

ENDANGERED SPECIES ACT MITIGATION MEASURES FOR SALMON BYCATCH IN THE GROUNDFISH FISHERY

The National Marine Fisheries Service (NMFS) prepared this report to illustrate potential regulatory changes based on our interpretation of the Council's Preliminary Preferred Alternative (PPA) for salmon bycatch mitigation measures in the Pacific Coast groundfish fishery. We annotated the draft regulations below to explain our rationale for the structure of the regulatory text and flag issues/questions for further Council discussion and clarification prior to final action at this meeting. NMFS will finalize the regulatory text after Council final action, and submit to the Council for deeming, as required under the Magnuson-Stevens Fishery Conservation and Management Act. For this reason, we are requesting the Council and advisory bodies offer general comments and responses to the questions and clarifications we pose below, rather than extensive wordsmithing of the example text.

We presented the [current regulatory text](#) or the [regulatory text proposed under Amendment 28](#) with strikethrough for deletion and bold red underlined text for additions. We grouped the draft regulatory changes and issues for Final Preferred Alternative (FPA) consideration by alternative suites 1) Block Area Closures, Extension to the Exclusive Economic Zone, and Selective Flatfish Trawl 2) Pacific Whiting Cooperative Operational Rules, 3) Automatic Authority for NMFS to Close Trawl Sectors and Preserve 500 Chinook salmon for Fixed Gear and Recreational Fisheries, and 4) Development of Reserve Rule Provision.

Issues/questions/clarifications for FPA consideration:

1) Block Area Closures, Extension to the Exclusive Economic Zone, and Selective Flatfish Trawl

- The Council chose to not include waters off Washington in the PPA to extend BACs to the Exclusive Economic Zone. The Council should clarify its rationale if it makes this recommendation in the FPA.

2) Pacific Whiting Cooperative Operational Rules

- NMFS interpretation of the PPA is an approved salmon mitigation plan (SMP) does not prohibit the Council from taking additional action to minimize salmon bycatch. This means that if a whiting sector fails to act on an SMP, has a high rate of salmon bycatch prior to reaching the reserve, or has a high rate of salmon bycatch after being allowed access to the reserve, the Council could choose to implement a BRA/BAC to slow bycatch in that sector.

- The shoreside whiting sector is not regulated in the same manner as the Catcher/processor (C/P) and Mothership (MS) sectors and co-ops. There is no requirement to register as a shoreside whiting vessel and all that is needed to participate in the fishery is a trawl endorsed limited entry permit assigned to a vessel and Pacific whiting quota. For these reasons, any SMP for the shoreside whiting sector would need to be tied to a vessel or group of vessels (e.g. the shoreside whiting co-op) rather than just the co-op itself. In other words, any vessel or group of vessels participating in the shoreside whiting sector could submit an SMP. Similarly, if not all vessels in the Mothership sector are part of the Mothership co-op, those vessel(s) would also have the option to submit a SMP.
- We have preliminarily determined the Council could, if desired, apply a mitigation measure (e.g., a BAC) to all whiting vessels and exempt those with an approved SMP. However, we would like additional feedback from the Enforcement Consultants and others on the feasibility of this approach.
- We seek 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.
 - The Council receives a scorecard and assessment of bycatch from the Groundfish Management Team (GMT) at each Council meeting. Whiting sector representatives may also provide status updates on their salmon bycatch minimization actions at Council meetings through public comment. This process may provide the Council with enough information to determine if participants are acting on SMP measures.
 - If the Council wanted a more formalized check-in point, the Council could request a representative from each SMP submit an inseason report detailing their actions related to the SMP. This report could be provided if, for example, the whiting sector was within a certain percentage of the sector's Chinook salmon bycatch guideline (e.g. 20 percent). This process would give the Council an opportunity, likely at the September or November Council meeting, to evaluate the SMP participants' inseason report and evaluate if behavior by SMP participants is consistent with the SMP.
 - If observer or VMS data is needed to further verify participants' behavior with respect to SMP provisions such as area closures or movement rules, NMFS could supply the Council with this information.
 - Should the Council determine the SMP participants' behavior is not consistent with SMP provisions, the Council could recommend NMFS withhold reserve access or put in other measure(s) it deems necessary to control access to the reserve.
 - Ultimately, if the SMP is not in good standing and the Council or NMFS has not implemented other measures to slow bycatch in that sector, NMFS would withhold access to the reserve through an automatic action.

