



UNITED STATES DEPARTMENT OF COMMERCE
National Oceanic and Atmospheric Administration
NATIONAL MARINE FISHERIES SERVICE
Sustainable Fisheries Division F/NWR2
7600 Sand Point Way N.E., Bldg. 1
Seattle, WA 98115-0070

JAN 14 2009

Don Hansen
Chairman
Pacific Fishery Management Council
7700 NE Ambassador Place
Portland, OR 97220

RECEIVED

JAN 20 2008

Dear Mr. Hansen:

PFMC

In 2008, the National Marine Fisheries Service (NMFS) Northwest Region and the Pacific Fishery Management Council (Council) began to transition the Pacific whiting shoreside fishery to a federally managed maximized retention and monitoring program. Although it was expected that a regulatory program would be in place before the start of the 2009 fishing season, it will not be possible given the complexity of the rulemaking and unanticipated issues that arose during the 2008 season. For 2009, NMFS is proposing to manage the Pacific whiting shoreside fishery under Exempted Fishing Permits (EFPs). The purpose of this letter is to notify the Council members, in advance of the Council's March 2009 meeting, of our intent to issue EFPs for the 2009 Pacific whiting shoreside fishery.

Because the Pacific whiting season begins on April 1, 2009, my staff must soon begin preparations for management of the fishery. Regulations at 50 CFR 600.745 require NMFS to notify the public of the intent to issue an EFP by publishing a notice in the *Federal Register*. Therefore, this letter will be followed by publication of a *Federal Register* notice announcing our intent to issue Pacific Whiting Shoreside Fishery Maximized Retention and Monitoring Program EFPs to Pacific whiting shoreside vessels and first receivers in 2009. As in 2008, the EFPs will be used to investigate the new components of the overall monitoring program before regulatory implementation.

The proposed maximized retention and monitoring program regulations are intended to create the regulatory structure necessary to effectively manage the Pacific whiting shoreside fishery without EFPs while providing accurate catch data such that the Endangered Species Act and Magnuson-Stevens Fishery Conservation and Management Act requirements for this fishery are adequately met. Under the proposed maximized retention and monitoring program, federal regulations would require Pacific whiting shoreside vessels to dump unsorted catch directly below deck and would allow unsorted catch to be landed, providing that an electronic monitoring system (EMS) is used on all fishing trips to verify retention of catch at sea. Participating vessels would be required to procure and pay for EMS services whenever the vessel was participating in the Pacific whiting shoreside fishery. The vessel's EMS responsibilities would include paying for the purchase or lease of EMS equipment, the installation and removal of EMS systems, all

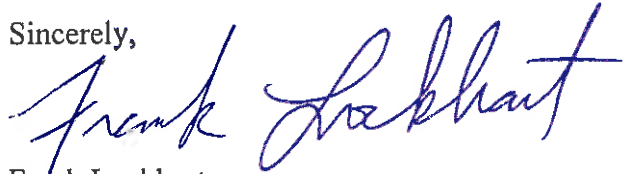
additional analysis of EMS data for enforcement or management purposes would be paid for by NMFS as would all administrative costs related to the monitoring program.

Under the proposed maximized retention and monitoring program, Federal regulations would require first receivers to have on-shore monitoring conducted by catch monitors. Catch monitors would be trained in techniques that would be used for the verification of fish ticket data and in species identification. Catch monitors would oversee the process of sorting, weighing, and recordkeeping, as well as gather information on incidentally caught salmon. Catch monitors would verify the accuracy of electronic fish ticket data used to manage the Pacific whiting shoreside fishery such that inaccurate or delayed information does not result in a fishery specification (bycatch limits, species allocations, optimum yields, and biological opinion thresholds) being exceeded.

Catch monitors are third party employees procured from NMFS-specified providers, paid for by industry, and trained to NMFS standards. The first receiver's responsibilities would include paying for the services of the catch monitor, including the days in which the catch monitor is trained, days in which catch monitors are assigned to the first receiver, and post deployment days in which the catch monitors are interviewed by NMFS and in which they submit their final data. Additional data analysis costs for enforcement or management purposes would be paid for by NMFS as would all administrative costs related to the monitoring program. Under the EFP, first receivers would also be required to submit a monitoring plan prior to receiving Pacific whiting shoreside fishery deliveries.

If you have any questions, contact me at your convenience.

