



August 16, 2007

Mr. Donald K. Hansen, Chair  
Pacific Fishery Management Council  
7700 NE Ambassador Place, Suite 101  
Portland, OR 97220

Mr. D. Robert Lohn, Administrator  
National Marine Fisheries Service, Northwest Region  
7600 Sand Point Way NE  
Seattle, WA 98115-0070

RE: Whiting Fishery Management

Dear Mr. Hansen and Mr. Lohn:

We are greatly concerned by the illegal dumping and disposal of widow rockfish and salmon by whiting fishermen and a Washington processor. This dishonest activity underscores the need for elevated bycatch monitoring, caps and controls of the whiting fishery. Our goal must continue to be a healthy ocean ecosystem for future generations and this requires the protection of overfished and recovering rockfish and other marine life impacted by managed fisheries. In the recent whiting fishery incidents, the few bad actors ought to be punished for their illegal activities; and any management solutions to continue the fishery must fully consider the conservation of all affected rockfish species, salmon, and other marine life; and include hard caps, 100% observer coverage, real-time monitoring, and enforcement that controls bycatch.

The Pacific whiting fishery is already managed on the edge of sustainability. The 2007 optimum yield for Pacific whiting was set at a level that risks bringing the stock to within one percent of overfished by 2009.<sup>1</sup> Widow rockfish remain under a continued rebuilding plan. Estimates of the widow rockfish population indicate the stock remains in the "precautionary zone." Management of the whiting fishery, however, must not be in the vacuum of single-species assessments and widow bycatch caps. Consideration must be given to the take of all affected marine life including the ecological impact of the proposed removal of 242,500 metric tons of whiting (the U.S. OY) from the California Current Large Marine Ecosystem.

We trust that the Council will closely engage in this issue, paying full consideration to the status of the whiting stock, rockfishes, salmon and other marine life affected by this fishery. This catastrophe should not be used to weaken regulations. We look forward to working with you at the upcoming September meeting in finding an appropriate and responsible solution.

Sincerely,

A handwritten signature in black ink, appearing to read "Ben Enticknap", is written over a light blue rectangular background.

Ben Enticknap  
Pacific Project Manager

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<sup>1</sup> 72 Federal Register, 19390 (April 18, 2007).

August 21, 2007

Dr. Donald McIsaac  
Executive Director  
Pacific Fishery Management Council  
7700 NE Ambassador Place, Suite 101  
Portland, Oregon 97220-1384

Dear Dr. McIsaac and members of the Council,

First, we would like to apologize for the length of this public comment. But it holds some very important issues that need to be addressed. We hope that you take the time to read it in its entirety and that you will gain some insight because of it. This may very well be our last public comment letter to the Council.

[Taken from the Minutes of the 187<sup>th</sup> PFMC Meeting in March 2007](#)

E.5 Consideration of Inseason Adjustments

E.5.b Report of the GMT

“ Mr. Moore noted the GMT’s concern with midwater trawls fishing for whiting in the RCA while sorting their catch during the primary season without full monitoring”.

Mr. Anderson noted that the GMT was recommending closing shoreward of the trawl RCA north of Cape Alava, which will probably move the small Neah Bay fleet south of Cape Alava.

Mr. Anderson asked, “Did the GMT consider the effect of this effort shift? Mr. Burden answered yes, the GMT was trying to shift larger vessels seaward of the RCA. [The GMT is uncertain about the effort shift of small vessels](#)”.

And obviously, the GMT didn’t care enough to acknowledge and consider the impact of an ‘effort shift’ for the small vessels of Neah Bay. And obviously, the Council didn’t care either because the Council thought that closing the area shoreward of the RCA was a good enough idea to implement it [immediately](#).

[From the Federal Register: April 18, 2007 \(Volume 72, Number 74\)\] \[Rules and Regulations\] \[Page 19390-19410\]:](#)

“The Council also considered various alternatives that would leave the area shoreward of the RCA and north of Cape Alava open during winter months to reduce the disproportionate impact this closure would have on vessels based in northern Washington.”

We are asking the GMT and the Council... WHY isn’t the impact to our small fleet important enough for you to do something about? WHY was the impact to the large vessels the only consideration important enough for you to act upon? WHY is one fleet more important to you than another? The Council acknowledges the fact that this impact is disproportionate against the vessels based in northern Washington. Yet no consideration is made for that unfair impact. The gesture for leaving the area north of Cape Alava, shoreward of the RCA open during the winter months is a alternative. But it would have absolutely no beneficial relief for the Neah Bay non-tribal trawl fleet, as the weather is too severe for us to fish during the winter months and we off the water already anyway.

