

GROUND FISH MANAGEMENT TEAM REPORT ON POTENTIAL EMERGENCY RULE  
TO CHANGE THE END DATE OF THE PRIMARY TIER SABLEFISH FISHERY

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## Introduction

Under Agenda Item B.1, Open Public Comment at this meeting (September 2021), the Pacific Fishery Management Council (Council) added an agenda item to consider an emergency action to change the primary tier sablefish fishery end date from October 31 to December 31 and extend the incidental Pacific halibut allowance to as late as allowed via International Pacific Halibut Commission Regulations<sup>1</sup> (IPHC; 12:00 P.M. local time, December 7). The Groundfish Management Team (GMT) provided background information on this issue when previously requested as an emergency action in [Agenda Item D.2.a, Supplemental REVISED GMT Report 4, September 2020](#) and submitted a report in September 2020 ([Agenda Item D.7.a, Supplemental GMT Report 1, September 2020](#)). This report provides some additional information for the Council to consider in determining if an emergency rule is warranted.

Based upon the [2020 Emergency Rule](#), 19 vessels took advantage of the season extension, which amounted to 249.9 mt in landings and \$857,833 in revenue (Table 1). The GMT believes that a similar scenario is likely to happen if the season is extended in 2021, such that vessels taking advantage of the emergency rule would land roughly 20 percent of the annual sablefish landings during the season extension. The higher percentage of pot landings compared to longline landings in November and December of 2020 is likely due to fewer longline vessels (10) participating during the season extension compared to the primary season (59). Comparatively, the large portion of pot vessels that participated during the primary season also continued to participate during the season extension.

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<sup>1</sup> <https://iphc.int/uploads/pdf/regs/iphc-2021-regs.pdf>

**Table 1. Landings and number of vessels in the 2020 primary tier sablefish fishery during the standard primary season and the emergency rule extension by gear type used. 80.1 percent of total sablefish landings were landed before November and 19.9 percent were landed during the season extension.**

Gear	Primary Season (Before November)				Emergency Rule Extension (November and December)			
	Landings (mt)	Percent of Season Landings (percent)	Ex-vessel Revenue	Number of Vessels	Landings (mt)	Percent of Extension Landings (percent)	Ex-vessel Revenue	Number of Vessels
<i>Pot</i>	327.36	32.6	\$1,043,358	13	205.83	82.4	\$701,626	9
<i>Longline</i>	676.80	67.4	\$2,435,391	59	44.04	17.6	\$156,207	10
Total	1,004.16		\$3,478,750	67 a/	249.87		\$857,833	19

a/ Some vessels fish for sablefish with both pot and longline gear.

### Use of Emergency Rules

As a reminder, under National Marine Fisheries Service (NMFS) Policy Guidelines for the Use of Emergency Rules ([62 FR 44421, August 21, 1997](#)), the phrase “an emergency exists involving any fishery” is defined as a situation that meets the following three criteria:

1. Results from recent, unforeseen events or recently discovered circumstances; and
2. Presents serious conservation or management problems in the fishery; and
3. Can be addressed through emergency regulations for which the immediate benefits outweigh the value of advance notice, public comment, and deliberative consideration of the impacts on participants to the same extent as would be expected under the normal rulemaking process.

Based on the analysis below as well as our considerations on the Emergency Rule criteria, the current situation involving the tier sablefish fishery meets the criteria of an emergency in a fishery.

### Current Status of the Tier Fishery

As described in [Agenda Item D.2.a, Supplemental REVISED GMT Report 4, September 2020](#), the primary sablefish fishery averaged 93.4 percent attainment of their allocation, with 65 percent of the landed share taken through September 13 from 2011-2019, excluding 2020 in which similar fishery conditions limited attainment and therefore a similar Emergency Rule was in place. In comparison, the fishery in 2021 has only landed 799 mt out of the 1,902 mt landed share (42 percent attainment) in the same period. Between 2011-2019, approximately 35 percent of the catch was taken between mid-September and the end of the season on October 31.

