

## NATIONAL MARINE FISHERIES SERVICE REPORT ON MOTHERSHIP SECTOR UTILIZATION

### *Introduction*

In September 2020, the Council adopted a [purpose and need statement for public review](#). At the March 2021 meeting, the Council will review a scoping paper prepared by Council staff for the Advanced Briefing Book and could adopt a Range of Alternatives (ROA) for further analysis. At the September 2020 meeting National Marine Fisheries Service (NMFS) committed to providing guidance on the proposals in this action that would be cost recoverable. This report also provides suggestions on the draft purpose and need statement, as well as NMFS workload considerations.

### *Scoping of Purpose and Need*

The purpose and need statement is a key element in shaping the range of alternatives. Strong purpose and need statements help define the range of alternatives considered and strike a balance between not being too broad or too narrow. Purpose and need statements should be able to answer key questions, including what is the problem, why are we taking action, what are the objectives of the action (solution), and what are we trying to achieve. The purpose and need statement adopted for public review in September identified the need for the action as underutilization in the Mothership (MS) sector and the purpose of the action to improve MS sector utilization and flexibility. During the September 2020 meeting, the Council adopted four proposals for further scoping that were developed by the GAP to implement changes to the MS sector. If the Council wants to expand the scope of the action to all sectors of the Pacific whiting fishery, NMFS recommends the Council consider the suggested changes put forward by Council staff in the draft purpose and need statement included in the scoping paper. In adopting a purpose and need statement, NMFS recommends the Council be specific on which sectors of the fishery are included in this action and the need for this action for those sectors. In addition, NMFS recommends that the Council be specific on which sectors of the whiting fishery are included in considering a range of alternatives.

### *Cost Recovery*

The Magnuson-Stevens Fishery Conservation and Management Act (MSA) requires NMFS to collect fees to recover the costs directly related to the management, data collection and analysis, and enforcement of a limited access privilege program (LAPP) (16 U.S.C. 1854(d)(2)), also called “cost recovery.”

Beginning in January 2014, NMFS WCR implemented cost recovery for the Trawl Program. The details of the cost recovery for the Trawl Program are in the Code of Federal Regulations at 50 CFR 660.115. The Trawl Program consists of three sectors: the Shorebased Individual Fishing Quota (IFQ) Program, the Mothership Co-op (MS) Program, and the Catcher/Processor Co-op (CP) Program.

During the September 2020 meeting, the Council adopted for further scoping, four proposals developed by the GAP. The first proposal would modify the start of the primary whiting season. NMFS has preliminarily determined that this proposal is not an incremental task as this season date pre-dated the rationalization of the fishery and was established to address salmon bycatch. The remaining proposals (e.g., MS processor obligation deadline, MS processor cap, and MS-C/P permit transfers) would modify program elements created as part of the Trawl Rationalization Program under Amendment 20. NMFS has preliminarily determined that staff time spent on these proposals is recoverable under the cost recovery program. Of the three cost recoverable proposals, one proposal (permit transfer between C/Ps and MS) is incremental to both the C/P and MS sectors while the other two recoverable proposals are incremental just to the MS sector. Staff time spent on these recoverable proposals will be charged using a ratio-based approach.

### *Proposal 1 Considerations*

If the Council were to change the whiting fishery season start date to earlier than May 15, NMFS recommends that the Council also consider changing the date when the annual cooperative applications and Salmon Mitigation Plans are due to 45 days prior to the season start date.