3) Automatic Authority for NMFS to Close Trawl Sectors and Preserve 500 Chinook salmon for Fixed Gear and Recreational Fisheries

- Automatic actions are non-discretionary. NMFS will implement the action specified in regulation once the threshold or situation discussed in regulation is reached.

- The table at 660.60(d)(1)(v) below describes the automatic closure points due to Chinook salmon bycatch. This table combines closure points implemented through 2019-2020 specifications, closure points recommended in the PPA for reserve rules (NMFS/Council action must be taken prior to access to reserve) and revised trawl closure points to preserve 500 Chinook salmon for the fixed gear and recreational fisheries.
- If 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.

4) *Development of Reserve Rule Provision*

- The Council should clarify its intent with respect to access to the reserve for any shoreside whiting vessels without an SMP. Must the Council or NMFS take additional action on non-SMP vessels for those vessels to have access to the reserve? Or would all shoreside whiting vessels have access to the reserve if a portion of the fleet has an approved SMP?

Draft Regulations based on PPA:

KEY - ~~example text~~ (black strikethrough) = text deletion
example text (bold red underline) = text addition
 example text (plain text) = existing text we don't plan to change; for context only

1. *Block Area Closures, Extension to the Exclusive Economic Zone, and Selective Flatfish Trawl*

[Based on proposed regulatory text under Amendment 28]

§ 660.11 General definitions.

Conservation area(s) means an enclosed geographic area defined by coordinates expressed in degrees latitude and longitude where NMFS may prohibit fishing with particular gear types. Conservation areas include Groundfish Conservation Areas (GCA), Essential Fish Habitat Conservation Areas (EFHCA) and Discretionary Conservation Areas (DCA).

(1) Groundfish Conservation Area or GCA means a conservation area created or modified and enforced to control catch of groundfish or protected species. Regulations at § 660.60(c)(3) describe the various purposes for which NMFS may implement certain types of GCAs through routine management measures. Regulations at § 660.70 further describe and define coordinates for certain GCAs, including: Yelloweye Rockfish Conservation Areas; Cowcod Conservation Areas; waters encircling the Farallon Islands; and waters encircling the

Cordell Banks. GCAs also include depth-based closures bounded by lines approximating depth contours and lines of latitude, including Bycatch Reduction Areas or BRAs, Block Area Closures or BACs, and Rockfish Conservation Areas or RCAs, which may be closed to fishing with particular gear types. BRA, BAC, and RCA boundaries may change seasonally according to conservation needs. Regulations at §§ 660.71 through 660.74, and 660.76 define depth based closure boundary lines with latitude/longitude coordinates. Regulations at § 660.11 describe commonly used geographic coordinates that define lines of latitude. Fishing prohibitions associated with GCAs are in addition to those associated with other conservation areas.

(i) Block Area Closures or BACs are defined at § 660.111.

(ii) Bycatch Reduction Areas or BRAs are conservation areas that apply to vessels using midwater groundfish trawl gear during the Pacific whiting primary season, as described at §§ 660.60(d) and 660.131(c).

Salmon Mitigation Plan (SMP) is a voluntary agreement by Pacific whiting fishery vessel(s) to manage Chinook salmon bycatch, approved by NMFS under §660.60(i)(5). Participants' compliance with an approved SMP provides access to the Chinook salmon bycatch reserve.

§660.60 Specifications and management measures.

(c) ***

(3) ***

(i) *Depth-based management measures.* Depth-based management measures, particularly closed areas known as Groundfish Conservation Areas, defined in § 660.11, include RCAs, BRAs, and BACs, and may be implemented in any fishery sector that takes groundfish directly or incidentally. ~~Depth-based management measures are set using specific~~ **Specific** boundary lines that approximate depth contours with latitude/longitude waypoints found at §§ 660.70 through 660.74, and § 660.76. Depth-based management measures and closed areas may be used for the following conservation objectives: To protect and rebuild overfished stocks; to prevent the overfishing of any groundfish species by minimizing the direct or incidental catch of that species; or to minimize the incidental harvest of any protected or prohibited species taken in the groundfish fishery. Depth-based management measures and closed areas may be used for the following economic objectives: To extend the fishing season; for the commercial fisheries, to minimize disruption of traditional fishing and marketing patterns; for the recreational fisheries, to spread the available catch over a large number of anglers; to discourage target fishing while allowing small incidental catches to be landed; and to allow small fisheries to operate outside the normal season.