Sincerely,



Frank Lockhart

Assistant Regional Administrator

Enclosures:

The 2009 Pacific Whiting Shoreside Fishery Maximized Retention and Monitoring Program

1) **Project Title:** The 2009 Pacific Whiting Shoreside Fishery Maximized Retention and Monitoring Exemption Program

2) **Project coordinator:** NMFS Northwest Region, Sustainable Fisheries Division.
For further information contact: Becky Renko by mail at 7600 Sand Point Way NE, Seattle, WA 98115, by email at becky.renko@noaa.gov, by fax at 206-526-6736, by phone at 206-526-6110.

3) **Purpose of the exemption program and exempted fishing permits (EFP)**

NMFS is in the process of transitioning the Pacific whiting fishery maximized retention and monitoring program managed under an EFP to a Federal regulatory program. The purpose of the exemption program is to test our initial design for the onshore monitoring in advance of the final rulemaking. The EFP would allow vessels to retain unsorted Pacific whiting catch for efficient prosecution of fishery while assuring that there is adequate monitoring at-sea and verification of electronic fish ticket reports.

4) **Specific regulations from which an exemption is being requested**

The EFP, if issued, would authorize, for limited purposes, the following activities which would otherwise be prohibited:

Under 660.306 (a)(2) it is unlawful for any person to retain any prohibited species. Prohibited species must be returned to the sea as soon as practicable with a minimum of injury when caught and brought on board. An EFP is needed to allow vessels to retain prohibited species until offloading and to require deliveries to processors participating in the program.

Under 660.306 (a)(10) it is unlawful for any person to take, retain, possess or land more than a single cumulative limit of a particular species, per vessel, per applicable cumulative limit period. An EFP is needed to allow vessels and first receivers to take, retain, possess or land more than a single cumulative limit.

Under § 660.306 (a)(7), it is unlawful for any person to fail to sort, prior to the first weighing after offloading, those groundfish species or species groups for which there is a trip limit, size limit, scientific sorting designation, quota, harvest guideline, or OY, if the vessel fished or landed in an area during a time when such trip limit, size limit, scientific sorting designation, quota, harvest guideline, or OY applied. An EFP is needed to allow Pacific whiting shoreside first receivers to use a hopper type scale to derive an accurate total catch weight prior to sorting providing that immediately following weighing of the total catch and prior to processing or transport away from the point of landing, the catch is sorted to the

species groups and all incidental catch is accurately weighed and the weight of incidental catch deducted from the total catch weight to derive the weight of target species.

5) **Catch information**

The species (target and incidental) expected to be harvested and/or discarded under the program are similar to those observed in recent years under the State run monitoring program. Please see the attached Pacific whiting shoreside fishery summary from 2007 for the expected catch by species.

Pacific whiting shoreside vessels participating with the EFP would be required to dump unsorted catch directly below deck and would be allowed to land unsorted catch providing an electronic monitoring system (EMS) is used on all fishing trips to verify retention of catch at sea.

On shore monitoring conducted by catch monitors would be required under the EFP. Catch monitors are third party employees procured from NMFS-specified providers, paid for by industry, and trained to NMFS standards. Catch monitor duties would include overseeing the sorting, weighing, and recordkeeping process. Catch monitors would also gather information on incidentally caught salmon.

Marine mammal catch will continue to be document on NMFS forms and submitted by the vessels per NMFS reporting requirements for the Pacific Coast Groundfish Fishery. The monitoring program under an EFP could be used to verify that reporting occurred.

6) **Anticipated number of participants**

The estimated number or EFPs that would be issued is as follows:

Catcher Vessels: 30-40

First Receivers: 12-16

7) **EFP Terms and conditions for Pacific whiting shoreside vessels**

The terms and conditions of EFPs issued to Pacific whiting shoreside vessels would include the following:

Reporting requirements:

- Vessels must have a valid declaration for midwater trawl gear in the Pacific whiting shoreside fishery
- Trawl logbooks must be maintained as required by the applicable state law.
- On each EFP trip "Maximum Retention Fishing Trip" (or "MAX") must be legibly written at the bottom of each logbook page.
- Logbooks must be completed in a timely manner and include:

- The estimated weight of all species, including, prohibited species.
- An estimate of the total amount of discarded catch for each species legibly written at the bottom of the logbook page, as well as the accurate location of the haul and reason for discarding.
- If discard occurs as a result of gear malfunction, a description of the event must be recorded.
- Immediately following an unavoidable discard event, the vessel must stop fishing and immediately return to port, with notification to NMFS, Office for Law Enforcement being made prior to arrival in port.