### *Biological Opinion Considerations*

Under the Endangered Species Act (ESA), NMFS is mandated to protect, conserve and recover ESA-listed species, including salmonid stocks. In 2013, NMFS reinitiated ESA Section 7 consultation for listed salmonids to address changes in the groundfish fishery, including the trawl rationalization program and the emerging midwater trawl fishery targeting species other than Pacific whiting. On December 11, 2017, NMFS issued a [biological opinion](#) (BiOp) finding that the continued implementation of the Pacific Coast Groundfish FMP, is not likely to jeopardize the continued existence of or destroy or adversely modify designated critical habitat of the ESA-listed salmonids evaluated in the BiOp.<sup>1</sup>

The proposed action considered in the BiOp included a season start date of May 15<sup>th</sup> for the whiting fishery north of 42° N. latitude. In evaluating the impacts of the whiting fishery on ESA-listed salmonids, the BiOp considered a number of factors, including the seasonality and geographic extent of the groundfish fishery. The BiOp stated that “significant uncertainty exists in the magnitude of ESU-specific impacts for fisheries in locations or time periods outside the available data. Areas south of 42° N. latitude and during the January- to-May period had particularly limited information.” (pg. 189, NMFS 2017). The BiOp further concluded that impacts to spring run fish could be greater earlier in the fishing year, which is when they are more likely to be present in the

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<sup>1</sup> These Chinook and coho salmon are managed as salmon Evolutionarily Significant Units (ESUs) that are identified by area: Puget Sound Chinook, Snake River Fall Chinook, Lower Columbia River (LCR) Chinook, Upper Willamette River (UWR) Chinook, Snake River Spring/summer Chinook, California Coastal (CC) Chinook, LCR Coho, Oregon Coast Coho, Southern Oregon/Northern California Coho, and Central California Coast (CCC) Coho Salmon.

fishing area for the whiting fishery. Given the information in historical fishing data when fishing occurred earlier in the year, the estimated impacts on ESU-listed spring run Chinook species (e.g., Upper Columbia River spring Chinook, Upper Willamette River spring Chinook, and Snake River spring/summer Chinook) were based on maintaining the May 15th season start date for the whiting fishery north of 42° N. latitude. Given that the proposed action considered in the 2017 BiOp contemplated a May 15th start date, changing the season start date may require reinitiation.

Impacts on ESA-listed stocks and projected total salmon incidental take were also estimated to differ under assumptions of latitudinal distribution of the fishery, where projected bycatch was substantially higher under assumptions of a Southern fleet distribution than under a Northern fleet distribution (NMFS 2017). Due to seasonal whiting migration patterns, there is a potential for a more southerly whiting fleet distribution with an earlier season start date.

Term and Condition 2.d in the Incidental Take Statement for the 2017 BiOp<sup>2</sup> requires NMFS and the Council to retain the May 15th start date for the primary Pacific whiting for all sectors, north of 40°30' N. latitude. If the Council includes a change to an earlier season start date as part of the range of alternatives considered for this action, it would require a determination of whether the change would require reinitiation of ESA consultation. Upon receiving the Council's recommendation for the Final Preferred Alternatives, NMFS would evaluate the proposed action considered in the 2017 BiOp using the criteria below, and make a determination whether reinitiation of the consultation is required.

As stated in 50 CFR 402.16 and the BiOp,

*“Reinitiation of formal consultation is required and shall be requested by the Federal agency or the Service, where discretionary Federal agency involvement or control over the action has been retained or is authorized by law and: (1) if the amount or extent of taking specified in the ITS is exceeded; (2) if new information reveals effects of the agency action that may affect listed species or critical habitat in a manner or to an extent not previously considered; (3) if the identified action is subsequently modified in a manner that causes an effect to the listed species or critical habitat that was not considered in the biological*

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<sup>2</sup> Term and Condition 2.d. in the Incidental Take Statement for the BiOp states, “The Council and NMFS shall retain the following restrictions to minimize Chinook bycatch for the duration of this opinion:

- The 10,000-lb trip limit restriction on targeted harvest of whiting inside of 100 fathoms in the Eureka area,
- The delay of the start of the primary Pacific whiting season until May 15th for all sectors, north of 40°30' N. latitude.
- The prohibition on at-sea processing south of 42°00' N. latitude,
- When shore-based fishing for whiting beginning April 15 south of 40°30' N. latitude is allowed, no more than 5 percent of the shore-based allocation may be taken prior to the opening of the main shore-based fishery on May 15.

