

GROUND FISH ADVISORY SUBPANEL REPORT ON SALMON MITIGATION MEASURES FOR THE GROUND FISH FISHERY

As an overarching statement, the Groundfish Advisory Subpanel (GAP) remains concerned that the Endangered Species Act (ESA) Section 7(a)(2) Biological Opinion; Reinitiation of Section 7 Consultation Regarding the Pacific Fishery Management Council's (Council) Groundfish Fishery Management Plan (BiOp) is inconsistent with Council direction and intent for the following reasons:

- The GAP does not recall the Council providing guidance to include authorization to automatically close groundfish fisheries. This is a significant change to the management regime. The GAP remains frustrated that a comprehensive economic analysis of the implications of this management shift versus any potential conservation benefits has not been done. It is unfortunate that the process has advanced to the point of considering new regulations without having analyzed the potential economic impacts of the BiOp.
- Use of the reserve as described in the BiOp is inconsistent with Council intent. As the GAP understood it, the Council's purpose for the reserve is to serve as a buffer against the highly unlikely event that sector-specific Chinook thresholds are exceeded. This understanding and purpose of the reserve is at odds with how the BiOp describes the reserve, which is an additional pool of fish that requires a regulatory response to access. This is a fundamental difference that should be addressed. A correct understanding of the Council's intent for the reserve is critical to develop corresponding management tools.

These inconsistencies have created uncertainty for fishery participants, necessitated development of new, complex management measures, and if implemented could negatively impact fishery participants.

Groundfish Management Team (GMT) analyses have consistently demonstrated a very low future risk of exceeding Chinook thresholds. Since 2002, the fishery has been below the 20,000 fish threshold in 15 of 16 years, and has remained below 50 percent of the threshold in 12 of the last 13 years. This information is evidence that the fishery can and does stay consistently well below the threshold without the threat of automatic fishery closure or complex management measures. Therefore, it is unfortunate that the BiOp is reverting the groundfish fishery back to a Command and Control management regime, especially after implementation of a Catch Shares Program that was supposed to facilitate fishery participants fishing "where they want, when they want, and how they want."

The GAP was briefed by Mr. Todd Phillips (Council staff) about Agenda Item G-3 and the current Council action. Mr. Phillips noted two Council action items: (1) to address remaining issues from the BiOp's Incidental Take Statement (ITS), and (2) develop a Purpose and Need Statement. To this latter action item, the GAP recommends the following Purpose and Need:

Section 2.0 of the ESA Biological Opinion and Incidental Take Statement provides Reasonable and Prudent Measures (RPMs) that are necessary or appropriate to minimize the impact of the amount or extent of incidental take of salmon in the Pacific Coast

groundfish fisheries. The Council has addressed all RPMs and Terms and Conditions (T&C) in the Biological Opinion except T&C 2.b., consideration of additional management measures, and T&C 3.a., develop and implement rules governing the reserve of 3,500 Chinook salmon.

To fulfill the requirements of the Biological Opinion, the Council intends to address these two remaining T&Cs. These are necessary to ensure the continued operation of the whiting and non-whiting groundfish fisheries in compliance with the Biological Opinion.

The Council recognizes that development of additional management measures is not required to fulfill T&C 2.b.; however, the Council is required to consider if additional management measures are necessary. In addition, the Council recognizes that the Council and NMFS shall develop and implement regulations governing the Reserve of 3,500 Chinook salmon.

The GAP also received a presentation from the GMT about potential new management measures that the Council could consider to address T&C 2.b. The GMT presentation highlighted the low risk of fishery closure and/or exceeding the 20,000 Chinook threshold and that Chinook bycatch was relatively low in recent years. The GMT suggested that this stated “low risk” could be further reduced with additional management measures. The GMT also suggested that these additional tools could keep individual fishery sectors within their respective guidelines and prevent preemption of other groundfish sectors. Consistent with T&C 2.b, the GMT noted that the Council should consider if additional management measures are needed and, if so, whether those measures should be implemented via National Marine Fisheries Service (NMFS) Automatic Authority or via Routine/Inseason Management action.