(A) Rockfish Conservation Areas. RCAs, as defined at § 660.11, may be modified as routine action for vessels using trawl gear (off Washington), nontrawl gear (coastwide), or recreational gear (coastwide) consistent with the purposes described in paragraph (c)(3)(i) of this section.

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(B) *Bycatch Reduction Areas*. BRAs may be implemented through automatic action in the Pacific whiting fishery consistent with paragraph (d)(1) of this section. BRAs may be implemented as routine management measures for vessels using midwater groundfish trawl gear consistent with the purposes described in paragraph (c)(3)(i) of this section.

(C) *Block Area Closures*. BACs, as defined at § 660.111, may be closed or reopened, off Oregon and California, for vessels using limited entry bottom trawl gear **and off Washington, Oregon and California for vessel using mid-water trawl gear**, consistent with the purposes described in paragraph (c)(3)(i) of this section.

§ 660.111 Trawl fishery—definitions.

These definitions are specific to the limited entry trawl fisheries covered in this subpart. General groundfish definitions are found at § 660.11.

Block area closures or BACs are a type of groundfish conservation area, defined at § 660.11, bounded on the north and south by commonly used geographic coordinates, defined at § 660.11, and on the east and west by **the EEZ, the shoreline, or** boundary lines approximating depth contours, defined with latitude and longitude coordinates at §§ 660.71 through 660.74 **(10 fm through 250 fm), and § 660.76 (700 fm)**. BACs may be implemented or modified, off Oregon and California **for vessels using limited entry bottom trawl gear, and off Washington, Oregon and California for vessels using limited entry midwater trawl gear**, as routine management measures, per regulations at § 660.60(c). **BACs may not be implemented off Washington seaward of the boundary line approximating the 250 fm depth contour. BACs may close areas to specific trawl gear types (e.g. closed for mid-water trawl, bottom trawl, or bottom trawl unless using selective flatfish trawl) or sectors (e.g. whiting, non-whiting, C/P, MS, or Shorebased IFQ)**. BACs may vary in their shape and duration. Their shape, **applicable gear type(s) or sector**, and effective dates will be announced in the Federal Register. BACs may have a specific reopening date as described in the Federal Register, or may be in effect until modified. BACs that are in effect until modified by Council recommendation and subsequent NMFS action are set out in Tables 1 (North) and 1 (South) of this subpart.

§660.130 Trawl fishery—management measures.

(e) *Groundfish conservation areas (GCAs)*. GCAs are closed areas, defined at § 660.11, and using latitude and longitude coordinates specified at §§ 660.70 through 660.74, **and 660.76**. This paragraph describes GCAs applicable to the limited entry trawl fishery, per prohibitions at § 660.112(a)(5), and exceptions to those closures. Vessels with trawl gear on board that is not stowed, as defined at § 660.111, may not operate within a GCA listed in this section, unless authorized in this section. Vessels may not take and retain, possess, or land groundfish taken within an applicable GCA, except as authorized in this paragraph. A vessel authorized to fish

Commented [3]: Note: Exclusive Economic Zone or EEZ is defined at § 600.10. See also Fishery management area at § 660.11.

Commented [4]: Note: The potential boundaries of future BACs already exist in subpart C. The existing procedures through which inseason action would implement these closures is also described in subpart C. The restrictions within closed areas that apply to specific gear types are described in subparts D and F.

Commented [5]: Note: The Council may recommend that NMFS close one or more BACs and the shape of the BAC may vary.

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within an applicable GCA may simultaneously have other groundfish trawl gear on board the vessel that is unlawful to use for fishing within the applicable GCAs, but only if the prohibited gear is stowed, as defined at § 660.111. Continuous transit, with or without groundfish on board, is allowed within an applicable GCA, only when all prohibited trawl gear on board stowed, as defined at § 660.111. Additional closed areas that specifically apply to vessels using limited entry midwater trawl gear are described at § 660.131(c).

- (1) * * *
- (2) * * *
- (3) * * *
- (4) * * *

(5) *Block area closures or BACs.* BACs, defined at § 660.111, are applicable to vessels with groundfish ~~bottom~~ trawl gear on board that is not stowed, per the prohibitions in § 660.112(a)(5). When in effect, BACs are areas closed to ~~bottom~~ trawl fishing. A vessel operating, for any purpose other than continuous transiting, in the BAC must have prohibited trawl gear stowed, as defined at § 660.111. Nothing in these Federal regulations supersedes any state regulations that may prohibit trawling shoreward of the fishery management area, defined at § 660.11. Prohibitions at § 660.112(a)(5) do not apply under any of the following conditions and when the vessel has a valid declaration for the allowed fishing:

(i) ~~Limited entry midwater trawl~~ **Trawl gear.** Limited entry midwater trawl gear **or bottom trawl gear** may be used within the BAC only when it is an authorized gear type for the area and season, **and not prohibited by the BAC.** ~~If a vessel fishes in the BAC using midwater trawl gear, it may also fish outside the BAC with groundfish bottom trawl gear on the same trip with appropriate declaration changes.~~

(ii) *Transiting.* A vessel authorized to operate in a BAC may continuously transit through the BAC, with or without groundfish on board, with prohibited trawl gear stowed, as defined at § 660.111.