*opinion; or (4) if a new species is listed or critical habitat designated that may be affected by the identified action.”*

NMFS cautions that early coordination, determination of whether the alternatives selected as part of the range of alternatives for this action would trigger reinitiation of ESA consultation, and a potential resulting ESA consultation would require time and resources of multiple NMFS WCR divisions and branches, including the Groundfish Branch and the Anadromous Harvest Management Branch and Protected Resources Division. This action may also trigger reinitiation of consultation on other ESA-listed species, such as Southern Resident killer whales.

As NMFS reported previously, NMFS WCR staff in both of these branches are fully subscribed with current workload, particularly through the implementation of the 2021 salmon (and Pacific whiting) harvest specifications. At this stage, we are highlighting these issues and once an ROA is selected we will be able to more fully engage. The earliest we anticipate being able to contribute to this analysis would be for a Fall 2021 meeting.

#### *Exempted Fishing Permit (EFP)*

An exempted fishing permit (EFP) is a permit issued under authority of the Magnuson-Stevens Act to allow fishing activities that would otherwise be prohibited under a fishery management plan (EFP regulations are at [50 CFR 600.745](#)). These permits are issued for limited testing, public display, data collection, exploratory fishing, compensation fishing, conservation engineering, health and safety surveys, environmental cleanup, and/or hazard removal purposes, to authorize the target or incidental harvest of species managed under an FMP or fishery regulations that would otherwise be prohibited.

NMFS sees a potential path forward for the proposal to change the season date using an EFP with the purpose to collect data on the effects of an earlier season start date north of 42 N. latitude on ESA-listed salmonids and other bycatch species. The Council should discuss prioritization of this EFP with regards to the rest of the Groundfish workload and new management measure priorities (including the MS utilization action with the remaining three proposals), since an EFP would also require analyses and consultations (e.g., NEPA, EFH, ESA and MMPA). If an EFP is prioritized, NMFS recommends utilizing the Council process to develop the scope and details of the EFP, including selecting the date for the start of the season and to whom the exemption would extend (i.e., a vessel, fishing locations, sector).

#### *Pacific Hake/Whiting Treaty and Harvest Specification Rulemaking Implementation Considerations*

Changing the primary Pacific whiting season start date earlier than May 15<sup>th</sup>, could have implications on the U.S./Canada bilateral process that sets the overall Total Allowable Catch (TAC) and the subsequent rulemaking process to establish the U.S. TAC and annual harvest specifications. Under the Agreement of the Government of the United States and Canada (Agreement), the Joint Technical Committee (JTC) delivers the annual stock assessment in February, the Scientific Review Group (SRG) then meets to review and provide advice to the Joint Management Committee (JMC). Based on recommendations from the JTC, SRG, and Advisory Panel (AP), the JMC determines the overall Pacific whiting TAC by March 25<sup>th</sup> of each year, which is subsequently approved by NMFS, under the delegation of authority from the Secretary of Commerce.

If the Council selects a change in season start date as part of the range of alternatives, NMFS would engage with members of the Agreement's JMC and other treaty bodies to discuss potential impacts to the bilateral stock assessment and TAC-setting process.

Given the timing of the JMC meeting and the subsequent final rulemaking process to establish the U.S. TAC, tribal allocation and non-tribal Harvest Guidelines (HG), it would be unlikely that a final rule would be in place for all proposed earlier season start dates. The Council and NMFS would have to explore formalizing a process to issue interim allocation in advance of the final rule publication that would meet the needs of the fishery without risk of exceeding the final U.S. TAC. NMFS notes that the earlier the season start date is set in the year, the greater the uncertainty would be and the interim allocation that NMFS could safely issue prior to publication of the final rule would likely be more conservative. NMFS also notes that an April 1 (and potentially April 15) season start date may not provide an adequate amount of time to process and issue interim allocations following the JMC's March meeting.