The GAP underscores the language from T&C 2.b., that “***if*** (emphasis added) the Council determines that additional management measures are needed...” It is clear that the agency provided the Council discretion to choose whether or not to develop additional management measures. At this point in time, the GAP is not convinced that additional management measures are necessary – the GMT analysis shows that Chinook salmon bycatch in the whiting and non-whiting fisheries have been less than half of the 20,000 fish limit in 12 out of the last 13 years. This is evidence of industry’s ability to act as the first line of defense against bycatch and implement prompt, meaningful action to address bycatch, something the Council has supported. This success has been largely due to the effectiveness of the whiting sectors respective voluntary cooperatives. Near-real time observation data facilitates the ability to recognize, understand, and rapidly respond to salmon bycatch. The cooperative agreements establish protocols to avoid and respond to salmon bycatch – areas to avoid are identified pre-season, salmon excluders are used, and daily fleet-wide communication ensures transparency within and across sectors. These are the most effective and proven tools to reduce salmon bycatch the Council could utilize.

In addition to the benefits provided by co-ops in the whiting sectors, significant changes in the non-whiting trawl fishery in recent years have led to reduced salmon bycatch – the buyback significantly reduced the size of the fleet and Amendment 20 was revolutionary in changing the pace of the fishery and the philosophy of fishery participants. As noted previously by the GAP, non-whiting trawl participants would benefit greatly from improved data management of Chinook bycatch reporting to increase transparency among fishery participants and facilitate real-time fleet-

wide communication of Chinook bycatch. NMFS staff indicated those data management improvements are possible. The GAP recommends this be a high priority.

The GAP recognizes that the Council could decide that there is merit in analyzing a range of new management measures. If so, the GAP strongly recommends the following:

- The analysis clearly demonstrates the tradeoffs and benefits provided by potential new measures compared to the voluntary industry efforts that are the foundation of the cooperative agreements. The GAP stresses that existing Chinook salmon bycatch performance is a direct result of the voluntary cooperative rules annually implemented. Therefore, the status quo for any *new* management measures the Council wishes to consider is industry voluntary management, and should be the basis for analysis. In considering new management measures, the GAP recommends the Council consider whether they would be complementary to existing cooperative management, or if they would erode the effectiveness of cooperative efforts to reduce bycatch. If there are no clear net benefits from any or all of the proposed new measures (either because of the extremely low risk of exceeding Chinook thresholds or because industry measures are timelier and more effective), then it should be clear to the Council that these new measures are not necessary.
- The GAP also recommends that, if a Range of Alternatives is specified, the Council clearly state their intention that additional management measures would be implemented via Routine/Inseason Management, not NMFS Automatic Authority. Given the dynamic nature of the groundfish fishery, Automatic Authority is likely to result in unintended consequences because they are reacting to past events and do not account for current conditions. Routine/Inseason Management provides the optimal vehicle to understand past events, account for measures adopted by industry, and implement effective management responses that are informed by the best available information and input from fishery participants.

Finally, the GAP carefully considered the potential new management tools developed by the GMT. If the Council chooses to consider development of additional management measures, finer scale spatial management via Block Area Closures and minimization of non-whiting trawl salmon bycatch through use of exclusion gear, including Selective Flatfish trawl, merit further analysis, especially to determine if these regulatory measures are more effective than voluntary measures. The GAP agrees with whiting fishery participants that regulating the use of salmon excluders in the whiting fishery should not move forward for further analysis. Salmon excluders are already widely used in the whiting fishery, a regulatory mandate is unnecessary. Moreover, excluder technology is constantly evolving and it is highly likely that any excluder defined in regulation will be out dated before the regulation is implemented. Regulating the use of outdated excluder designs will result in less Chinook savings and stifle industry innovation.

The GAP also reviewed supplemental GMT Report 2 that covers whiting sector actions and the suggestion to “set aside” 500 Chinook for recreational and fixed gear fisheries. Consistent with GMT recommendations, the GAP recommends the Council include in the Range of Alternatives consideration of how and whether the existing whiting voluntary cooperative measures to avoid Chinook salmon could be used to satisfy the remaining T&Cs of the BiOp relative to the whiting fishery. The GAP agrees with the GMT conclusion “that the fixed gear and select recreational fisheries would have a very low risk of closing even if they did not have a set-aside of 500 Chinook salmon for multiple reasons.” Therefore, the GAP recommends the Range of Alternatives not include a carve out of 500 Chinook for recreational and fixed gear sectors. The analysis of the

Range of Alternatives should clearly address the risks of these two sectors being preempted and ensure that management measures are sufficient to prevent preemption.

In closing, the GAP remains concerned that much time and effort is being spent responding to a BiOp that is inconsistent with Council intent, reiterates that voluntary industry efforts are truly the best mechanism to ensure salmon bycatch is minimized, and urges the Council to be deliberate in its consideration of whether new management measures are needed at this time, especially given that Chinook salmon bycatch in the whiting and non-whiting fisheries have been less than half of the 20,000 fish limit in 12 out of the last 13 years.

PFMC
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