Qualifying criteria.* Vessel catch and/or processing history will be used to determine whether that vessel meets the qualifying criteria for a Pacific whiting vessel license and to determine the sectors for which that vessel may qualify. Vessel catch and/or processing history includes only the catch and/or processed product of that particular vessel, as identified in association with

the vessel's USCG number. Only whiting regulated by this subpart that was taken with midwater (or pelagic) trawl gear will be considered for the Pacific whiting vessel license. Whiting harvested or processed by a vessel that has since been totally lost, scrapped, or is rebuilt such that a new U.S.C.G. documentation number would be required will not be considered for this license. Whiting harvested or processed illegally or landed illegally will not be considered for this license. Catch and/or processing history associated with a vessel whose permit was purchased by the Federal Government through the Pacific Coast groundfish fishing capacity reduction program, as identified at 68 FR 62435 (November 4, 2003), does not qualify a vessel for a Pacific whiting vessel license and no vessel owner may apply for or receive a Pacific whiting vessel license based on catch and/or processing history from one of those buyback vessels. The following sector-specific license qualification criteria apply:

(A) For catcher/processor vessels, the qualifying criteria for a Pacific whiting vessel license is evidence of having caught and processed any amount of whiting during a primary catcher/processor season during the period January 1, 1997 through January 1, 2007.

(B) For mothership at-sea processing vessels, the qualifying criteria for a Pacific whiting vessel license is documentation of having received and processed any amount of whiting during a primary mothership season during the period January 1, 1997 through January 1, 2007.

(C) For catcher vessels delivering whiting to at-sea mothership processing vessels, the qualifying criteria for a Pacific whiting vessel license is documentation of having delivered any amount of whiting to a mothership processor during a primary mothership season during the period January 1, 1997, through January 1, 2007.

(D) For catcher vessels delivering whiting to Pacific whiting first receiver, the qualifying criteria for a Pacific whiting vessel license is documentation of having made at least one landing of whiting taken with mid-water trawl gear during a primary shore-based season during the period January 1, 1994, through January 1, 2007, and where the weight of whiting exceeded 50 percent of the total weight of the landing.

(ii) *Documentation and burden of proof.* A vessel owner applying for a Pacific whiting vessel license has the burden to submit documentation that qualification requirements are met. An application that does not include documentation of meeting the

qualification requirements during the qualifying years will be considered incomplete and will not be reviewed. The following standards apply:

(A) A certified copy of the current vessel document (USCG or State) is the best documentation of vessel ownership and LOA.

(B) A certified copy of a State fish receiving ticket is the best documentation of a landing at a Pacific whiting shoreside first receiver, and of the type of gear used.

(C) For participants in the at-sea whiting fisheries, documentation of participation could include, but is not limited to: a final observer report documenting a particular catcher vessel, mothership, or catcher/processor's participation in the whiting fishery in an applicable year and during the applicable primary season, a bill of lading for whiting from an applicable year and during the applicable primary season, a catcher vessel receipt from a particular mothership known to have participated in the whiting fishery during an applicable year, a signed copy of a Daily Receipt of Fish and Cumulative Production Logbook (mothership sector) or Daily Fishing and Cumulative Production Logbook (catcher/processor sector) from an applicable year during the applicable primary season.

(E) Such other relevant, credible documentation as the applicant may submit, or the SFD or the Regional Administrator request or acquire, may also be considered.

(3) *Issuance process for Pacific whiting vessel licenses.*

(i) SFD will mail, to the most recent address provided to the SFD permits office, a Pacific whiting vessel license application to all current and prior owners of vessels that have been registered for use with limited entry permits with trawl endorsements, excluding owners of those vessels whose permits were purchased through the Pacific Coast groundfish fishing capacity reduction program. NMFS will also make license applications available online at: <http://www.nwr.noaa.gov/Groundfish-Halibut/Groundfish-Permits/index.cfm>. A vessel owner who believes that his/her vessel may qualify for the Pacific whiting vessel license will have until April 9, 2009, to submit an application with documentation showing how his/her vessel has met the qualifying criteria described in this section. NMFS will not accept applications for Pacific whiting vessel licenses received after April 9, 2009.

(ii) After receipt of a complete application, NMFS will notify applicants by letter of its determination

whether their vessels qualify for Pacific whiting vessel licenses and the sector or sectors to which the licenses apply. Vessels that have met the qualification criteria will be issued the appropriate licenses at that time. After April 9, 2009, NMFS will publish a list of vessels that qualified for Pacific whiting vessel licenses in the **Federal Register**.

(iii) If a vessel owner files an appeal from the determination under paragraph (a)(3)(ii) of this section the appeal must be filed with the Regional Administrator within 30 calendar days of the issuance of the letter of determination. The appeal must be in writing and must allege facts or circumstances, and include credible documentation demonstrating why the vessel qualifies for a Pacific whiting vessel license. The appeal of a denial of an application for a Pacific whiting vessel license will not be referred to the Council for a recommendation, nor will any appeals be accepted by NMFS after May 11, 2009.

(iv) Absent good cause for further delay, the Regional Administrator will issue a written decision on the appeal within 30 calendar days of receipt of the appeal. The Regional Administrator's decision is the final administrative decision of the Department of Commerce as of the date of the decision.

(4) *Notification to NMFS of changes to Pacific whiting vessel license information.* The owner of a vessel registered for use with a Pacific whiting vessel license must provide a written

request to NMFS to change the name or names of vessel owners provided on the vessel license, or to change the licensed vessel's name. The request must detail the names of all new vessel owners as registered with U.S. Coast Guard, a business address for the vessel owner, business phone and fax number, tax identification number, date of birth, and/or date of incorporation for each individual and/or entity, and a copy of the vessel documentation (USCG 1270) to show proof of ownership. NMFS will reissue a new vessel license with the names of the new vessel owners and/or vessel name information. The Pacific whiting vessel license is considered void if the name of the vessel or vessel owner is changed from that given on the license. In addition, the vessel owner must report to NMFS any change in address for the vessel owner within 15 days of that change. Although the name of an individual vessel registered for use with a Pacific whiting vessel license may be changed, the license itself may not be registered to any vessel other than the vessel to which it was originally issued, as identified by that vessel's United States Coast Guard documentation number.

(b) [Reserved]

■ 6. Section 660.339 is revised to read as follows:

**§ 660.339 Limited entry permit and Pacific whiting vessel license fees.**

(a) The Regional Administrator will charge fees to cover administrative

expenses related to issuance of limited entry permits including initial issuance, renewal, transfer, vessel registration, replacement, and appeals. The appropriate fee must accompany each application.

(b) The Regional Administrator will charge a one-time fee for the issuance of the original Pacific whiting vessel license.

■ 7. In § 660.373, paragraph (a) is revised to read as follows:

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

(a) *Sectors and licensing requirements.* 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 vessels that process whiting 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 shore-based sector is composed of vessels that harvest whiting for delivery to Pacific whiting shoreside first receivers. In order for a vessel to participate in a particular whiting fishery sector, that vessel must be registered for use with a sector-specific Pacific whiting vessel license under § 660.336.

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