Maximized Retention requirements

- All catch must be brought on board the vessel and retained until offloading, with some exceptions:
 - Pacific whiting removed from the deck and fishing gear during cleaning may be discarded, provided that the total does not exceed one basket from any single haul, with the maximum dimensions of the basket being 24 inches by 16 inches by 16 inches. All catch in excess of the one basket would need to be placed into the fish hold. Discarding species other than Pacific whiting would be prohibited.
 - Large individual marine organisms, such as marine mammals or fish species longer than 6 ft (1.8 m) in length, could be discarded provided the species and the reason for discarding were properly recorded in the required logbook.
 - All incidentally caught marine mammals would need to be documented in the vessel logbook and reported to the NMFS Office of Protected Resources by submitting a completed Marine Mammal Authorization Program mortality/injury report form.
 - Unavoidable discard of catch would be the result of an event that is beyond the control of the vessel operator or crew. The quantity and all species discarded as a result of an unavoidable discard event would need to be estimated, and the location of the tow, and reason for discarding recorded in the required. Immediately following the event, the vessel would be required to stop fishing and return to port, with notification to NMFS OLE being made prior to arrival in port.
 - Discard, that results when more catch is taken than is necessary to fill the hold, is within the control of the vessel operator and would continue to be prohibited.
- All prohibited species incidentally caught in a midwater trawl, and required to be retained under this section, would be abandoned to the State of landing immediately upon offloading.
- All groundfish caught in excess of the trip limits would be abandoned to the State of landing immediately upon offloading.
- No vessel could receive payment for any fish landed in excess of any cumulative trip limits.
- All fish from a delivery must be offloaded at only one first receiver.

EMS requirements

- Owners of vessels participating in the Pacific whiting shoreside fishery would be required to arrange for EMS services from a NMFS-approved provider and pay all associated costs.

- Vessels required to procure EMS services may also be required to carry an NMFS West Coast Groundfish Observer Program observer.
- The vessel operator would be required to schedule maintenance of EMS equipment.
- One each trip prior to the start of fishing, the vessel operator must conduct an EMS status check as specified by the EMS provider to confirm that all components of the EMS are functioning properly. The EMS will record the results of this check. If the EMS check identifies a malfunction, the vessel must contact the NMFS-specified EMS provider immediately.
- From 30 minutes before official sunset until 30 minutes after official dawn, each vessel required to have EMS would be required to provide lighting to areas where the trawl nets and fish are handled and fish hold openings, deck spaces, and the trawl ramp so the activities could be clearly recorded by the EMS cameras:
 - When aware that EMS is not functioning properly or the power has been interrupted, the vessel operator would be required to immediately contact the EMS service provider.
 - The vessel is obligated to monitor the EMS performance and contact the EMS service provider immediately when the system malfunctions. The EMS provider is required to provide technical service within 24 hours of notification.

Prohibited actions:

- Failure to comply with all EFP requirements.
- Failure to maintain the trawl logbook as required by the State of landing and the EFP.
- Delivery of unsorted whiting catch to first receivers that do not hold EFPs.
- Fish with a vessel that does not have properly installed and functioning EMS equipment.
- Tamper with, disconnect, damage, destroy, alter, or in any way distort, render useless, inoperative, ineffective, or inaccurate any component of the EMS unit.
- Fail to provide notice to NMFS of any interruption in the power supply to the EMS unit or intentionally interrupting the power supply to the EMS unit (failure to provide notice to NMFS OLE will be considered as an intentional interruption);
- Use a gear other than midwater trawl gear.
- Fail to have a valid declaration report for midwater trawl.
- Target a species other than Pacific whiting when the vessel has a declaration for midwater trawl gear in the Pacific whiting fishery.
- Fail to abandon all prohibited species and overage catch to the state of landing
- Fail to bring all catch onboard the vessel and retain that catch until offloading, with the exception of large marine organisms and operational discards.
- Fail to cease fishing and return to port immediately following a discard event of more than one basket of fish.
- Fish for, land, or process fish without observer coverage when a vessel is required to carry an observer under § 660.314(c).

8) **EFP Terms and conditions for Pacific whiting shoreside first receiver**

The terms and conditions of EFPs for Pacific whiting shoreside first receivers would include the following:

Maximized retention requirements

- Procure catch monitor services from a NMFS approved catch monitor provider and pay all associated costs.
- Catch monitors would be required for all Pacific whiting shoreside fishery deliveries by vessels holding EFPs.
 - Pacific whiting shoreside fishery landings are those landings taken during the primary season by a vessel declared to be using limited entry midwater trawl.
- A catch monitor would be required to be present at the shoreside processing facility each day that Pacific whiting landings are received.
- Catch monitor would be given notification in person, by personal communications radio, or by telephone of planned facility operations, including the receipt of fish, at least 30 minutes and not more than 2 hours prior to the start of the planned operation.
- Catch monitors would be given free and unobstructed access to the catch throughout the sorting process and the weighing process.
- Catch monitors would be given free and unobstructed access to any documentation required by regulation including fish tickets and scale test results.
- Catch monitors would be given free and unobstructed access to a telephone and facsimile during the hours that Pacific whiting is being processed at the facility and 30 minutes after the processing of the last delivery each day.
- The owner or manager of each Pacific whiting shoreside first receiver would be required to provide reasonable assistance to the catch monitors to enable each catch monitor to carry out his or her duties. Reasonable assistance includes, but is not limited to: informing the monitor when bycatch species will be weighed, and providing a secure place to store equipment and gear.
- The owner or manager of each Pacific whiting shoreside first receiver would be required to adhere to all applicable state and federal rules, regulations, or statutes pertaining to safe operation and maintenance of a processing and/or receiving facility.

NMFS-Approved Monitoring plans

- Each Pacific whiting shoreside first receiver would be required to have a NMFS accepted monitoring plan before being issued an EFP.
- A monitoring plan would be submitted to NMFS by the owner or manager of a first receiver at least 14 days prior to receiving Pacific whiting shoreside fishery deliveries.
- The catch monitoring plan must include the following types of information:
 - Name and signature of the person submitting the monitoring plan.
 - Address, telephone number, fax number and email address (if available) of the person submitting the monitoring plan;
 - Name and location of the first receiver;
 - A detailed description on how the first receiver will meet the weighing and sorting requirements including:
 - The sorting locations and the amount of space for sorting catch, the number of personnel assigned to catch sorting and the maximum rate that catch will flow through the sorting area.
 - Personnel skills and training for sorting catch to federal species groups.
 - The process for weighing catch, including large and small volumes of target and incidentally caught species.

- The scale makes and models being used to weigh catch during the Pacific whiting shoreside fishery, including the most current test date provided by the Department of Weights and Measures for the state of landing and whether or not the scale met the testing criteria either initially or upon retesting.
 - A description of how the catch monitor requirements would be met, including:
 - How the first receiver operates and maintains a safe processing and/or receiving facility.
 - Who would be responsible for notifying the catch monitor of planned facility operations, including the receipt of fish.
 - How the catch monitor would be given access to the catch throughout the sorting process and the weighing process and to any documentation required by regulation including fish tickets and scale test results.
 - The name and contact information for an individual(s) who will be responsible for assuring that the catch monitor obtains the necessary information from the first receiver.
 - A description of when and where prohibited species will be counted.
- NMFS will review the monitoring plans within 14 days of receiving a complete monitoring plan submission. If NMFS does not accept a monitoring plan the first receiver owner or manager may resubmit a revised monitoring plan.

Specifications and management measures

- An allowance would be made to allow Pacific whiting shoreside first receivers that use a hopper type scale to derive an accurate total catch weight prior to sorting. Providing that immediately following weighing of the total catch and prior to processing or transport away from the point of landing, the catch must be sorted to the species groups and all incidental catch (groundfish and non groundfish species) is accurately weighed and the weight of incidental catch deducted from the total catch weight to derive the weight of target species.

Prohibited actions

- Receive for transport or processing, catch from a Pacific whiting shoreside vessel without obtaining verification from vessel personnel that the vessel has an EMS from the NMFS provider installed on the vessel
- Process catch without coverage of a catch monitor unless NMFS has granted a written waiver specifically exempting the first receiver from the catch monitor coverage requirements.
- Fail to sort fish to federal species groups.
- Process, sell, or discard any groundfish received from a Pacific whiting shoreside vessel that has not been accurately weighed on a scale and accounted for on an electronic fish ticket report
- Fail to weigh fish landed from a Pacific whiting shoreside vessel prior to transporting the catch away from the point of landing.
- Mix catch from more than one delivery prior to the sorting and weighing of catch.

- Fail to allow the catch monitor unobstructed access to catch sorting, processing, catch counting, catch weighing, or electronic or paper fish tickets.
- Fail to provide reasonable assistance to the catch monitor.
- Forcibly assault, resist, oppose, impede, intimidate, harass, sexually harass, bribe, or interfere with a catch monitor.
- Interfere with or bias the procedure employed by a catch monitor.
- Tamper with, destroy, or discard a catch monitor's equipment, records, photographic film, papers, or personal effects without the express consent of the catch monitor.
- Harass a catch monitor by conduct that: has sexual connotations, has the purpose or effect of interfering with the catch monitors work performance, and/or, otherwise creates an intimidating, hostile, or offensive environment.
- Require, pressure, coerce, or threaten a catch monitor to perform duties normally performed by processor employees.