**Table 2. Annual total primary sablefish fishery mortality (mt) (retained and discards, with mortality rates applied), allocation (mt), percent attainment, and number of active vessels, as well as the landings (mt), landed catch share (mt), percent attainment, and the number of vessels that have landed catch through September 13 of each year. Source: Groundfish Expanded Multi-year Mortality (GEMM); PacFIN Comprehensive\_FT.**

Year	Annual Total				Through September 13			
	Mortality	Allocation	Percent Attainment	Vessels	Landings	Landed Catch Share	Percent Attainment	Vessels
2011	1,571.06	1,598	98.3	98	1,142.17	1,547	73.8	92
2012	1,405.64	1,549	90.7	95	931.41	1,500	62.1	88
2013	1,057.99	1,156	91.5	89	631.68	1,119	56.5	77
2014	1,100.46	1,254	87.8	84	742.57	1,214	61.2	69
2015	1,366.53	1,385	98.7	86	920.10	1,339	68.7	74
2016	1,470.68	1,515	97.1	85	991.76	1,466	67.6	72
2017	1,470.04	1,518	96.8	85	1,059.10	1,463	72.4	74
2018	1,463.71	1,583	92.5	85	963.28	1,526	63.1	68
2019	1,414.19	1,620	87.3	83	838.27	1,545	54.3	66
2020 Total	1,173.84	1,653	71.0	79	553.26	1,578	35.1	53 a/
<i>Pot</i>	573.87	-	-	17	83.23	-	-	5
<i>Longline</i>	599.98	-	-	62	470.02	-	-	51
2021 Total					802.66	1,902	42.2	55 a/
<i>Pot</i>					233.48	-	-	8
<i>Longline</i>					569.18	-	-	50

a/ Three vessels landed sablefish with both pot and longline gear.

**Table 3. Number of vessels achieving given percent attainment of tiers through September 14 from 2017 to 2020 and through September 11 for 2021. Years with less than three vessels in an attainment bin were grouped to protect confidential data. Source: PacFin ENF506 OLE Sablefish Primary Fishery Tracking Report, 9/11/2021.**

Percent Attainment through September 14	Number of Vessels				
	2017	2018	2019	2020	2021
99-100	44	35	30	18	18
90-98	8	8	6	4	4
80-89	6	8	0		4
70-79		3	4	4	7
60-69	0	5	5		3
50-59	4		3		
<50	12	10	18	24	17
Zero Landings	25	25	27	40	33
Total Vessels Participating through 9/14	74	69	66	53	55
Total Vessels With Tier Permits <sup>a/</sup>	99	94	93	93	88

a/ Note that this number could include vessels harvesting against the same tier permit in a given year.

The total vessels with tier permits declined in 2018 and 2019 relative to 2017, due to consolidation of stacked permits on a smaller number of vessels. The percent attainment distribution to date in 2021 has followed the trend of 2020 and is almost the reverse of prior years, with about half the vessels close to full attainment and about twice the vessels with zero landings to date. Fifty-five vessels have less than 50 percent attainment in 2021 (17 of which have landed in this fishery in 2021 and 33 of which have not). Although vessel attainments in 2021 so far have been greater than in 2020, 2021 vessel attainments remain considerably below the average of 2017-2019.

Table 4 shows the number of vessels associated with the number of stacked tier permits for those vessels that have made less than 50 percent of their tier landings (including those with zero landings to date). As a reminder, in 2021, a Tier 1 permit is allocated 58,649 pounds, a Tier 2 permit is allocated 26,659 pounds, and a Tier 3 permit is allocated 15,234 pounds. Therefore, there may be up to four vessels that still have more than 100,000 lbs to harvest by the end of the season. Five pot vessels and five longline vessels that have made less than 50 percent of their tier landings hold at least one Tier 1 permit. Three of those five longline vessels also hold one Tier 2 or Tier 3 permit.