We would like to tell you, Mr. Burden, and the others that thought this was a good idea, just exactly what kind of an impact this ‘effort shift’ has made on the non-tribal trawl fleet out of Neah Bay. It has proven to be the final blow for us. You have finally killed the non-tribal nearshore trawl fishery of Neah Bay. And we honestly have to say that it virtually feels like that was the agenda. There are indeed many that would like us off the water for several various reasons.

Mr. Burden makes the assumption that our fleet can just relocate to below Cape Alava and continue fishing and everything will be okay for us. That observation and assumption shows that he does not have a true understanding of what our fishery is really all about. If he does indeed understand, then he just doesn’t care if our fleet survives or not.

It’s not like we can just sell our home, relocate, and get a new job someplace else. This is a lot different then that. We have two very important issues, first and foremost is safety... we have to be able to survive in the fishing areas we are allowed to fish in and come back home. The second is economical viability... we have to be able to make enough to cover our expenses AND bring some money home. The latter has been harder and harder to do with each area closure that we have had to endure in Washington.

Telling the larger vessels and/or the Whiting boats that they can not fish in the nearshore waters anymore and they can only fish seaward of the RCA is not a great hardship for them. That is a viable option for them... they can easily keep fishing. There may be some financial loss for them because they are losing an area to fish in, but it is an actual viable option for them and they can keep fishing and survive fishing seaward of the RCA. The large vessels are capable of physically surviving the hard weather... safety is not a daily issue for them. For us there is a huge safety issue. To tell us that we can only fish south of Cape Alava and we are forced to brave the storms is placing our fleet in peril. Our boats are extremely limited in their capabilities on the Pacific Ocean. By pushing us south of Cape Alava that safety issue is magnified many times over. Shifting our effort seaward of the RCA is not an economically viable option for us and neither is running south to below Cape Alava. We have told the Council over and over that our vessels are simple not large enough to be able to do that.

We always had faith that our fisheries were being governed by people that were fair and just, that care about the environment, and care about the fish and the people that harvest them, and managed the fisheries with careful consideration to all aspects and impacts of all users. But the Council's actions of the last few years towards our small fleet out of Neah Bay has caused us to have great reservations about the Council's actions and that integrity. How could the impact of such a drastic closure on our fleet not be important enough for the Council to consider a more equal alternative? Why doesn't our fleet deserve the same respect and importance from the Council? Does the GMT and the Council view the Whiting fishery and the seaward Petrale fishery more important than the Neah Bay non-tribal trawl fishery? We know that we are only a small fleet and we do not have the same status as the larger vessels, but non-the-less we are fishermen with equal rights, that by law are suppose to have the same equal opportunity to fish and survive. The MSA states that the regulation of one fishery shall not adversely effect another, and that it is the Council's responsibility to conduct itself in such a manor that is unbiased and non-discriminatory, and guards against those adverse effects.

Taken from the Minutes of the 187<sup>th</sup> PFMC Meeting in March 2007

Mr. Moore asked, "*Why can't an adjustment to this fishing strategy be made as a routine inseason adjustment?*"

Mr. DeVore stated, "*A routine adjustment cannot be made because this strategy, its associated impacts, and possible actions to mitigate these impacts were not analyzed in the 2007-08 Groundfish Harvest Specifications and Management Measures EIS*".

We fail to see how the Council can not move the Whiting boats out of the RCA as an adjustment to the fishing strategy, yet the Council can close half of a state coastline as a fishing strategy, without it being analyzed in the 2007-08 GHS and MM EIS, and with no regard or consideration of the impact to the historic non-tribal trawl fleet of that area. How can this action by the Council appear to be anything but inappropriate and discriminatory? It certainly was not an emergency action Inseason Adjustment closure, as we were not near the OY for any bycatch in the nearshore area. As a result of our nearshore closure, Canary rockfish that would have been part of the nearshore bycatch OY was taken away and given to the Whiting sector. They said that it was our fault and we caught too many Canary rockfish and they needed to close our area. Then the Council increases the Canary bycatch OY from 4mt to 4.3mt for the Whiting boats. This isn't fishery management... this is biased fishery allocation! Is our problem simply that we are not doing anything about those *'possible actions to mitigate the impacts'*? Perhaps we should be.

