

**Season Date Change
for midwater trawl fishery (whiting and non-whiting) -
NMFS interpretation**

As NMFS begins implementation of the season date change, NMFS would like to provide our interpretation of the Council final action for Council guidance, if necessary.

Several documents are provided in Appendix 1 at the end of this document as background material, including: the Council preliminary and final motions, excerpts from regulation, and excerpts from the Pacific Coast Groundfish Fishery Management Plan (FMP). The Council took final action on the season date change in November 2012, with preliminary action in March 2012, and discussion in November 2011. The Council final action referred to its preliminary action, so both are provided in Appendix 1.

NMFS Interpretation

Based on the rationale described below and because the Mothership Coop Program and Catcher/Processor Coop Program (collectively, the at-sea sectors) would continue to have a primary whiting season start date of May 15, the description of the proposed action to be used for analysis and rulemaking is:

Description of Proposed Action

- Modifying 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.
 - The resulting change for both components of the Shorebased IFQ Program (whiting and non-whiting midwater) would be the following:

<i>North of 42° N. lat.—</i>	<i>June 15 → May 15</i>
<i>Between 42°-40°30' N. lat.—</i>	<i>April 1 → May 15</i>
<i>South of 40°30' N. lat.—</i>	<i>April 15 (no change)</i>

- No change to the 5% allocation provision where no more than 5% of the Shorebased IFQ Program allocation may be taken and retained south of 42° N. lat. before the start of the primary Pacific whiting season north of 42° N. lat. The 5% allocation language, specified in the FMP at 6.3.2.2 and in regulation at 660.55(i)(2), would apply to the fishery south of 40°30' N. lat. Language in the FMP at 6.8.1 on the California early season would remain unchanged.

Questions & Rationale

As NMFS is beginning the rulemaking process for the whiting season date change and based on the Council's motion and background information, some questions have come up.

1. Was the Council aware in Nov 2012 that the action also affected the non-whiting midwater trawl fishery?
2. Did the Council intend to only change the season date to the extent it would not require an FMP amendment (i.e., only change the dates north of 40°30' N. lat., not coastwide)?

NMFS believes the answer to both of these questions is yes based on the rationale described under Questions 1 and 2 below.

Question 1

Regarding the non-whiting midwater trawl fishery¹, the analysis in front of the Council at the time discussed the non-whiting midwater fishery (Agenda Item I.5.a, Attachment 6, Nov 2012). Based on this information, NMFS understanding is that the Council and stakeholders were aware that the whiting season date change would also affect the start of the season for the non-whiting midwater trawl fishery. The November 2012 analysis available before the Council's final motion explained potential impacts of this season date change from the non-whiting midwater fishery, summarized in Table 2-2, p.8, including earlier use of midwater gear to target widow and yellowtail and potential increase in total salmon bycatch.

Question 2

The final motion speaks to "May 15 for all sectors" which alludes to the IFQ fishery coastwide moving to a May 15 start, including the area south of 40°30' N. lat. The November 2012 analysis available before the Council's final motion mentioned that the season date change would be coastwide, acknowledging that it would then be outside the regulatory framework for season date changes described in 660.131(b)(2) which applies to areas north of 40°30' N. lat. but within the socioeconomic framework contained in the FMP² (Agenda Item I.5.a, Attachment 6, Nov 2012, p.6-9). However, the Council final action confirmed the preliminary action which stated, "Use a single May 15 start date for all whiting sectors including California fisheries and eliminate the 5 percent California early season whiting fishery cap, to the extent that a fishery management plan (FMP) amendment is not required." (emphasis added)

An FMP amendment would be required to eliminate all California early seasons and create a coastwide season date. FMP section 6.8.1 (Seasons) describes the use of seasons for the different whiting sectors by stating, "*Each of these sectors is managed with its own season. The*

¹ NMFS is working on more clarity in regulations for the non-whiting midwater trawl fishery through the "whiting clean-up" rule (see Agenda Item J.4.a, Attachment 1, Nov 2014 for details and Agenda Item J.1.b, Supplemental NMFS Report 1, Nov 2014 for a schedule).

² The socioeconomic framework contained in the FMP requires a full rulemaking process including two decision meetings for the Council (preliminary and final actions).

shorebased sector also includes an early season for waters off California, to allow vessels in that area to access whiting when it is migrating through waters off California.”