As of September 11, 2021, eight vessels attained 70-95 percent of their tier permit landings while 29 longline and 13 pot vessels attained zero percent (Table 5). The GMT did not include in Table 5 vessels that attained greater than 95 percent, because those vessels are less likely to benefit from a season extension.

**Table 4. Stacked tiers on vessels where less than 50 percent of the tiers have been harvested through September 14, 2021.**

Tier 1 Permits	Tier 2 Permits	Tier 3 Permits	Number of Vessels
2-3	0-1		4
1	0-2		4
0	2-3	0	3
	1	2	4
		0-1	6
	0	2-3	9
		1	19

Table 5 shows the number of vessels by gear type (longline and pot) within each attainment level group (0 percent, 1-70 percent, and 70-95 percent).

**Table 5. Number of vessels by level of attainment of their tier permit landings for both longline and pot gears through September 11, 2021.**

Attainment of Tier Permit Landings (percent)	Number of Vessels	
	Longline	Pot
0	29	13
1-70	22	4
70-95	4	4

### **Economic Impacts**

From the start of April to September 11, 2021, the average round weight price for sablefish landed in the primary fishery was \$4,063 per mt, and vessels caught approximately 67.1 mt.

The GMT discussed general market challenges for sablefish in our statements in [September 2020](#) which are still largely being felt by the industry through 2021. Price has remained low for sablefish caught by all fisheries and gear types, and primary sablefish fishery prices are summarized by month in Table 6 below. Even if landings stay flat through a surge of late season effort and possible season extension, revenues and associated community impacts will be a fraction relative to recent years, as the price per pound in 2021 is a whole \$1 less per pound than the 2017-2019 average. The prices per pound in November (\$1.65) and December (\$1.41) of 2020 were similar to the average of the April through October period (\$1.52), and therefore the GMT expects the same trend for a 2021 season extension.

**Table 6. Primary Sablefish Fishery price per pound by month (2020\$/lb), through September 11, 2021. Data Source: PacFin, Comprehensive\_FT, 9/11/21**

Year	Apr	May	Jun	Jul	Aug	Sep	Oct	Apr-Oct
2011	\$3.95	\$4.84	\$4.94	\$5.06	\$4.80	\$4.81	\$4.54	\$4.71
2012	\$3.55	\$3.62	\$3.69	\$3.49	\$3.28	\$3.21	\$2.95	\$3.40
2013	\$2.43	\$2.72	\$2.75	\$2.66	\$2.65	\$2.60	\$2.86	\$2.67
2014	\$2.44	\$2.95	\$3.93	\$3.50	\$3.13	\$3.24	\$3.47	\$3.24
2015	\$2.50	\$3.25	\$3.20	\$2.95	\$2.61	\$3.43	\$4.24	\$3.17
2016	\$2.89	\$3.26	\$3.15	\$3.95	\$3.30	\$3.63	\$3.74	\$3.42
2017	\$3.40	\$3.08	\$3.56	\$4.06	\$3.95	\$3.88	\$3.78	\$3.67
2018	\$2.03	\$2.11	\$2.91	\$2.90	\$2.94	\$3.03	\$3.03	\$2.71
2019	\$1.83	\$2.05	\$2.21	\$2.45	\$2.44	\$2.44	\$2.25	\$2.24
2020	\$1.43	\$1.22	\$1.45	\$1.52	\$1.79	\$1.62	\$1.59	\$1.52
2021	\$1.63	\$1.65	\$1.89	\$1.94	\$1.88	\$2.07	NA	\$1.84 a/

a/ 2021 average calculated through mid-September.