(iii) *Multiple gears.* If a vessel fishes in a BAC using midwater trawl gear, it may also fish outside the BAC with groundfish bottom trawl gear on the same trip with the appropriate declaration change. **If a vessel fishes in a BAC using bottom trawl gear, it may also fish outside the BAC with groundfish midwater trawl gear on the same trip with the appropriate declaration change.**

(6) *Bycatch reduction areas or BRAs.* Vessels using midwater groundfish trawl gear during the applicable Pacific whiting primary season may be prohibited from fishing shoreward of a boundary line approximating the 75 fm (137 m), 100 fm (183 m), 150 fm (274 m), or 200 fm (366 m) depth contours.

(f) *Essential fish habitat conservation areas.* EFHCAs are defined at § 660.11 and at §§ 660.76 through 660.79. EFHCAs apply to vessels using bottom trawl gear or to vessels using bottom contact gear, defined at § 660.11. Vessels may transit through, with or without groundfish on board, with all prohibited gear stowed. EFHCAs closed to bottom trawl gear are listed at § 660.112(a)(5)(v). EFHCAs off California that are closed to bottom trawl gear, except vessels fishing with a valid declaration for demersal seine gear, are listed in § 660.112(a)(5)(vi). EFHCAs closed to bottom contact gear are listed at § 660.12(a)(4), (16) and (17).

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Commented [7]: Note: EFHCA moved to (f) under proposed A28 regs

2. Pacific Whiting Cooperative Operational Rules

§660.113 Trawl fishery—recordkeeping and reporting.

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(b) Shorebased IFQ Program.

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(6) Salmon Mitigation Plan Annual Report. If NMFS approved a Salmon Mitigation Plan (SMP) for a vessel or group of vessels in the previous year's fishery that party must submit a Salmon Bycatch Annual report as described at § 660.60(i)(4).

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(c) MS Coop Program (coop and non-coop fisheries)

(1) ***

(2) ***

(3) Annual coop report. The designated coop manager for the mothership coop must submit an annual report to NMFS and the Council by March 31 each year, before a coop permit is issued for that year. The annual coop report will contain information about the previous year's fishery, including:

(i) ***

(ii) ***

(iii) ***

(iv) A description of any actions taken by the mothership coop in response to any vessels that exceed their allowed catch and bycatch; ~~and~~

(v) Plans for the current year's mothership coop fishery, including the companies participating in the cooperative, the harvest agreement, and catch monitoring and reporting requirements; ~~and~~ **and**

(vi) Postseason Salmon Mitigation Plan information, as described at § 660.60(i)(4), if NMFS approved an SMP for the mothership coop in the previous year's fishery.

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(d) C/P Coop Program

(1) ***

(2) ***

(3) Annual coop report. The designated coop manager for the C/P coop must submit an annual report to NMFS and the Council by March 31 each year, before a coop permit is issued for that year. The annual coop report will contain information about the previous year's fishery, including:

(i) ***

(ii) ***

(iii) ***

(iv) A description of any actions taken by the C/P coop in response to any vessels that exceed their allowed catch and bycatch; ~~and~~

(v) Plans for the current year's C/P coop fishery, including the companies participating in the cooperative, the harvest agreement, and catch monitoring and reporting requirements; and

(vi) Postseason Salmon Mitigation Plan information, as described at § 660.60(i)(4), if NMFS approved an SMP for the C/P coop in the previous year's fishery.

§660.150 Mothership (MS) Coop Program.

(A) Coop agreement. Signed copies of the coop agreement must be submitted to NMFS before the coop is authorized to engage in fishing activities. A coop agreement must include all of the information listed in this paragraph to be considered a complete coop agreement. NMFS will only review complete coop agreements. A coop agreement will not be accepted unless it includes all of the required information; the descriptive items listed in this paragraph appear to meet the stated purpose; and information submitted is correct and accurate.