NMFS Comments

Mr. Lockhart said that the GMT has done a great job of laying out the Canary rockfish bycatch problem and exploring the various options the Council needs to consider to address this concern.

We do not agree with you. Maybe if you are a Whiting boat, then the GMT has done a great job for you. If you are among the Neah Bay non-tribal trawl fleet you are done fishing. How can the GMT have done a great job exploring various options when it wasn't even important enough for them to discuss the impact of an area wide closure for the Neah Bay non-tribal trawl fleet? The only bycatch problem that was laid out was to give the Whiting boats .3mt more Canary rockfish to harvest.

The GMT has concerns with the Whiting trawlers fishing in the RCA while they were sorting their catch during the primary season without full monitoring. Why can the Whiting boats be in the RCA at all? The other trawlers can not be in the RCA. When the RCA was implemented by the Council, we brought up the issue that the RCA was in part of the area that we have historically used for drifting at night when the weather allowed us to and we asked if it would be all right for us to continue that practice. And if it would be legal for us to drift over the RCA line if we were picking up our gear and got pushed in by the current. The Council's answer to us was "No". We could not night drift in the RCA and we could not be in the RCA for any reason other than transiting through it. To do so would be at risk of citation. We tried to explain to the Council about the currents in the northern nearshore area and that it would be much more dangerous for us to night drift in a different area, but the answer was still "No, we could not be in the RCA". So, our question is... Why are the Whiting boats allowed to sort their

fish in it? If they were not allowed in it at all, like all the other trawlers, then there would not be the problem of them possibly fishing in it.

From the Federal Register: April 18, 2007 (Volume 72, Number 74) [Rules and Regulations] [Page 19390-19410]:

Overfished Species Bycatch Limits in the Pacific Whiting Fishery

“In recent years, the most constraining overfished species for the whiting fishery have been darkblotched, canary and widow rockfish.”

These are the very same fish species that our Neah Bay fleet fishery was shut down for. How can it possibly be that our three small boats have the greatest bycatch?

Trying to shift the larger vessels seaward of the RCA is a good strategy... but at what expense? Killing off another fleet? That is NOT acceptable Fishery Management... that is discrimination. We have made several suggestions to the Council on how to lessen the impact of large vessels in the area nearshore of the RCA, but they have always fallen on deaf ears. Now we are shut down and the large vessels seaward of the RCA are still fishing. The northern nearshore non-tribal trawl fleet are not the offenders of this bycatch issue... yet we suffer the heaviest burden. That's simply not right. Our punishment for supposedly catching too many Canary rockfish north of 40'10 is a complete closure of the last area we can viably fish in. The Whiting trawlers punishment for catching too many Canary rockfish north of 40'10 is an increase of .3mt more Canary rockfish to harvest, and 20mt more of Widow rockfish to harvest.

Limited Entry Trip Limits - [Page 19397]

“Industry representatives indicated that petrale sole limits less than 20,000 lbs (9,072 kg) per two months were not economically sustainable, given the cost of fuel needed to access that catch. The Council also considered the effects of petrale sole cumulative limit reductions on the bycatch of canary rockfish.

Based on these analyses and information, the Council recommended and NMFS is implementing a decrease in the limited entry trawl fishery cumulative limits for petrale sole north of 40[deg]10.00[min] N. lat.: Beginning May 1 through October 31, 2007, from “25,000 lb per two months” to “20,000 lb per two months”; and beginning November 1 through December 31, 2007, from “50,000 lb per two months” to “30,000 lb per two months”. South of 40[deg]10.00[min] N. lat., beginning May 1 through October 31, 2007, the Council recommended and NMFS is implementing reductions in cumulative limits for petrale sole from “30,000 lb per two months” to “25,000 lb per two months”. “

Our Neah Bay non-tribal trawl fleet needs to be given the same consideration for the high cost of fuel and the economic viability of forcing us to travel to south of Cape Alava to fish. There is a point at which it is just not financially profitable to continue fishing. This recent closure north of Cape Alava has put our fleet at that breaking point. Notice that the Council obliged the request and did not recommend any limit less than the 20,000lb per two month period. Why is it that our fleets requests continually go unheard?

