

QUINULT INDIAN NATION STATEMENT ON GRAYS HARBOR FALL CHINOOK OVERFISHING AND MAXIMUM FISHING MORTALITY THRESHOLD

Last year it came to our attention that Grays Harbor Fall Chinook were subject to overfishing for a number of years. This overfishing occurred due to discrepancies between 1) the correct value of the Maximum Fishing Mortality Threshold (MFMT) as adopted by rulemaking in 2015, 2) the Pacific Salmon Fishery Management Plan (FMP) which was not updated with the correct value until 2021, and 3) the Stock Assessment and Fishery Evaluation (SAFE) reports prepared by the Salmon Technical Team (STT), which have not been updated to reflect this change.

During the September 2024 PFMC meeting, we became aware that reports informing overfishing status determinations for Grays Harbor Fall Chinook have been prepared incorrectly. The STT had been comparing post season exploitation rates each year to the proxy MFMT value of 0.78 rather than the correct value of 0.63 for Grays Harbor Fall Chinook which was adopted in federal regulations in 2015. This led the STT to incorrectly report that exploitation rates had not exceeded the MFMT in 2023, 2021, 2019, 2018 as well as some earlier years. In 2020 the discrepancy between the regulations and the FMP was recognized and the salmon FMP was updated under Amendment 20 in 2021, but the Review of Ocean Fisheries and Pre-season Report 1 tables, which are used by the Council and NOAA for status determinations, were not updated. The Council and its STT have proposed to update SAFE documents at the March 2025 Council Meeting to correct the basis for determining overfishing status.

The methods employed to compute exploitation rates reported by the STT are unclear. The values reported differ from those estimated by the Chinook Technical Committee of the Pacific Salmon Commission (TCCHINOOK 25-1). Exploitation rates should be reported in terms of Mature Run Equivalents (MREs), metrics that represent cumulative total fishing mortality exploitation rates on fish produced by multiple brood years which would be expected to spawn in a particular year. MRE's can be directly compared to estimates of MSY and associated exploitation rates determined from stock-recruitment analysis.

Under the Council's Pacific Salmon FMP, Grays Harbor Fall Chinook are not considered to be "overfished" since the three-year geometric mean of the last three years of available spawning escapement estimates of 12,726 is above the MSST threshold value of 6,653 so no rebuilding plan is required. Under the SFMP, the situation where "overfishing" has occurred because MFMT has been exceeded is confusing because Grays Harbor Fall Chinook is not considered to be "overfished" in relation to the MSST definition.

"At low abundance levels, some de minimis level of fishing impacts are allowed by the provisions of the PST, negotiations through federal court orders, or reserved tribal fishing rights. The magnitude of the de minimis impacts, and the actual abundance level at which they occur, vary from stock to stock. At high abundance levels, the control rules are such that F may exceed MFMT in some years because management of some of these stocks is focused on attaining SMSY on an annual basis. If the year specific exploitation

rate on a stock exceeds MFMT, the Council will report this as overfishing according to the terms of the MSA and NSI Guidelines.”

Under the FMP, Grays Harbor Fall Chinook are not subject to allowable catch limits under the International Exception stated in section 3.3.6.2, and *de minimis* impacts (F_{DM}) as shown in figure 3-2 are not specified. Updating the SAFE documents, however, is not the only action required under the Magnuson Stevens Fisheries Conservation and Management Act (MSA) or the FMP. Under the FMP the process for responding to instances of overfishing is as follows:

"3.1.2.1 Council Action Because salmon are exploited in multiple fisheries, it is necessary to determine fishery specific contribution to the total exploitation rate to determine the actions necessary to end and prevent future overfishing. As the Council has no jurisdiction over river fisheries and ocean fisheries north of the U.S./Canada border, it also may be necessary for other responsible entities to take action to end ongoing and prevent future overfishing. The STT will report postseason exploitation rates in the annual SAFE document, and when overfishing occurs, the Council shall:

- 1) notify the NMFS West Coast Regional Administrator of the STT's findings;*
- 2) direct the STT to assess the mortality rates in fisheries impacting the stock of concern and report their findings;*
- 3) immediately take action to ensure Council area fisheries are not contributing to overfishing, and;*
- 4) notify pertinent management agencies of the stock's status and the contribution of various fisheries to the total exploitation rate."*

Both the law and the FMP require that PFMC and NMFS West Coast Region coordinate with the Alaska Region and North Pacific Fisheries Management Council (NPFMC) to respond to overfishing determinations.

The vast majority of U.S. and total fishery exploitation rates on Grays Harbor Fall Chinook takes place in Southeast Alaska (SEAK) and Northern British Columbia (NBC) fisheries, outside of the Council's jurisdiction. The proportion of US fishery impacts that occurs in SEAK has been increasing. For example, Appendix C of the PSC TCCHINOOK 25-1 reported the 2009-2022 distribution of total adult equivalent mortality (retained catch plus incidental fishing mortality) of Grays Harbor Fall Chinook as:

Year	SEAK	Canada	S US	Esc	% of US Fishery Impacts	
					SEAK	S US
2009	34.4	14.8	15.8	34.7	69%	31%
2010	26.1	9.8	17.8	45.8	59%	41%
2011	28.6	11.0	20.1	40.0	59%	41%
2012	42.5	17.6	15.0	23.5	74%	26%
2013	30.4	25.8	13.9	28.8	69%	31%
2014	32.3	15.1	15.9	35.6	67%	33%
2015	26.0	16.7	23.1	32.5	53%	47%
2016	31.9	20.1	12.5	35.5	72%	28%
2017	18.3	14.0	16.6	51.0	52%	48%
2018	27.5	25.6	9.8	36.9	74%	26%
2019	22.5	30.5	8.5	36.8	73%	27%
2020	38.0	12.5	8.4	41.0	82%	18%
2021	35.3	25.0	7.1	32.2	83%	17%
2022	31.9	22.6	6.6	39.0	83%	17%

Note that these distribution proportions do not represent MRE exploitation rate values.