Vessels have harvested 18 mt less in the first half of September 2021 than they did in 2019 (1st-12th 70.38 mt; 2019 88.49 mt; 2020 61.2 mt) and 9 mt above the 2020 value when the first emergency rule was requested. Analysis done for the 2020 emergency rule noted that the fishery typically takes more in the following weeks through October 31st ([SIR Primary Sablefish Emergency Rule October 2020](#)). Using the catch ratio of the first half of September 2021 catch compared to a “normal” 2019 catch (70.38/88.49 mt = 0.80). Since 2021 is tracking closer to 2020 as a low catch year, we could also apply the rate of 1.15 mt to the 2020 year’s landings. If the fleet maintains that “normal” catch rate through the end of October and assuming a constant price at \$4,063 per mt, approximately 678 mt of the sablefish primary allocation, an estimated value of \$2.76 million, would remain unharvested without a season extension. However, using the “low catch” rate of 2020, 518 mt of sablefish would be left on the table resulting in an ex-vessel value of \$2.4 million. Table 7 compares the distribution of primary fishery revenue to date in 2021 to that of 2020 as well as the prior five years in West Coast port communities.

Comments from the public at this and the September 2020 meeting indicated that the inability to harvest up to the sablefish tier limits on permits may cause a financial hardship on vessel operators, especially those that either lease permits or have financed the purchase of permits. An average of 40 percent of registered primary tier vessels from 2017-2019 leased at least one permit ([Agenda Item G.2, Attachment 1, June 2021](#)). As of September 13, 2021, Dock Street Brokers lists the price of Tier 3 permits between \$140,000 and \$175,000, and Tier 2 between \$300,000 and \$325,000 (no Tier 1 permits are currently listed). In addition to the short term drastic financial hardship to individuals, the cumulative impact of multiple borrowers defaulting on loans could decrease future financing options and negatively impact the fishery as a whole.

Participation in the additional two months may also be affected if vessels participate in other fisheries such as gear switching in the Individual Fishing Quota (IFQ) program and/or the daily trip limit (DTL) fisheries in the last two months of the year. As described in [SIR Primary Sablefish Emergency Rule October 2020](#), opportunities to continue fishing in the tier season may impact

effort by vessels that participate in both. Additionally, if the Dungeness crab fishery opens, some vessels may forgo participation in an extended season.

### **Community Impacts**

Of the 50 vessels that have yet to take at least 50 percent of their sablefish tier limits to date (September 11, 2021), 20 are from California, 13 are from Oregon, and 17 are from Washington. The permits on these vessels are owned by entities across all three states (25 permits from California, 27 from Oregon, and 37 from Washington). If the primary tier allocation is not fully landed, impacts would extend beyond potential individual revenue loss to negatively affect communities along the West Coast. For example, in 2019, the limited entry fixed gear fishery (of which the tier fishery is the main contributor) was estimated to bring in \$4.1 million in wages to fishing crews and captains ([Agenda Item F.1, Attachment 8, June 2020](#)). Table 7 below summarizes the ex-vessel revenue and associated income impacts and jobs supported by the primary sablefish fishery by port group for the recent five-year average, 2020, and 2021 to date. These are the sum of the local community income impacts and do not reflect the impact of one community on another or on the larger state and regional economies. In other words, these values may be seen as the lower bounds of expected impacts. With six weeks left in the season, 2021 revenue to date is substantially below annual averages in the prior five years, reflecting price declines and lower landings as well as unique barriers to fishing associated with local travel restrictions and health guidance.

**Table 7. Average ex-vessel price per round weight pound (2019\$), revenue (millions of 2019\$), associated income impacts (millions of 2019\$), and number of jobs associated with the primary sablefish fishery, stratified by IOPAC (input-output model for Pacific Coast fisheries) port group for 2021 to date, 2020, and the 2015-2019 average. Data from port groups with fewer than 3 active vessels in a given time period are considered confidential and noted as “Conf.”**