The Council has stated that additional data was given by the SSC from the WCGOP and the data showed that there was too much bycatch caught in the area shoreward of the RCA north of Cape Alava. We are requesting a copy of that data. This data was generated with taxpayer dollars and as such should be public information. Consider this our formal request for **ALL** catch and bycatch data from the SSC and WCGOP (with the exception of individual personal information privacy) for the area shoreward and seaward of the RCA in Washington state. We want to see the data responsible for the demise of our Neah Bay non-tribal trawl fleet.

Contrary to what your data says, because we are a small fleet, our bycatch impacts are less. Our fleet has worked very hard for years to try and guarantee that our impact is very minimal. We use to have a very clean fishery for Pacific Cod and for Petrale also. The advances that were made with the selective trawl were very successful. A fleet of only three small family owned and operated boats just does not make a huge impact. Our fleet doesn't even fish all year... at best we may get to fish for six to eight months of the year. Weather and sea conditions are our main controller.

Tuesday, August 07, 2007

The Oregonian Newspaper - Illegal Action Stops Fishing of Whiting

Bycatch - A fishing boat and plant were dumping widow rockfish, which has caps...

<http://www.oregonlive.com/business/oregonian/index.ssf?base/business/118645712345330.xml&coll=7>

This kind of greed harms all of the commercial fishermen. But it is an especially bitter pill for us to swallow when the Neah Bay non-tribal fleet was shut down this year partially because of this species.

After the closure we tried moving south of Cape Alava, we even moved our entire business operation out of Neah Bay and relocated to Westport, WA. That didn't work. We don't have a clue where the fish are down there. The hardship of the extra fuel cost to search for new fishing grounds was cost prohibitive. The only area left that we were familiar with is up close to the Cape Alava line. That is a very long run for us either from Neah Bay or from Westport... it is right in the middle. We tried night drifting below Cape Alava in order to conserve fuel and we almost lost our boat because of it. We tried anchoring at night behind some of the small islands and sea-stacks dotted in a few places along the coast. These places are very few and far between and only offer very limited protection, if any at all. During storms there is virtually no protection. As we stated in several comment letters previously, the boats in our fleet are small and we can not operate like the larger vessels. Our fleet does not have the option of fishing seaward of the RCA and our fishing effort is extremely limited by the weather alone. Because fishing below Cape Alava is not a financially viable option for our fleet either, this last Council decision has devastated our fleet and we are basically done.

The only thing that would save our fleet at this point would be if there were an immediate opening of the area shoreward of the RCA north of Cape Alava to the Canadian Border. That would allow our fleet to still exist. The financial hardship our fleet has been forced to suffer because of this Council decision will take us atleast a year to recuperate from... and that would only be if we were allowed to go fishing immediately. Any delay would mean our ultimate demise. Our fleet tried doing what the Council and GMT recommended... it didn't work. With one stroke of the pen by the Council and GMT the Neah Bay non-tribal nearshore trawl fleet will cease to exist and be gone forever. And we would like to remind the Council that there has been a historic non-tribal Neah Bay nearshore trawl fleet for over 75 years. We have slowly been reduced to only three because of old age and regulations. Previously, we have told the Council how all three of us are in our mid sixties and asked the Council to allow us to fish in our usual area for just a few more years so that we may be able to finish out our careers. There are no younger trawl fishermen coming up behind us to replace us. So when we retire the Neah Bay non-tribal trawl fishery will be finished anyway. That request fell on deaf ears also.

It's not fair to make our fleet the main ones to suffer the burden of area closures. It's not fair to allocate our bycatch to a different sector. The survival of our small fleet is in the Council's hands. We sincerely hope that you make an honorable decision... manage the fishery fairly... and open the area nearshore of the RCA north of Cape Alava immediately.

We would like to thank Mr. Anderson from the WDFW, and Mr. Moore from West Coast Seafood Producers for their comments to the GMT and the Council in trying to bring to your attention the need to consider the true impact on our fleet. They both bring up very valid and relative issues. The GMT and Council would do well to listen to Mr. Anderson and Mr. Moore more carefully in the future. The impacts on ALL fleets need to be addressed completely. Not just be assumed. These are life-changing decisions the Council makes, with big impacts on other people's lives. These decisions deserve deep consideration and not frivolous assumptions. Our fleet deserves the respect from the Council of your equal consideration too.

Sincerely,  
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