The cumulative impacts of all these fisheries (SEAK, NBC, and terminal fisheries) are intended to be constrained by regimes established under the jurisdiction of the Pacific Salmon Treaty (PST). Impacts to Grays Harbor in SEAK and Canadian fisheries in Northern British Columbia and West Coasts Vancouver Island fisheries occur under Aggregate Abundance-Based Management (AABM) regimes, while Council and terminal fishery impacts operate under Individual Stock Based Management (ISBM) constraints. Combined, AABM and ISBM regimes seek to provide conservation and coordinated fishery management of Pacific salmon stocks. Grays Harbor Fall Chinook are part of the indicator stocks that the PST process annually monitors to ensure international conservation and catch sharing obligations are met.

Table 1-1 in TCHHINOOK 24-1 reports catches in relation to catch limits for AABM fisheries, while ISBM constraints for Washington Coastal chinook are discussed in section 1.3.2 of that report:

Year	Southeast Alaska (Troll, Net, Sport)			Northern British Columbia (Troll), Haida Gwaii (Sport)		West Coast Vancouver Island (Troll, Sport)	
	Catch Limit ¹	Observed Catch	Hatchery Add-on ²	Catch Limit ¹	Observed Catch	Catch Limit ¹	Observed Catch
2009	218.8	228.0	62.0	143.0	109.5	107.8	124.6
2010	221.8	230.6	53.6	152.1	136.6	143.7	139.0
2011	294.8	291.2	65.5	182.4	122.7	196.8	204.2
2012	266.8	242.8	51.4	173.6	120.3	133.3	135.2
2013	176.0	191.4	65.6	143.0	115.9	115.3	116.9
2014	439.4	435.2	56.6	290.3	216.9	205.4	192.7
2015	237.0	335.0	68.1	160.4	158.9	127.3	119.0
2016	355.6	350.7	35.7	248.0	190.2	133.3	103.1
2017	209.7	175.4	31.6	149.5	143.3	115.3	117.4
2018	144.5	127.8	37.0	131.3	109.0	88.3	85.3
2019	140.3	140.3	34.6	124.8	88.0	79.9	73.6
2020	205.2	204.6	30.2	133.0	36.2	87.0	44.6
2021	205.2	202.1	34.1	153.8	91.0	88.0	75.5
2022	266.6	238.6	37.2	142.8	83.2	100.7	96.2
2023	206.0	202.7	32.4	141.7	78.3	115.5	83.6
2024	211.4			179.4		105.0	

The Council’s Pacific Salmon FMP and the Pacific Salmon Treaty AABM-ISBM regime for Chinook management fail to prevent “overfishing.” Under the international exemption provided in the FMP, when the productivity and abundance of individual stocks like Grays Harbor fall Chinook decline, terminal areas where the vast majority of treaty fishing impacts occur must be increasingly and disproportionately curtailed to try to prevent the stock from becoming “overfished.” This inequitable result is inconsistent with federal trust responsibilities and U.S. legal obligations.

The AABM regime used for SEAK fisheries does not exempt the Council from obligations to comply with requirements of the MSA and the FMP. The MSA is the primary domestic law that governs stock conservation and fishery management regulations in federal waters. The SEAK fisheries are still subject to the Pacific Council’s FMP conservation requirements established pursuant to the guidance for the National Standards of the MSA (50 C.F.R. § 600.310). These conservation requirements obligate the Pacific Council to instruct the STT to: (1) document the mortality contribution of all fisheries impacting the stock; (2) notify the West Coast Regional Administrator of those findings, and (3) notify and coordinate with other agencies to determine actions to end and prevent future overfishing.

The MFMT is a federal threshold for overfishing, and the federal government regulates fishing activities within federal waters. Fishing activities within federal waters have to comply with the MSA and the United States has the obligation to honor treaty fishing rights. We note that domestic fisheries management can be more restrictive than international management regimes under the PST. Specifically, Section 301 of the MSA requires, among other things, that FMPs and regulations prevent overfishing, treat a stock as a single management unit throughout its range to the extent practicable, and that conservation and management measures shall not discriminate between residents of different states. Under *United States vs. Washington*, treaty tribal fisheries cannot be restricted by the federal or state governments unless the conservation

necessity is demonstrated for the stock, which includes a requirement to exhaust all other measures to constrain impacts to necessary levels.

The Tribes request that the Council direct the STT to analyze and report mortality rates of all fisheries that comprise the total fishery exploitation rate, as directed by the FMP, for each year that overfishing occurred. We also request that NMFS and PFMC coordinate with their counterparts in the Alaska Region and the NPFMC to develop management responses that will provide assurance that overfishing ends and does not continue into the future by equitably distributing the burden of conservation across the federal fisheries that encounter this stock. Once the MFMT is updated, regulations and conservation measures preventing future overfishing can only be imposed on Indian treaty protected fisheries after all other fisheries are restricted as necessary to meet conservation necessity standards and prevent overfishing.

In closing, the Quinault Indian Nation also requests that the Council provide a written response on protocols and timelines that the NMFS and PFMC intend to follow in the future to fulfil their trust responsibilities to protect tribal treaty fishing rights and their management responsibilities as directed by the FMP to prevent continued overfishing of far-north migrating Chinook stocks.