

NOAA FISHERIES REPORT ON ESA MITIGATION MEASURES FOR SALMON - SCOPING

In December 2017, the National Marine Fisheries Service (NMFS) completed an Endangered Species Act (ESA) consultation on the continued implementation of the Pacific Coast Groundfish Fishery Management Plan (PCGFMP), where it was determined that the proposed action would not jeopardize the continued existence of listed salmon species under NMFS WCR jurisdiction. In the incidental take statement (ITS) of NMFS' published biological opinion¹, we provide a series of non-discretionary, reasonable and prudent measures (RPM) to minimize the impact of the amount or extent of incidental take. Within the ITS, we also provide the terms and conditions (T&C) of the RPMs with which NMFS and/or the Council must comply. If NMFS and/or the Council do not comply with the T&Cs, the protective coverage for the proposed action could lapse.

NMFS would like to thank the Council for its engagement on efforts to minimize Pacific salmon bycatch and consider measures to comply with the ITS. The Council has already addressed a number of the terms and conditions through the 2019-2020 harvest specifications. However, the Council must still address T&C 3.a. (Reserve rules), as this was removed from consideration during 2019-2020 harvest specifications development.

In addition, consistent with T&C 2.b., the Council may also consider using the action that will develop the Reserve rules to develop additional management measures to allow for timely inseason management to keep the sectors from exceeding their salmon bycatch guidelines.

NMFS will consider T&C 2.c., regarding reapportionment of the treaty tribes' whiting allocation to the non-treaty sectors (50 CFR 660.131) and the level of Chinook bycatch when determining whether to reapportion whiting, during scoping for the 2019 whiting rule.

Required Council Action:

Reserve Rules - The ITS of NMFS' biological opinion identifies the level of take expected from implementation of the proposed Federal action, which in this case is the continuing implementation of the PCGFMP. That take is exempted from the ESA section 9 take prohibitions, and is specified in the ITS as the guidelines for each sector of the groundfish fishery. In consideration of uncertainty regarding the expected level of salmon bycatch within the fishery, NMFS identified a bycatch Reserve that is available only to address unexpected high bycatch levels.

RPM 3 requires the Council and NMFS "develop and implement regulations regarding the Reserve and its use." As stated, the Reserve is only intended to address unexpected high bycatch levels, and is not available as a matter of course to allow the sectors to exceed their bycatch

¹ available at https://www.westcoast.fisheries.noaa.gov/publications/fishery_management/groundfish/s7-groundfish-biop-121117.pdf

guidelines. Additionally, NMFS would like to remind the Council that use of the Reserve in three out of any consecutive five years would result in reinitiation of formal consultation. T&C 3.a. requires the Council and NMFS “develop and implement initial regulations governing the Reserve of 3,500 Chinook.” These Reserve rules must:

- 1) Allow for inseason action to prevent any exceedance of a sector guideline plus the full amount of the Reserve; and
- 2) Minimize the chance that the Reserve is used in three out of any consecutive five years.

In developing these reserve rules, NMFS supports an approach that is simple, flexible and can accommodate sector-year specific bycatch conditions. While the Reserve rules do not need to be overly prescriptive, it is important that the Council establish a specific process for addressing salmon bycatch in the event a sector were to approach a sector-specific Chinook or Coho salmon guideline. The Reserve rules could include:

- a trigger for action
- the type of action to take
- which sectors the action applies to (i.e., sector-specific or fishery-specific)
- guidance for implementation (routine inseason action or automatic action)
- guidance for removing or adjusting the action (i.e. would the action expire or could the Council remove/adjust it based on updated fishery information).

Inseason Bycatch Measures - T&C 2.b. states that, “If the Council determines that additional management measures are needed to allow for timely inseason management to keep the sectors from exceeding their bycatch guidelines, the Council will develop such measures and recommend them to NMFS within three years of the issuance of this opinion. Such measures may include, but are not limited to: sector-specific catch limits, bycatch thresholds, harvest guidelines, time and area closures, and gear restrictions. They may be described as NMFS automatic actions or Council inseason actions.”