(1) Coop agreement contents. Each coop agreement must be signed by all of the coop members (MS/CV-endorsed permit owners) and include the following information:

(xiii) A Salmon Mitigation Plan (SMP) proposal, as described at § 660.60(i)(3), if the coop seeks NMFS approval of the SMP.

§660.160 Catcher/processor (C/P) Coop Program.

(d) ***

(1) ***

(A) *Coop agreement.* Signed copies of the coop agreement must be submitted to NMFS before the coop is authorized to engage in fishing activities. A coop agreement must include all of the information listed in this paragraph to be considered a complete coop agreement. NMFS will only review complete coop agreements. A coop agreement will not be accepted unless it includes all of the required information; the descriptive items listed in this paragraph appear to meet the stated purpose; and information submitted is correct and accurate.

(1) *Coop agreement contents.* The coop agreement must be signed by the coop members (C/P-endorsed permit owners) and include the following information:

(ix) A Salmon Mitigation Plan (SMP) proposal, as described at § 660.60(i)(3), if the coop seeks NMFS approval of the SMP.

3. *Automatic Authority for NMFS to Close Trawl Sectors and Preserve 500 Chinook salmon for Fixed Gear and Recreational Fisheries*

§ 660.60 Specifications and management measures.

(d) *Automatic actions.* ~~Automatic management actions may be initiated by the NMFS Regional Administrator or designee without prior public notice, opportunity to comment, or a Council meeting.~~ **The NMFS Regional Administrator or designee will initiate automatic management actions without prior public notice, opportunity to comment, or a Council meeting.** These actions are nondiscretionary, and the impacts must have been taken into account prior to the action. Unless otherwise stated, a single notice will be published in the Federal Register making the action effective if good cause exists under the APA to waive notice and comment.

(1) Automatic actions ~~are used to~~ **will be initiated in the following circumstances:**

(i) ***

(ii) ***

(iii) ***

(iv) ***

(v) ~~Close one or both of the whiting or non-whiting sectors of the groundfish fishery upon that sector having exceeded its annual Chinook salmon bycatch guideline and the reserve. The whiting sector includes the Pacific whiting IFQ fishery, MS, and C/P sectors. The non-whiting~~

~~sector includes the midwater trawl, bottom trawl, and fixed gear fisheries under the Shorebased IFQ Program, limited entry fixed gear fisheries, open access fisheries, and recreational fisheries subject to this provision as set out in §660.360(d).~~

~~(A) The whiting sector Chinook salmon bycatch guideline is 11,000 fish.~~

~~(B) The non-whiting sector Chinook salmon bycatch guideline is 5,500 fish.~~

~~(C) The reserve is 3,500 fish.~~

~~(vi) Close the whiting or non-whiting sector of the groundfish fishery upon that sector having exceeded its annual Chinook salmon bycatch guideline if the other sector has already been closed after exceeding its Chinook salmon bycatch guideline and the reserve. The whiting sector includes the Pacific whiting IFQ fishery, MS, and C/P sectors. The non-whiting sector includes the midwater trawl, bottom trawl, and fixed gear fisheries under the Shorebased IFQ Program, limited entry fixed gear fisheries, open access fisheries, and recreational fisheries subject to this provision as set out in §660.360(d).~~

(v) Close components of the groundfish fishery in response to Chinook salmon bycatch per the following table.

<u>Close:</u>	<u>If Chinook salmon catch exceeds:</u>	<u>and:</u>
<u>Pacific whiting IFQ fishery, MS, and/or C/P</u>	<u>11,000 fish</u>	<u>NMFS or the Council have not taken action on that component per §660.60(i)(2)</u>
<u>Whiting sector (Pacific whiting IFQ fishery, MS, and C/P)</u>	<u>11,000 fish</u>	<u>the 3,500 Chinook salmon reserve is attained by the non-whiting sector</u>
	<u>14,000 fish</u>	<u>:</u>
	<u>14,500 fish</u>	<u>the non-whiting sector has not accessed the reserve</u>
<u>Non-whiting sector (midwater trawl, bottom trawl, and fixed gear fisheries under the Shorebased IFQ Program, limited entry fixed gear fisheries, open access fisheries, and recreational fisheries subject to this provision as set out in §660.360(d))</u>	<u>5,500 fish</u>	<u>NMFS or the Council have not taken action per §660.60(i)(1)</u>
	<u>5,500 fish</u>	<u>the 3,500 Chinook salmon reserve is attained by the whiting sector</u>
	<u>9,000 fish</u>	<u>the whiting sector has not accessed the reserve</u>
<u>Non-whiting trawl fisheries (midwater trawl and bottom trawl fisheries under the Shorebased IFQ Program)</u>	<u>8,500 fish</u>	<u>:</u>
<u>All trawl fisheries (whiting sector and non-whiting trawl sector)</u>	<u>19,500 fish</u>	<u>:</u>
<u>All groundfish fisheries</u>	<u>20,000 fish</u>	<u>:</u>