Port Group	2021 to date		2020		Average 2015-2019 (2019\$)			
	Average Price	Revenue (millions)	Average Price	Revenue (millions)	Price	Revenue (millions)	Income Impacts (millions)	Jobs
<b>Puget Sound</b>	Conf.	Conf.	\$1.51	\$1.15	\$3.54	\$2.00	\$3.77	43
<b>Washington Coast</b>	\$1.83	\$0.27	\$1.64	\$0.21	\$3.44	\$1.45	\$2.09	39
<b>Astoria-Tillamook</b>	Conf.	Conf.	\$1.58	\$0.38	\$3.39	\$0.62	\$1.11	14
<b>Newport</b>	\$1.83	\$0.97	\$1.63	\$1.41	\$3.29	\$2.42	\$3.36	48
<b>Coos Bay-Brookings</b>	\$1.96	\$0.78	\$1.41	\$0.36	\$3.29	\$1.50	\$2.17	37
<b>Crescent City-Eureka</b>	\$2.09	\$0.32	\$1.89	\$0.38	\$2.59	\$0.44	\$0.49	10
<b>Fort Bragg</b>	\$1.36	\$0.25	\$1.31	\$0.30	\$1.51	\$0.56	\$0.70	26
<b>San Francisco (incl. Bodega Bay)</b>	\$2.75	\$0.03	Conf.	Conf.	\$3.33	\$0.41	\$0.66	13
<b>Monterey</b>	\$2.21	\$0.21	Conf.	Conf.	\$1.92	\$0.18	\$0.18	3
<b>Total</b>	\$1.84	\$3.26	\$1.57	\$4.34	\$3.07	\$9.57	\$14.53	233

## **Potential Bycatch Impacts**

### **Groundfish Species**

#### ***Yelloweye Rockfish***

In 2021, the nearshore and non-nearshore fishery (of which the tier season is a part) combined has an annual catch target (ACT) of 6.2 mt and a harvest guideline (HG) of 7.8 mt for yelloweye rockfish. The fisheries are currently estimated to take 3.9 mt of that allocation, assuming the full allocation of sablefish is taken under the current season structure. The amount of yelloweye rockfish bycatch mortality that would occur from extending the season is uncertain. However, the fishery would need to take double the projected attainment for the entire season in the remaining two months to risk exceeding the yelloweye rockfish ACT and HG. Given current trends, this level of increased landings appears unlikely and so the potential associated yelloweye rockfish bycatch is also improbable. The GMT believes the risk of exceeding either the yelloweye rockfish specification or annual catch limit (ACL) is very low.

#### ***Other Groundfish and Non Groundfish Species***

From 2018 through 2020, the stocks (besides sablefish) with the highest estimated discard in the primary tier fishery were Pacific spiny dogfish, blue shark, arrowtooth flounder, and Pacific halibut (Table 8).



**Table 8. Bycatch of the stocks with the highest landings and/or mortality in the primary tier fishery through September 7, 2021 with estimated mortality from all sectors compared to the ACL. Data sources: GEMM and PacFIN Comprehensive Fish Ticket Table.**

Stock	Primary tier fishery estimated discard (mt) a/	Primary tier fishery landings (mt)	Estimated total mortality (all sectors; mt)	ACL (mt)	% of ACL
Shortspine thornyhead (North of 34° 27' N. lat.)	2.2	10.3	272.6	1,428	19
Lingcod (North of 40° 10' N. lat.)	1.4	11.4	790.6	5,369	15
Longnose skate	16.1	6.7	612.6	1,823	34
Rougheye rockfish (North of 40° 10' N. lat.)	20.4	4.7	299.3 b/	1,595 b/	19 b/
Spiny Dogfish Shark	115.7	0.0	612.5	1,621	38
Blue Shark	49.2	--	N/A	N/A	N/A
Arrowtooth Flounder	31.7	0.5	658.5	9,933	7

a/ Estimated discard based on the 2018-2020 average discard with mortality rates applied.

b/ Estimated mortality, ACL, and percent of ACL values are for the slope rockfish complex north of 40° 10' N. lat.

