

GROUND FISH ADVISORY SUBPANEL REPORT ON ENDANGERED SPECIES ACT
MITIGATION MEASURES FOR SALMON – FINAL ACTION

The Groundfish Advisory Subpanel (GAP) received a briefing from Mr. Todd Phillips, Pacific Fishery Management Council (Council) staff, about the draft Regulatory Impact Review¹ (RIR) of the Council's Preliminary Preferred Alternative (PPA) salmon mitigation measures adopted at the September 2019 Council meeting. Mr. Brian Hooper, National Marine Fisheries Service (NMFS), reviewed the draft regulations provided in the Supplemental NMFS Report 1².

In general, the GAP recommends adoption of the PPA as the Final Preferred Alternative (FPA) with several caveats.

Regulatory Impact Review (RIR)

The GAP discussed with Council and NMFS staff language in the Council motion related to the annual salmon mitigation plans (SMP) post-season report to be submitted to the Council by the Pacific whiting cooperatives in relation to the salmon mitigation plans (SMPs) developed by the cooperatives. The Council motion appears to make “incidences of high salmon bycatch” the focus of the annual post-season report. The GAP thinks the purpose of an SMP and function of the annual post-season report is to describe overall performance of the cooperative relative to mitigating salmon bycatch, rather than focusing on individual events. Overall performance also seems more consistent with Term and Condition 2.b, where “the Council is required to consider developing new mitigation management tools to allow for timely inseason management to keep the sectors from exceeding their salmon bycatch guidelines.” Council and NMFS staff appeared to agree with the GAP. **The GAP recommends the Council clarify that the intent of the annual post-season report is to focus on seasonal performance of the cooperative in mitigating salmon bycatch rather than focusing on individual incidences of high salmon bycatch.**

The RIR frames the post-season reporting requirement in the context of describing the “effectiveness” of salmon mitigation measures. However, while the cooperatives closely monitor bycatch and timely respond to high bycatch events, these activities are not necessarily quantifiable, which would be necessary to measure effectiveness. Therefore, consistent with the GAP's previous recommendation, the GAP recommends the Council clarify that its intent of the post-season report is to describe the use of salmon mitigation measures and performance of cooperative mitigation measures on an annual basis.

¹ [Initial Review Draft, Regulatory Impact Review for Proposed Regulatory Amendment, Agenda Item H.9, Attachment 1 \(Revised\), November 2019](#)

² [Endangered Species Act Mitigation Measures for Salmon Bycatch in the Groundfish Fishery, Agenda Item H.9.a, Supplemental NMFS Report 1, November 2019](#)

The GAP recommends that the Council select Option B for the reserve access rule for the shoreside whiting sector, which would provide automatic access to the reserve for vessels operating under an approved SMP, just like in the at-sea sectors. **The GAP recommends that those approved vessels be exempted from additional measures**, such as block area closures (BACs), which the Council or NMFS might apply to the remainder of the shoreside whiting sector to allow access to the reserve by vessels who are not operating under an approved SMP. Option B would provide more certainty for industry about application of the reserve rules – i.e., those who submit an SMP could access, those who do not could not without further action by the Council or NMFS – and would provide more equitable access to the reserve by all whiting sectors.

The GAP notes that the mothership sector regulations provide for the possibility of multiple mothership (MS) cooperatives and/or a cooperative and non-cooperative fishery. The catcher processor (CP) regulations state that the CP sector would revert to an Individual Fishery Quota program in the event the CP cooperative disbands. While these scenarios are unlikely and disincentivized in the regulations, **the GAP recommends that the Council include backstop provisions for the at-sea sectors similar to what we suggest for the shoreside sector**, stating that in such situations MS catcher vessels and/or CP vessels (or groups of vessels) could submit SMPs that, once approved by NMFS, would allow automatic access to the reserve. The GAP thinks it would be better to address the possibilities provided in regulation now, however unlikely, so that the action is complete and does not need revisiting later.

The GAP notes an apparent error in the Council motion that appears to have been corrected by staff in developing the alternatives. That is, the 3rd bullet under “Development of Reserve Rule Provision” (page iii) states: “If there are vessels participating in the shoreside whiting fishery that are not members of a shoreside whiting co-op, then additional actions by the Council or NMFS may be needed to minimize Chinook salmon bycatch (e.g., BACs, [selective flatfish trawl] SSFT) prior to allowing access to the reserve by that sector.” However, whiting vessels do not use SSFT gear. Later in the document (page ix), the text for this 3rd bullet was changed to omit reference to SSFT. **The GAP supports this correction and recommends the Council accept the language as modified by staff.**

Supplemental NMFS Report – Clarifying Questions and Draft Regulations

The GAP appreciates the clarifying questions provided by NMFS, as well as the additional details about program implementation provided in Supplemental NMFS Report 1. Mr. Hooper noted that the draft regulatory language in the supplemental report was an initial draft that is subject to change prior to the formal rulemaking stage. **The GAP recommends the Council request NMFS continue to coordinate with Council staff and fishery participants prior to the formal rulemaking process to ensure draft regulations developed for the proposed rule are consistent with Council intent, satisfy the Terms and Conditions of the Biological Opinion, and align with cooperatives/industry participants’ ability to develop, implement, and report on salmon mitigation measures.**

The GAP notes that similar language focusing on “high salmon bycatch incidents” appears in the supplemental NMFS report and recommends the same change as detailed above.