In addition, creating the same coastwide season start date brings in to question the utility of keeping FMP and regulatory language on a 5% early season allocation where no more than 5% of the Shorebased IFQ Program allocation may be taken and retained south of 42° N. lat. before the start of the primary Pacific whiting season north of 42° N. lat. An FMP amendment would be required to remove FMP allocation language at 6.3.2.2 (Sector allocations of Pacific whiting) which requires that, “...*No more than five percent of the shoreside whiting sector’s allocation may be taken and retained south of 42° N latitude prior to the start of the shore-based whiting season north of 42° N latitude (in waters off Oregon and Washington).*” The corresponding regulations at 660.55(i)(2) would also need to be removed.

The Council final action confirmed the preliminary action which stated, “*Use a single May 15 start date for all whiting sectors including California fisheries and eliminate the 5 percent California early season whiting fishery cap, to the extent that a fishery management plan (FMP) amendment is not required.*” (emphasis added) Because a coastwide season start date would require an FMP amendment, NMFS will only change the Shorebased IFQ Program season date for the whiting and nonwhiting midwater trawl fisheries to May 15 north of 40°30' N. lat. to the U.S./Canada border.

APPENDIX 1: Background materials

Preliminary Action

Preliminary Preferred Action (PPA) - March 2012 (excerpt from Council meeting minutes, p. 36-37)

Agenda Item F.8 Trawl Rationalization Trailing Actions and Allocation Amendments and Actions

Motion 24 to adopt the following preliminary preferred actions and Council direction:

...

8. Whiting season opening date and southern allocation - PPA = Alt (1) (page 12, Agenda Item F.8.a - Attachment 1)

...

Agenda Item F.8.a - Attachment 1 stated:

Whiting Season Rule (Stand Alone or as Part of PIE 2 or Gear Rule)

8. Whiting season opening date and southern allocation (Preliminary NEPA Determination: EA)

Under a rationalized fishery, the previous rationale for varying start dates among areas and whiting sectors may no longer apply. As a first step, at its November 2011 meeting, the Council adopted for consideration the GAP and Trawl Rationalization Regulatory Evaluation Committee (TRREC) option of moving the whiting season start date for all sectors and areas to May 15, consistent with the start date for the at-sea fishery. The GAP recommendation, adopted as guidance by the Council, also stated:

The GAP also supports reviewing the overall whiting fishery management regime, including consideration of moving towards a year round fishery. If this adds significant workload, it should remain a priority for the TRREC to address for implementation in the Program Improvements and Enhancements (PIE) 3 rule or beyond.

Only the issue of moving the whiting season date to May 15 is part of the current action. The following are the options for consideration.

Status quo: No Action. The current regulations for the start date and southern allocation are as follows.

660.131(B)(2) Different primary season start dates. North of 40°30' N. lat., different starting dates may be established for the catcher/processor sector, the mothership sector, and in the Pacific whiting IFQ fishery for vessels delivering to IFQ first receivers north of 42°N. lat. and vessels delivering to IFQ first receivers between 42° through 40°30' N. lat. . . .

(iii) Primary whiting season start dates and duration. After the start of a primary season for a sector of the whiting fishery, the season remains open for that sector until the sector allocation of whiting or non-whiting groundfish (with allocations) is reached or projected to be reached and the fishery season for that sector is closed by NMFS. The starting dates for the primary seasons for the whiting fishery are as follows:

- (A) Catcher/processor sector—May 15.
- (B) Mothership sector—May 15.
- (C) Shorebased IFQ Program, Pacific whiting IFQ fishery.
 - (1) North of 42°N. lat.—June 15;
 - (2) Between 42°–40°30'N. lat.—April 1; and
 - (3) South of 40°30'N. lat.—April 15.

660.55 (f)(2) . . . No more than 5 percent of the Shorebased IFQ Program allocation may be taken and retained south of 42° N. lat. before the start of the primary Pacific whiting season north of 42° N. lat.

Alternative [1] (recommendation by the GAP endorsed by the Council, Nov 2011):

Use a single May 15 start date for all whiting sectors including California fisheries and eliminate the 5 percent California early season whiting fishery cap, to the extent that a fishery management plan (FMP) amendment is not required. This change would be implemented through the two-meeting process already authorized under the framework of the Pacific Coast Groundfish FMP.