NMFS recommends the Council consider additional management tools that would maximize flexibility and that could be implemented in stepwise fashion to slow bycatch of Chinook. Management measures that could provide a controlled, stepwise approach to bycatch reduction, including gear restrictions (e.g., selective flatfish trawl, SFFT) as well as area-based closures (e.g. block area closures), or combinations of the two. Such an approach could minimize impacts to industry while protecting salmon. A generalized example of a stepwise approach to implementing management measures to slow Chinook bycatch, the Council might first consider implementing gear restrictions (e.g., SFFT), followed by block area closures if needed, and lastly implementing larger block areas, or coastwide area closures. The Council should recommend similar details for implementing these provisions, as those provided for the Reserve rules (trigger, type of action, sectors subject to action, etc.)

Any management measure to be used to control bycatch of salmon must first be analyzed, or shown to have been previously analyzed for managing salmon specifically. Gear restrictions, specifically SFFT requirements, have been used since 2005 to reduce bycatch of pelagic or semi-pelagic rockfish. Likewise, use of SFFT may reduce salmon bycatch and enable fishermen to continue operations within an area, avoiding the potentially greater negative socioeconomic effects of closing an area to fishing altogether. Further, use of SFFT gear could be expanded

outside of its range under the previous regulations, which may extend its usefulness for reducing salmon bycatch. If salmon bycatch remained high, even under mandatory use of SFFT, then area closures could be implemented. Block-area/depth closures, such as a combination of RCA contours and latitudinal management lines are analyzed in the Amendment 28 (EFH/RCA). The 200 fathom BRA was analyzed to some extent for salmon as part of the draft Environmental Assessment (Appendix C) for the 2019-20 harvest specifications². If BRAs are to be used, the Council should ensure BRAs as a whole are specifically analyzed for managing salmon bycatch.

T&Cs and Council Action:

In addition to those T&Cs requiring Council action, there are a number of requirements that have either been addressed, have ongoing monitoring and reporting, or that will require future management action. The table below summarizes the T&Cs, the necessary action, when the action needs to be addressed by, whether it is addressed or ongoing, and whether a Council action is required.

Table G.8.a: Overview of terms and conditions (T&C) in the incidental take statement (ITS) of the salmon biological opinion for Council consideration during this and subsequent management actions:

| Term & Condition | Summary of term & condition | Action to be addressed by (date) | Addressed or Ongoing | Council Action Required | Notes |
|---|---|--|-------------------------|-------------------------|---|
| RPM 1: Monitoring | | | | | |
| T&C 1.a | Continue to monitor and report salmon bycatch in the trawl fisheries on a weekly basis. | Annual (post-season analysis of fishery impacts). | Ongoing | No | If change in monitoring is proposed, quality must be commensurate with current monitoring. |
| T&C 1.b | Evaluate and report changes in the geographic and temporal distribution of fishing effort by gear type. | Biennial (analysis of fishing effort distribution by gear type). | Ongoing | No | Significant change in effort considered relative to assumption in the Biological Opinion. |
| RPM 2: Developing Measures to keep Bycatch Within Guidelines | | | | | |
| T&C 2.a | Review of existing mechanisms in the PCGFMP and regulations for avoiding and reducing salmon bycatch. | 2019-2020 groundfish biennial harvest specifications. | Addressed | No | Addressed in 2019-2020 groundfish biennial harvest specifications. |
| T&C 2.b | Propose inseason measures to limit risk of exceeding bycatch guidelines. | Within three years of Opinion (if necessary). | Council Action Required | Yes | Consider stepwise implementation of gear restrictions (e.g. SFFT), depth/ area closures (e.g. RCA blocks), and BRA. |

² available at https://www.westcoast.fisheries.noaa.gov/publications/nepa/groundfish/misc_ea/2019-20_gfspex_app_c_august_2018.pdf