Specific to the 500 Chinook salmon held in reserve for fixed gear and recreational fisheries, the GAP notes that in its review of this measure, NMFS appears to conclude that “[i]f the Council wants to preserve 500 fish for fixed gear and recreational fleets, the 19,500 fish closure point for all trawl fisheries, and the 8,500 fish closure point for non-whiting trawl fisheries may be sufficient. Therefore, additional reductions from the whiting sector may not be necessary.”³ **The GAP recommends the Council accept this NMFS analysis and clarify the fishery closure points.**

In the supplemental report, NMFS details its rationale for extending the ability to submit SMPs from only cooperatives to groups of shoreside vessels and/or individual shoreside vessels. The GAP notes that there are regulatory provisions for whiting mothership (MS) participants to operate independent of the formal MS cooperative. **The GAP recommends that if a subset of MS sector participants operate in a non-cooperative mode, then those vessels also be required to submit SMPs in order to have access to the Chinook salmon reserve. Similarly, as noted above, if the CP sector changes to an IFQ fishery then individual CPs (or groups of CPs) need to submit an SMP as a means to access the reserve.**

In addition, in the supplemental report, NMFS requests “Council input on when to evaluate if behavior by SMP participants is consistent with the SMP, thereby ensuring the SMP is in good standing prior to the sector or SMP participants accessing the reserve.” NMFS notes that if the Council wants a more formal check-in process, that whiting participants fishing under an SMP could be required to submit inseason reports to the Council and that NMFS could provide Vessel Monitoring System data from these vessels to the Council. **The GAP recommends that for the MS, CP, and shoreside cooperatives these elements discussed by NMFS are not necessary and should not be included in rulemaking.** The Council regularly receives inseason information from the Groundfish Management Team and cooperative representatives regularly report on the performance of their respective sectors. For the cooperatives, this current process is sufficient to ensure compliance with SMPs.

Improved Accounting of Chinook Bycatch

As the Council discussed under the NMFS Report Agenda Item at this meeting, whiting fishery participants are concerned that observer extrapolations of Chinook salmon bycatch do not match actual salmon bycatch. **The GAP recommends the Council request NMFS Observer Program staff work with whiting industry participants to change Chinook sampling protocols from an extrapolation-based method to a census for the MS and CP sectors** (it appears salmon are already censused in the shoreside whiting fishery). MS and CP vessels participate in both the Alaska pollock and Pacific whiting fisheries. These vessels comply with NMFS Alaska Region regulations implementing the Salmon Retention Program that censuses salmon bycatch (rather than an extrapolation estimate). This request is intended to implement similar catch sampling protocols for the whiting fishery and reflects a transition to improved and more accurate catch accounting for Chinook salmon bycatch.

³ (page 3) [Endangered Species Act Mitigation Measures for Salmon Bycatch in the Groundfish Fishery, Agenda Item H.9.a, Supplemental NMFS Report 1, November 2019](#)

Salmon Donation Program

As the GAP discussed Chinook salmon enumeration for the at-sea sectors under the above section, members of the GAP found it prudent to suggest that the Council and NMFS consider establishing a salmon donation program for at-sea processors, now or in the future, similar to the shoreside processor program for maximized retention fisheries on the West Coast⁴, or the prohibited species donation (PSD) program in the North Pacific. Under the North Pacific program, authorized tax-exempt distributors such as [Sea Share](#) are issued PSD permits and may collect stored salmon bycatch from authorized vessels to provide food resources to hunger relief agencies, food bank networks, or food bank distributors⁵. This is an incredibly successful program that current at-sea whiting processors participate in during their pollock operations. However, there is no mechanism on this coast to donate our bycaught salmon.

PFMC

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⁴ 50 CFR §660.140 (g)(3) - https://www.ecfr.gov/cgi-bin/text-idx?SID=d3fef68cbe2a611cb38e644b8352186&mc=true&node=pt50.13.660&rgn=div5#se50.13.660_1140

⁵ 50 CFR §679.26 - https://www.ecfr.gov/cgi-bin/text-idx?SID=d3fef68cbe2a611cb38e644b8352186&mc=true&node=pt50.13.679&rgn=div5#se50.13.679_126