Commented [8]: Note: Added per PPA reserve rule (NMFS/Council action must be taken prior to access to reserve)

Commented [9]: Note: PPA clarified action needed for each component

Commented [10]: Note: Added per PPA.

Commented [11]: Note: this closure (guideline plus reserve) is likely moot under PPA, but including here because it is in current regulation.

Commented [12]: Note: Added per PPA reserve rule (NMFS/Council action must be taken prior to access to reserve)

(vii) Implement BRAs, described at §660.131, when NMFS projects a sector-specific allocation will be reached before the sector's whiting allocation.

(2) Automatic actions are effective when actual notice is sent by NMFS identifying the effective time and date. Actual notice to fishers and processors will be by email, Internet www.westcoast.fisheries.noaa.gov/publications/fishery__management/groundfish/public__notices/recent__public__notices.html), phone, letter, or press release. Allocation reapportionments will be followed by publication in the Federal Register, in which public comment will be sought for a reasonable period of time thereafter.

§660.130 Trawl fishery—management measures.

(f) Salmon bycatch. This fishery may be closed through automatic action at §660.60(d)(1)(v).

Commented [13]: Note: added this reference based on Council PPA to include an all trawl closure point

§660.131 Pacific whiting fishery management measures.

(i) *Salmon bycatch.* This fishery may be closed through automatic action at §660.60(d)(1)(v) ~~and (vi).~~

Commented [14]: Note: Just showing that we would adjust the regulation text references based on the new text.

§660.230 Fixed gear fishery—management measures.

(f) *Salmon bycatch.* This fishery may be closed through automatic action at §660.60(d)(1)(v) ~~and (vi).~~

§660.330 Open access fishery—management measures.

(f) *Salmon bycatch.* This fishery may be closed through automatic action at §660.60(d)(1)(v) ~~and (vi).~~

§660.360 Recreational fishery—management measures.

(d) *Salmon bycatch*. Recreational fisheries that are not accounted for within pre-season salmon modeling may be closed through automatic action at §660.60(d)(1)(v) and (vi).

4. Development of Reserve Rule Provision

§660.19 Appeals process for catch monitors, observers, salmon mitigation plans and provider permits.

(a) *Allowed appeals*. This section describes the procedure for appealing IADs described at §§660.17(g), 660.18(d) and (f), 660.60(j), 660.140(h), 660.150(j), 660.160(g), 660.603(b)(3) for catch monitor decertification, observer decertification, provider permit expirations due to inactivity, Salmon Mitigation Plan disapproval, and EM service provider permit denials. Any person whose interest is directly and adversely affected by an IAD may file a written appeal. For purposes of this section, such person will be referred to as the “applicant.”

§660.60 Specifications and management measures.

(i) *Salmon bycatch management*. The Council may recommend to NMFS routine inseason actions (e.g. BRA, BAC, or selective flatfish trawl requirement) it deems necessary to minimize Chinook salmon and/or coho salmon bycatch in the groundfish fishery. These routine inseason salmon bycatch management measures would not apply to tribal vessels. The non-whiting sector includes the midwater trawl, bottom trawl, and fixed gear fisheries under the Shorebased IFQ Program, limited entry fixed gear fisheries, open access fisheries, and recreational fisheries subject to this provision as set out in §660.360(d). The whiting sector includes the Pacific whiting IFQ fishery, MS, or C/P components of the Pacific whiting fishery. Fishery components may be closed through automatic action at §660.60(d)(1)(v).

(1) *Salmon bycatch management for the non-whiting sector*. Actions may include:

(i) *Implementation of a BAC for bottom trawl or midwater trawl as specified at § 660.111 using routine inseason action.*

Commented [15]: Note: Adding SMP to the appeals process as NMFS would be approving/disapproving the SMP similar to permit or coop agreement. Approval process is described below.

Commented [16]: Note: The approach would be consistent with existing “routine inseason” frameworks already in the FMP and regulations.

