CALIFORNIA DEPARTMENT OF FISH AND WILDLIFE REPORT ON THE APPLICATION TO PROCESS WHITING AT SEA OFF NORTHERN CALIFORNIA

The California Department of Fish and Wildlife (CDFW) provides the following report in response to the Exempted Fishery Permit (EFP) application submitted by a consortium of Pacific whiting processors to the National Marine Fisheries Service (NMFS) as shown in Agenda Item F.4. Attachment 2.

As described under the Supplemental Executive Director's report in Agenda Item A.4, "The Council is advised to focus on the technical merits, impacts, and uncertainties regarding any EFPs it receives when developing any recommendations or considerations for NMFS regarding EFP proposals…final action on EFPs is best considered a series of recommendations and considerations for NMFS as it entertains EFP applications."

Consideration 1: Consistency Issues with the Groundfish Biological Opinion

CDFW finds that without significant additions to the Terms and Conditions of the EFP proposal, the application runs a high risk of inconsistency with the Biological Opinion and Incidental Take Statement (Endangered Species Act (ESA) Section 7(a)(2) Biological Opinion: Reinitiation of Section 7 Consultation Regarding the Pacific Fisheries Management Council's Groundfish Fishery Management Plan).

Sub-Issue A: Southern Distribution of the Whiting Fleet. In 2024, the at-sea whiting fleet reported spending more of their season fishing in southern waters (Southern Oregon; Pacific Hake/Whiting Treaty: JMC & JTC Meeting 11/7/24), as opposed to the historical south to north progression throughout the year. This trend seems to be continuing into 2025, with all currently fishing Catcher Processor (CP) vessels off Southern Oregon in late October (Marine Traffic – 10/27/2025). This shift in distribution puts the fleet more in line with southern ESUs of Chinook and Coho salmon, which is likely to increase the relative bycatch of these stocks. When the fleet fishes further south, impacts on southern Evolutionarily Significant Units (ESUs) of Chinook and Coho increases.

- Genetic sampling of salmon encountered during previous Midwater Rockfish Exempted Fishing Permit trawl trips indicates the majority of salmon encountered south of 42 N lat. are Klamath-Trinity ESU. Further, modeling conducted by NMFS and presented in Agenda Item F.6.a, Supplemental NMFS Report 1, April 2018, indicates that the proportion of Chinook salmon encountered south of 42 N lat. is likely to be ~51 percent Klamath-Trinity ESU and ~35 percent Southern Oregon and Northern California Coastal (SONCC) Chinook ESU. More recently, a model published by Moran et al. (2021) using genetic stock identification data showed that the majority of bycatch in the whiting fishery south of latitude 42° N likely consists of Klamath-Trinity (51%), SONCC (35%), and California Coastal (CC; 7%) Chinook.

The Biological Opinion (p. 249) specifically states that, "Consultation shall be reinitiated if… the distribution of the whiting fleet changes substantially from that described in Figures 24 and

26 under the Northern distribution or Figures 25 and 27 under the Southern distribution". When describing the reasoning behind this requirement for reinitiation of consultation, the Biological Opinion goes on to state that, "bycatch and bycatch rates are anticipated to be higher and more variable when the whiting fleet fishes under a Southern distribution."

CDFW is not assured by the proposed EFP condition that Motherships and Catcher/Processors would each be limited to processing no more than 35 percent of sector's annual Pacific whiting allocation in EFP area. Additionally, CDFW does not find this measure will serve to prevent a 'substantial change' to the distribution of Southern distribution of whiting activity that is presently covered under the existing Biological Opinion. Notably, the Mothership sector attained only 47 percent of its annual allocation on average between 2019 and 2023 as described in the Pacific Coast Groundfish Fishery 2025-26 Harvest Specifications and Management Measures analytical document (p240,). Allowing this sector to take 35 percent of its allocation in the EFP area could mean in practical terms that most of the sector's processing could occur in the EFP area, which would be a substantial change from the Southern distribution that was analyzed.