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|-----------------------------------|---|---|-------------------------|-----|--|
| T&C 2.c | Reapportionment of the treaty tribes' whiting allocation to the non-treaty sectors (50 CFR 660.131) and the level of Chinook bycatch. | No Later than May 15th, 2019. | Ongoing | No | NMFS to address in 2019 whiting rule. |
| T&C 2.d | Council will retain specific restrictions minimizing salmon bycatch. | N/A | N/A | No | Retains specific restrictions minimizing salmon bycatch. No action required. |
| T&C 2.e | Prohibits use of midwater trawls and requires the use of selective flatfish trawls within the Columbia River Salmon Conservation Zone (CRSCZ) and the Klamath River Salmon Conservation Zone (KRSCZ). | Within two years of Opinion. | Addressed | No | Addressed in 2019-2020 groundfish biennial harvest specifications. |
| RPM 3: Reserve | | | | | |
| T&C 3.a | Develop regulations governing salmon bycatch Reserve. | 2019-2020 groundfish biennial harvest specifications. | Council Action Required | Yes | |
| T&C 3.b | Monitor and report on use of Reserve in 2019. | During development of 2021-2022 groundfish biennial harvest specifications. | Ongoing | No | NMFS to provide report and recommendation based on 2019 observations. |
| T&C 3.c | Regulations give NMFS automatic authority to close either the whiting and/or the non-whiting sector fisheries if either sector catches its guideline limit plus reserve amount. | 2019-2020 groundfish biennial harvest specifications. | Addressed | No | Addressed in 2019-2020 groundfish biennial harvest specifications. |
| RPM 4: New Times and Areas | | | | | |
| T&C 4.a | Ensure impacts of reopened areas (e.g. RCAs) are consistent with the analysis in the Opinion. | Consider in developing future management measures for the fishery. | Ongoing | No | Council and NMFS would develop and implement measures if salmon bycatch rates in reopened areas exceed the rates used in the analysis of the Opinion by more than 25%. |
| T&C 4.b | Implement EFP studying salmon bycatch in the non-whiting midwater and bottom trawl fisheries south of 42° N. latitude. | Minimum of three years. | Ongoing | No | SFFT EFP ongoing. |

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| T&C 4.c | Implement EFP studying salmon bycatch in the spring (Jan - mid-May) coastwide non-whiting trawl fishery. | Minimum of three years. | Ongoing | No | Coastwide year round EFP ongoing. |
| T&C 4.d | NMFS and the Council will consider data collected as described in T&Cs 4.a and 4.b in developing future management measures. | N/A | Ongoing | No | |
| RPM 5: Identifying and Addressing High Bycatch Times/Areas/Conditions | | | | | |
| T&C 5.a | NMFS and the Council shall work to identify spatiotemporal 'hot spots' of high salmon bycatch. | N/A | Ongoing | No | Consider information in developing mitigation measures to reduce bycatch. |
| T&C 5.b | NMFS working with the Council shall identify: i. Indicators relating anomalous ocean conditions to salmon bycatch, and ii. Those indicators that are potentially predictive of high salmon bycatch. | Over the next two years, and every five years thereafter. | Ongoing | No | NMFS will provide a report to the Council. |
| T&C 5.c | Report on RPM 5, for future management measures. NMFS and the Council may consider data collected as described in T&Cs 5.a&b. | Over the next two years, and every five years thereafter. | Ongoing | No | NMFS anticipates completion of first report for November 2019 Council meeting. |
| RPM 6: Reporting and Evaluation | | | | | |
| T&C 6.a | Annual postseason report. | Annually by November 1 the year following each season. | Ongoing | No | NMFS will prepare first report by November 1, 2019. |
| T&C 6.b | Review existing monitoring and reporting systems for timeliness of bycatch reporting and assessment of salmon bycatch. | NMFS report completed within two years of Opinion. Implement recommendations within one year after issuance of the report. | Ongoing | No | NMFS and the Council to implement recommendations within one year after issuance of the report. |