In addition to providing a very rough estimate of in-season bycatch, the stocks (besides sablefish) with the highest landings through September 7, 2021 are shown in Table 8. If the primary tier fishery continues to catch the stocks in Table 8 at a similar rate, the mortality impacts could be higher than originally projected whether or not the season is extended. However, the GMT notes that estimated discard of these stocks in the primary tier fishery in Table 8 are based on a three-year average that includes the 2020 season extension and so may already account, to some degree, for potential increases under a 2021 season extension.

As of September 7, 2021, all stocks listed in Table 8 are under 40 percent of their respective ACLs, and therefore, additional bycatch in the primary sablefish tier fishery resulting from a season extension is not expected to pose any risk of exceeding their ACLs.

### **Pacific Halibut**

In the primary tier sablefish fishery in areas north of Pt. Chehalis, Washington, there is an allowance for incidental retention of Pacific halibut. Currently 225 pounds of Pacific halibut are allowed for every 1,000 pounds of sablefish, plus two additional fish. The incidental Pacific halibut fishery is currently scheduled to close on October 31, with the closure of the sablefish fishery. If the sablefish fishery season were extended, the incidental Pacific halibut retention is required to close by noon local time on December 7, as specified in IPHC regulations<sup>2</sup>. However, as discussed in 2020, the Council would need to specify if the incidental retention could last beyond October 31 (up until December 7 or if the quota is taken, whichever comes first). The GMT anticipates that if the 70,000-pound limit is approached, action will be taken through the normal inseason process to prohibit retention of Pacific halibut in the sablefish fishery north of Pt. Chehalis, WA.

<sup>2</sup> <https://iphc.int/uploads/pdf/regs/iphc-2021-regs.pdf>

## Endangered Species

Impacts to Endangered Species Act (ESA)-listed species under this action item would likely vary by gear type, as both longline and pot gear are used to harvest sablefish in this fishery. Therefore, impacts by species are discussed in terms of interactions with these two gears. Table 9 below shows the amount of sablefish caught by longline and pot gears in the primary sablefish fishery from 2011-2021 to date. The average proportion of sablefish caught by gear type between 2011 and 2019 is 72.9 percent longline and 27.1 percent pot. However, in 2020, the annual proportions were distributed more evenly, with 57.5 percent longline and 42.5 percent pot. This reflects that 82 percent of sablefish landings during the season extension were made using pot gear (Table 1).

**Table 9. Annual percent of sablefish caught by longline and pot gears in the primary sablefish fishery from 2011-2021.**

Year	Longline	Pot
2011	75.32%	24.68%
2012	79.41%	20.59%
2013	71.82%	28.18%
2014	68.41%	31.59%
2015	72.77%	27.23%
2016	73.87%	26.13%
2017	73.44%	26.56%
2018	71.59%	28.41%
2019	69.59%	30.41%
2020	57.48%	42.52%
2021 a/	70.71%	29.29%

a/ through September 11

## Seabirds

Potential impacts to seabirds, especially the short-tailed albatross, from extending the season are difficult to predict. Short-tailed albatross can occur off of the U.S. West coast year-round. Observed interactions in the winter have been relatively lower than average (Section 2.5 in [Agenda Item I.5, Attachment 1, June 2019](#)), but this pattern could be due to decreased abundance during those months or simply an artifact of low coverage rate and effort. The GMT notes that between 2011-2021, on average approximately 75 percent of the tier fishery was harvested using longline gear (Table 7). However, as of 2020 (see [84 FR 67674](#)), streamer lines used as a mitigation measure are in effect year round and could be expected to minimize interactions. As there are no expected gear configuration changes or changes to fishing methods (other than seasonal timing) that would impact seabirds, it is expected that encounter rates and take will remain similar to those noted in [Agenda Item Item I.4.a, NMFS Report 6, June 2020](#).