(ii) Implementation of another routine inseason mitigation measure (e.g., selective flatfish trawl requirement for bottom trawl) to minimize Chinook salmon and/or coho salmon bycatch in the groundfish fishery.

(2) Salmon bycatch management for the whiting sector. Actions may include:

- (A) Implementation of a BRA as specified at §§ 660.60(d) and 660.131(c).
- (B) Implementation of a BAC as specified at § 660.111.

(3) Reserve access for the non-whiting sector. The non-whiting sector may only access the reserve of 3,500 Chinook salmon if the Council or NMFS has taken action to minimize Chinook salmon bycatch in that sector prior to that sector exceeding its Chinook salmon bycatch guideline.

(i) Any action described in paragraph (i)(1) of this section to minimize Chinook salmon bycatch in the groundfish fishery qualifies as a Council or NMFS action to access the reserve.

(4) Reserve access for the whiting sector. The Pacific whiting IFQ fishery, MS, or C/P components of the whiting sector may only access the reserve of 3,500 Chinook salmon if the Council or NMFS has taken action to minimize Chinook salmon bycatch in that component prior to the whiting sector exceeding its Chinook salmon bycatch guideline. Council or NMFS actions that allow a component to access the reserve include:

(i) Any action described in paragraph (i)(2) of this section to minimize Chinook salmon bycatch in the groundfish fishery.

(ii) Approval of a Salmon Mitigation Plan (SMP), as described in paragraph (i)(5) of this section.

- (1) Pacific whiting IFQ fishery. All participating vessels/ INSERT NUMBER of vessels must have a NMFS approved SMP in order for the fishery to have access to the reserve through an SMP. OR Those vessels with an approved SMP would have access to the reserve. The Council or NMFS must take an action described in paragraph (i)(2) of this section to minimize Chinook salmon bycatch in the groundfish on vessels without an approved SMP prior to allowing those vessels access to the reserve.

(5) Salmon Mitigation Plan (SMP). NMFS may approve more than one SMP. NMFS may approve an SMP for an individual vessel or group of vessels (e.g. coop). An approved SMP does not prohibit the Council from taking action to minimize salmon bycatch as described in paragraph (i)(2) of this section.

Commented [17]: Council Clarification Needed: Council should clarify its intent with respect to shoreside whiting vessels and access to the reserve.

Commented [18]: Note: This is Option A from RIR

Commented [19]: Note: This is Option B from RIR

Commented [20]: Council Clarification Needed: Council should clarify its intent with respect to access to the reserve for those vessels without an SMP.

(i) SMP contents. The SMP must contain, at a minimum, the following—

- (A) Compliance agreement. The SMP must include a written statement that all parties to the SMP agree to comply with all provisions of the SMP. Failure to comply with the provisions of the SMP may void access to the reserve and necessitate additional NMFS or Council mitigation action prior to that sector or party accessing the reserve.**
- (B) Signatures. The names and signatures of the owner or representative for each vessel that is a party to the SMP. The representative for the MS Coop or C/P Coop may sign a proposed SMP on behalf of all vessels that are members of that cooperative.**
- (C) A description of:**
- (1) How participants will adequately monitor and account for the catch of Chinook salmon.**
 - (2) How participants will avoid and minimize Chinook salmon bycatch, including a description of tools participants will employ.**
 - (3) The penalties for failure to avoid Chinook salmon at the vessel level**
 - (4) How the SMP is expected to promote reductions in a vessel's Chinook salmon bycatch rates relative to what would have occurred in absence of the SMP.**

(ii) Deadline for proposed SMP. A proposed SMP must be submitted to NMFS between February 1 and March 31 of the year in which it intends to be in effect. NMFS will not consider any proposals received after March 31.

(iii) Duration. Once approved, a SMP expires on December 31 of the year in which it was approved. An SMP may not expire mid-year. No party may join or leave an SMP once it is approved, except as allowed under paragraph (5)(iv)(C) of this section.

(iv) NMFS review of a proposed SMP—(A) Approval. An SMP will be approved by NMFS if it meets the following requirements:

(1) Contains the information required in paragraph (i)(3)(i) of this section; and

(2) Is submitted in compliance with the requirements of paragraphs (i)(3)(ii) and (i)(3)(iii) of this section.

(B) SMP identification number. If approved, NMFS will assign an SMP identification number to the approved SMP. This number must be used by the SMP representative in amendments to the SMP.