Sub-Issue B: No Proposed Limit for Coho Salmon in the EFP area; Conditions for Coho Salmon in California Remain Dire

The EFP application (P. 19) erroneously references a "guideline" of 494 coho salmon and further indicates that "overall, the combined sector incidental catch has been well within the guideline…" However, the Incidental Take Statement is clear (P. 249) that "Consultation shall be reinitiated if any of the following events occur: (1) the total bycatch in the sector exceeds 14,500 Chinook salmon or 474 coho in a calendar year…"

There are two ESUs of Coho Salmon in California, Southern Oregon/Northern California Coast Coho (SONCC) and Central California Coast (CCC) Coho. NOAA has found that SONCC and CCC Coho are two of the most vulnerable species of Pacific salmon to climate change (Crozier et al. 2019), a risk that has only increased for both species since they were listed under the ESA and since publication of the 2017 Groundfish FMP Biological Opinion. Data tracking the current abundance of SONCC Coho are limited, however, the 2024 five-year status review published by NMFS states that "the available data for populations within the SONCC Coho Salmon ESU indicates that all independent populations remain below recovery targets. Of the few populations with sufficient monitoring data to calculate the number of adults, two of these populations are at high risk of extinction (Shasta River and Mattole River)." Similarly, for CCC Coho, the 2023 five-year review found that abundance metrics for all independent and dependent populations remain far below recovery targets and that long term trends have generally continued downward and remain a concern.

Impacts are likely to be higher on SONCC and CCC Coho with a more southernly distribution of the whiting fishery. The EFP application cites the 2017 Biological Opinion as sufficiently covering concerns with Coho Salmon and does not offer additional constraints on Coho bycatch. Coho bycatch in the more northerly distributed whiting fishery comes from areas with directed Coho fisheries and Coho hatcheries that produce fish specifically for commercial and recreational take. California has not had directed commercial or recreational Coho fisheries since the early 1990's and has minimal Coho hatchery production focused on conservation to avoid

extirpation of specific populations.

The 2017 Biological Opinion sets the total allowable whiting fishery bycatch for Coho at 474 based on maximum historical catch between 2002 and 2017, with composition projections further broken down for specific listed ESUs. These estimates are 21 fish for SONCC and 14 fish for CCC and were created using PFMC's Fishery Regulation Assessment Model to project impacts by the whiting sector. As recently as 2019, the whiting fishery caught 168 Coho in a season. A southern expansion of fishing effort poses a particularly acute risk for these two ESUs of Coho Salmon by fishing in areas where they would occur at higher abundances and this could exceed the estimated impacts outline in the 2017 Groundfish FMP Biological Opinion.

CDFW recommends that either real-time GSI be implemented with sub-limits on bycatch for specific ESUs (i.e. SONCC Coho and CCC Coho), or that the total Coho bycatch limit in the EFP area be reduced to the level outlined as acceptable for the whiting fishery for CCC Coho (14) in the 2017 Biological Opinion. CDFW acknowledges and appreciates that since the time of filing the application, the EFP proponents have agreed to include a 14-fish coho limit for fishing in the EFP area among the Terms and Conditions.

Consideration 2: Chinook Salmon Concerns Are Not Sufficiently Alleviated

There are multiple ESUs of Chinook Salmon in California, including Klamath River Fall Chinook (KRFC), SONCC Chinook, California Coastal Chinook, Sacramento River Spring Chinook (SRSC), Sacramento River Winter Chinook (SRWC), and Sacramento River Fall Chinook (SRFC). Of these ESUs, CC Chinook, SRSC, and SRWC are listed under the ESA, and SONCC Chinook are currently a candidate for listing. While not federally recognized as an ESU, Klamath-Trinity Spring Chinook are also listed as threatened under the California ESA. The other major stocks, KRFC and SRFC, have recently experienced historic lows prompting the closure of directed fisheries in California in 2023 and 2024, and mostly closed fisheries in 2025. Additionally, KRFC are currently designated as overfished and meanwhile are experiencing habitat disruption from dam removal.

The conditions that prompted the 1992 emergency rule remain. The impetus prohibiting at-sea processing of whiting south of latitude 42° N was due in large part to high bycatch of Chinook salmon, amounting to 4,600 in the Eureka area in 1991. Fifty percent of the salmon were taken in 8 out of 596 observed trawls (Whiting EFP Application). This represents a severe risk of lightning strike trawls where high numbers of Chinook may be captured in few trawls. Conditions in the Mothership and Catcher-Processor Salmon Mitigation Plans (SMPs) somewhat control for this with information sharing and move-along provisions, however, CDFW believes the risk of exceeding the 500 Chinook cap in relatively few trawls is still too great without substantial modification to the EFP's design.