## Humpback Whales

In the groundfish fixed gear fishery, incidental take of humpback whales can occur as a result of entanglement with fishing gear. Sablefish pot/trap fishery gear has been a source of entanglement

in the past ([NMFS 2020](#)). The Mexico distinct population segment (DPS) and the Central America DPS are listed under the ESA.

As noted in the Groundfish Endangered Species Workgroup report ([Agenda Item G.4.a, GESW Report 1, June 2021](#)), “Bayesian estimates of humpback whale entanglements/takes for the LE Sablefish pot sector, the OAFG pot sector, and the sectors combined did not exceed the 2020 BiOp-established thresholds of five individuals observed or estimated in any one year or a 5-year running average of 2.34 individuals per year” ([2020 NMFS Biological Opinion \[BiOp\]](#)). There have been two documented takes from 2012 to 2019, one in the limited entry (LE) fixed gear sablefish pot sector in 2014 and one in the open access fixed gear (OAFG) sablefish pot fishery in 2016 (NMFS 2020). The GMT is not aware (at this time) of any humpback whale takes in 2020 by either the pot or longline gears of the sablefish primary fishery.

Migratory patterns may overlap with areas of active fishing. While the timing and distribution of humpback whales during their migration periods, as well as locations of resident animals, varies, some DPS are known to travel south to their over-wintering grounds during November and December along the Pacific West Coast. Indeed, as described in the BiOp, “humpback whales could be present at any time of the year anywhere along the U.S. West Coast” and their presence “is likely to be higher during the late spring through the fall.” The BiOp also noted that entanglements tend to be most common April through November, which reflect the general migration pattern of heading south to breeding areas by December each year, and subsequently starting to return to feeding areas by April.

The BiOp details that groundfish fixed gear fishery related entanglements have only been attributed to pot gear (NMFS 2020). Historically, based on the 10-year average between 2011-2019, the tier fishery operates using 25 percent pot gear versus 75 percent longline gear (Table 7). In 2020, likely due to 82 percent of season extension landings being made by pot gear vessels, this annual distribution shifted to 58 percent longline and 43 percent pot. Landing patterns by gear type in a 2021 extended season could be similar but will not be fully analyzed until 2022. Adding two additional months to the season increases the amount of time that vessels may be fishing on the water and therefore raises the potential for encounters with humpback whales. However, the GMT notes that, unlike the DTL fishery in which effort could theoretically be unlimited, the primary tier fishery is managed with tiers that are restricted to a finite number of gear endorsements, and thus effort is also finite. Whether this finite amount of effort shifts from spring/summer to fall, as was the case in 2020 with a season extension, may determine potential humpback whale impacts. Further, not all of the primary tier vessels represent “new” effort in the November - December period, since some of these vessels may cross-participate in other sablefish fisheries such as the DTL fishery or shorebased IFQ program during normal years. The GMT discusses interactions with Dungeness crab fishery impacts in our September 2020 statement ([Agenda Item D.7.a, Supplemental GMT Report 1, September 2020](#)).

The inherent stochastic nature of humpback whale interactions with this fishery and the unknowns related to potential fishery effort in these months make the likely level of incidental takes of humpback whales during the potential season extension difficult to project.

### ***Salmon***

The groundfish fishery operates under specific bycatch guidelines for Chinook and coho salmon. The thresholds for the non-whiting fishery, of which the fixed gear sector is a part, are 5,500

Chinook salmon and 560 coho salmon. Historically, the fixed gear fishery has had low Chinook and coho salmon bycatch ([Agenda Item H.9, Attachment 1, November 2019](#), [Richerson, et al 2020](#)), so it is highly unlikely that the fishery will exceed its guideline threshold.

## **Observer Availability**

The majority of observers employed by the West Coast Groundfish Observer Program (WCGOP) end their contracts at the end of October. From November to March, the WCGOP contracts only about one-third the number of Federally-funded observers contracted the rest of the year. Observer coverage during the 2020 season extension was roughly 24 percent of landings compared to roughly 32 percent of landings during the primary season. Assuming 2021 observer coverage exhibits similar rates, discard estimates on season extension landings is likely to be less certain but still considered robust.