(C) Amendments to an SMP. Amendments to an approved SMP may be submitted to NMFS at any time and will be reviewed under the requirements paragraph (i)(3). An amendment to an approved SMP is effective upon written notification of approval by NMFS to the SMP representative.

Commented [21]: Note: Mirrored after Alaska IPA regulations.

Commented [22]: Note: NMFS could evaluate compliance with area closures, movement rules, test tows, and excluder use through observer data, VMS, or consultation with the SMP participants. NMFS is also open to suggestions for other tools to monitor compliance with SMP provisions.

Commented [23]: Note: mirrored after Alaska IPA regulations

Commented [24]: Note: mirrored after Alaska IPA regulations.

Commented [25]: Note: this timeframe matches with submission of co-op agreements.

Commented [26]: Note: NMFS will adjust this to accommodate timing of the first year of this program.

Commented [27]: Note: mirrored after Alaska IPA regulations. This will help NMFS identify SMP especially if approved for an individual vessel.

(D) Disapproval. (1) NMFS may disapprove a proposed SMP or a proposed amendment to an SMP for either of the following reasons:

(i) If the proposed SMP fails to meet any of the requirements of paragraphs (i)(3)(i) through (iii) of this section, or

(ii) If a proposed amendment to an SMP would cause the SMP to no longer be consistent with the requirements of paragraphs (i)(3)(i) through (iii) of this section.

(2) Initial Administrative Determination (IAD). If, in NMFS' review of the proposed SMP, NMFS identifies deficiencies in the proposed SMP that require disapproval of the proposed SMP, NMFS will notify the applicant in writing. The SMP representative will be provided one 30-day period to address, in writing, the deficiencies identified by NMFS. Additional information or a revised SMP received by NMFS after the expiration of the 30-day period specified by NMFS will not be considered for purposes of the review of the proposed SMP. NMFS will evaluate any additional information submitted by the applicant within the 30-day period. If the Regional Administrator determines that the additional information addresses deficiencies in the proposed SMP, the Regional Administrator will approve the proposed SMP under paragraph (i)(5)(iv)(A) of this section. However, if, after consideration of the original proposed SMP and any additional information submitted during the 30-day period, NMFS determines that the proposed SMP does not comply with the requirements of paragraph (i)(5)(iv)(A) of this section, NMFS will issue an initial administrative determination (IAD) providing the reasons for disapproving the proposed SMP.

(3) Administrative Appeals. An SMP representative who receives an IAD disapproving a proposed SMP may appeal under the procedures set forth at §660.19. If the SMP representative fails to file an appeal of the IAD pursuant to §660.19, the IAD will become the final agency action. If the IAD is appealed and the final agency action is a determination to approve the proposed SMP, then the SMP will be effective as described in paragraph (i)(5)(iii) of this section.

(4) Pending appeal. While the appeal of an IAD disapproving a proposed SMP is pending, proposed members of the SMP subject to the IAD will not have access to the Chinook salmon bycatch reserve unless the Council or NMFS has taken other action to minimize bycatch as specified at §660.60(i)(2).

(vi) Public release of an SMP. NMFS will make all proposed SMPs and all approved SMPs and the list of participants in each approved SMP available to the public on the NMFS West Coast Region website.

(6) SMP Postseason Report. The representative of each approved SMP must submit a written postseason report to NMFS, West Coast Region, Sustainable Fisheries Division, 7600 Sand Point Way NE., Seattle, WA 98115.

Commented [28]: Note: NMFS may look for ways to reference IAD sections or combine the IAD sections from other parts of the regulations.

(i) Submission deadline. The SMP Postseason Report must be received by NMFS no later than March 31.

(ii) Information requirements. The SMP Postseason Report must contain, at a minimum, the following information:

- (A) A description of all high-Chinook salmon bycatch incidents.**
- (B) A comprehensive description of Chinook salmon bycatch avoidance measures used in the previous fishing year, including but not limited to, information sharing, area closures, movement rules, salmon excluder use, and internal bycatch guidelines.**
- (C) An evaluation of the effectiveness of these avoidance measures in achieving Chinook salmon savings.**
- (D) A description of any amendments to the terms of the SMP that were approved by NMFS since the last annual report and the reasons that the amendments to the SMP were made.**

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Commented [29]: Note: NMFS recommends the postseason report include a requirement to evaluate the effectiveness of avoidance measures. This would help NMFS comply with term and condition 6.a.iii which requires a summary of the bycatch reduction measures used and an evaluation of their effectiveness.

Commented [30]: Note: mirrors Alaska Region's IPA regulations