The 4,600 Chinook bycatch observed in the Eureka area in 1991 was concerning due to the exceptionally low abundance of KRFC during that time, and a large portion of that bycatch was likely made up of KRFC (Moran et al. 2021). Between 1990 and 1992, the period that spurred the emergency whiting processing rule, KRFC ocean abundance averaged **151,500**, compared to **136,900** for 2022 to 2024 (O'Farrell et al. 2025). The stock has been designated as overfished since 2018 and California directed ocean salmon fisheries were closed in 2023 and 2024, and

severely limited in 2025, in large part to protect KRFC. Whiting fisheries and their associated bycatch have impacted KRFC during each of these years and the proposed EFP would only exacerbate these impacts.

In addition to the low abundance of KRFC, they are also currently recovering from the largest dam removal in US history. While the outlook for KRFC is promising, the stock is fragile as newly accessible habitats develop and adults re-establish in upstream spawning locations.

Much like KRFC, the California Coastal Chinook stock is also currently in poor condition, cannot support additional harvest, and will likely be caught in high proportions south of 42 N (Moran et al. 2021). CC Chinook were listed in 1999, after the emergency whiting processing rule went into effect. This ESU was reaffirmed as threatened in 2005, and despite improvements in some watersheds (Mad River, Redwood Creek), the most recent 5-Year Review states that most southern watersheds are far below recovery targets. Given the recent closure of directed salmon fisheries and the heavily buffered 2025 aggregate allowable impact rate of 7.7% on age-4 KRFC by these fisheries (proxy for CC Chinook; 2025 NMFS Guidance Letter), adding to the already high bycatch impacts will likely be detrimental to the recovery of CC Chinook.

Consideration 3: Insufficient Analytical Framework for an EFP

The EFP proposal lacks a defined sampling design. Moreover, the EFP does not adequately describe how set-asides or non-whiting species will be analyzed or reported throughout the year, nor does it compare mortality rates inside versus outside the EFP area. There is also no description of gear specifications, as required under COP 19. Because the EFP would authorize only processing activity as the associated fishing activity is already authorized, it is unclear if vessels fishing south of the Oregon/California border are fishing for a processor operating in the EFP. Haul areas are outlined in PacFIN under the Comprehensive NORPAC table which reports observer data from at-sea motherships and catcher processors but not processing areas. Therefore, it would be challenging for an analyst determine the amount of target whiting catch, or incidental catch and bycatch inseason under the EFP to ensure set asides and any salmon caps are adhered to. Moreover, since catcher vessels are already permitted to fish south of 42 N lat. it is unclear if they are participating in the EFP as they might be able land their fish elsewhere either at-sea or shoreside. This is particularly concerning if a catcher vessel has a high bycatch haul, as it could be landed at-sea north of 42 N lat., or landed shoreside, and not have it count against the EFP caps. Set asides for stocks south of 40°10′ N. lat. should be considered, for example slope and shelf south.

The application lacks a reasonable process for identifying or selecting participating vessels, as required by COP 19. Allowing all CPs or MS vessels to begin fishing May 15th at 40°10′ N. Lat. is likely to create a race to fish for the 35 percent allocation, with potentially serious impacts to existing at-sea set asides, or other stocks for which bycatch in the whiting fishery has yet to be analyzed under the Biological Opinion because the fishery is operating in a new area. Since 2010, multiple whiting tows operating off southern Oregon have taken over 200 Chinook in a single haul, while other tows elsewhere off the west coast have exceeded 10 Coho.

In the spirit of conducting an experiment to evaluate whether processing south of the border can occur without changing the extent and composition of bycatch from what is analyzed and

authorized under the Biological Opinion, CDFW recommends the EFP include detailed operational requirements that require the processing of catch from a single haul first, and then a reporting out of the catch and bycatch composition, before a second haul is conducted. “Stop and Count” and/or “Slowdown” mechanisms are common tools in fishery management frameworks to ensure catch is properly enumerated and doesn’t happen so quickly as to exceed limits. CDFW recommends incorporating detailed fleetwide operational and reporting terms and conditions that apply to both MS and CP fleets as a single unit. Although EFP proponents describe a ‘test tow’ process before fishing commences, that is not adequate to prevent deployment of many nets simultaneously on the start date, or a race for fish. In discussions leading up to the November Council Meeting, CDFW noted use of the term ‘fair start’ in negotiations between catcher vessels and processors. CDFW associates this term with the high-volume derby fisheries, rather than a carefully designed study to evaluate catch and bycatch composition from an area closed to processing operations for over 30 years.