If the sablefish tier season was extended, observer coverage would likely predominate in California relative to coverage rates in Oregon and Washington, reflecting the typical distribution of observers and fishery effort, as well as coverage priorities in November to March. Coverage in the primary fishery could be prioritized above other sectors, such as California halibut trawl and pink shrimp trawl, but this would increase uncertainty in estimates for those sectors. North of California, where effort could be highest, coverage rates would likely be very low. If vessels or permits that have not yet made landings in 2021 enter the fishery, these coverage rates could be even lower coastwide.

The degree to which NMFS has funds for additional observers, and the feasibility of retaining or recruiting observers on this short timeline, is unknown. If this rule moves forward, NMFS should work with industry to identify the vessels that plan to continue fishing after October 31 as soon as possible to allow the maximum time for WCGOP to plan for and deploy observers.

## **Assessment of Emergency Rule Criteria<sup>3</sup>**

### *1. Results from recent, unforeseen events or recently discovered circumstances*

Historically, the primary tier fishery has succeeded in attaining more than 90 percent of their allocation between April 1 and October 31 (Table 1), excluding 2020. Based on public comment at the September 2021 Council meeting, for the second time in almost 20 years, participants forecast not being able to obtain a significant portion of their allocation, and have requested a season extension. Industry members noted that many vessels experienced delays in prosecuting Alaska fisheries due to state and local quarantine restrictions, as well as quarantine requirements on returning to some West Coast communities. These delays hindered prosecution of higher than typical allocations in Alaska fisheries, which then jeopardized the ability of vessels that participated in both to obtain their allocation in the later West Coast primary fishery.

While these issues appear to be long-standing as the global COVID-19 pandemic continues to impact fisheries and markets through 2021, many within the fishery did not foresee the continuation of these issues for this long and likely expected 2021 to be more similar to 2019 conditions. Therefore, the current conditions could still be considered “unforeseen” and “recently discovered”. Vessel crew member shortages in 2021 were also “unforeseen” by industry members.

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<sup>3</sup> [62 FR 44421, August 21, 1997](#)

Additionally, individual vessel outbreaks are also considered specific unforeseen events that lead to downstream impacts to the fishery as a whole.

2. *Presents serious conservation or management problems in the fishery; and*

Notice-and-comment rulemaking is estimated to take a minimum of six months, which is not enough time to implement the changes before the end of the 2021 season. By implementing an emergency action, participants in the primary sablefish fishery may be able to realize their economic potential without causing additional impacts to the physical or biological environment, beyond what was projected during development of the 2021-22 harvest specifications and management measures. If the Council chooses not to recommend an emergency action at this time, it is clear that participants in the primary sablefish fishery could leave about 678 mt of sablefish in the water based on recent “normal” harvest rates, which could affect up to 135 jobs (based on recent five-year trends) and a loss of \$2.76 million in ex-vessel revenue. Not providing this opportunity would result in economic harm to the fishing industry and the communities that rely on the revenue from these fisheries. However, as described above, potential impacts of a season extension on humpback whales remain highly uncertain.

3. *Can be addressed through emergency regulations for which the immediate benefits outweigh the value of advance notice, public comment, and deliberative consideration of the impacts on participants to the same extent as would be expected under the normal rulemaking process.*

The analysis shows that there are immediate benefits with extending the season from October 31 to December 31 for participants in the primary sablefish fishery and the communities that rely on these fisheries. As described above, the ex-vessel revenue associated with the remaining quota could be ~\$2.76 million and affect participants in all West Coast states.

Furthermore, given the current season end date occurs in six weeks and the inability for the Council to address the issue in a meaningful way through a routine inseason action, an emergency rule is the only mechanism to implement changes to the season end date and address this management problem.

PFMC  
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