Final Action

Final Preferred Alternative - November 2012 (excerpt from Council meeting minutes, p.39)

Agenda Item I.5.d - Trawl Rationalization Trailing Actions and Updates

Motion 17 for the Council to adopt the following final preferred alternatives:

...

- **Whiting season start date: May 15 for all sectors; removal of California early season (PPA).**

...

Relevant Regulations

50 CFR 660.55 Allocations. (emphasis added)

(i) Pacific whiting allocation. The allocation structure and percentages for Pacific whiting are described in the PCGFMP.

- (1) Annual treaty tribal Pacific whiting allocations are provided in §660.50, subpart C.

(2) The fishery harvest guideline for Pacific whiting is allocated among three sectors, as follows: 34 percent for the C/P Coop Program; 24 percent for the MS Coop Program; and 42 percent for the Shore based IFQ Program. No more than 5 percent of the Shore based IFQ Program allocation may be taken and retained south of 42° N. lat. before the start of the primary Pacific whiting season north of 42° N. lat. Specific sector allocations for a given calendar year are found in Tables 1a through c and 2a through c of this subpart. Set-asides for other species for the at-sea whiting fishery for a given calendar year are found in Tables 1D and 2D of this subpart.

50 CFR 660.131 Pacific whiting fishery management measures. (emphasis added)

(b) Pacific whiting seasons-

(2) Different primary season start dates. North of 40°30' N. lat., different starting dates may be established for the catcher/processor sector, the mothership sector, and in the Pacific whiting IFQ fishery for vessels delivering to IFQ first receivers north of 42° N. lat. and vessels delivering to IFQ first receivers between 42° through 40°30' N. lat.

*referred
to as
"framework"*

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

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

(iii) Primary whiting season start dates and duration. After the start of a primary season for a sector of the whiting fishery, the season remains open for that sector until the sector allocation of whiting or non-whiting groundfish (with allocations) is reached or projected to be reached and the fishery season for that sector is closed by NMFS. The starting dates for the primary seasons for the whiting fishery are as follows:

(A) Catcher/processor sector—May 15.

(B) Mothership sector—May 15.

(C) Shorebased IFQ Program, Pacific whiting IFQ fishery.

(1) North of 42° N. lat.—June 15;

(2) Between 42°-40°30' N. lat.—April 1; and

(3) South of 40°30' N. lat.—April 15.

Groundfish FMP (May 2014 version)

6.3.2.2 Sector allocations of Pacific Whiting (emphasis added)

Projected total mortalities of Pacific whiting in recreational, research, and non-whiting fisheries are first set aside (these deductions are decided in the annual process for specifying Pacific whiting harvest specifications and management measures based on the best available information at the time of the decision), then a yield amount is set-aside to accommodate tribal whiting fisheries. In some years the whiting set-aside may be increased to accommodate other programs, such as EFPs. The nontribal commercial share of whiting is allocated to LE whiting trawl sectors as follows: 42 percent for the shoreside whiting sector, 24 percent for the at-sea mothership whiting sector, and 34 percent for the at-sea catcher-processor whiting sector. No more than five percent of the shoreside whiting sector's allocation may be taken and retained south of 42° N latitude prior to the start of the shore-based whiting season north of 42° N latitude (in waters off Oregon and Washington).

6.8.1 Seasons (emphasis added)

... Designation and adoption of seasons must be made through either a specifications-and-management-measures rulemaking (Section 6.2 C) or a full rulemaking (Section 6.2 D).

Seasons have been used to manage the commercial Pacific whiting trawl and LE fixed gear fisheries. The non-tribal whiting fishery is divided into three sectors: catcher boats that deliver to shorebased processing plants, catcher vessels that deliver to motherships at sea, and at-sea catcher-processors. Each of these sectors is managed with its own season. The shorebased sector also includes an early season for waters off California, to allow vessels in that area to access whiting when it is migrating through waters off California. ...

In addition to the whiting and sablefish seasons, intended to constrain the directed catch of the target stocks within a particular period, commercial fisheries may be constrained by season to protect overfished species.

...