



Phoenix Processor Limited Partnership

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November 2, 2012

November 2012 Council Meeting, Public Comment

Re: Agenda Item I.5, Proposed Change in Shoreside Whiting Primary Season Start Date

Dear Chairman Wolford and Members of the Pacific Fishery Management Council:

Phoenix Processor Limited Partnership (PPLP) owns two mothership processors, owns permits in both the shoreside and at-sea sectors of the rationalized Pacific whiting fishery, and is a member of the Whiting Mothership Cooperative (WMC) and United Catcher Boats (UCB). Many of the partners in PPLP also own and operate catcher vessels and permits in the whiting fishery. PPLP opposes the proposed change in the shoreside whiting primary season start date.

Regulations at 50 CFR § 660.131(b)(2) specify ten factors that must be considered before changing the start date. PPLP previously commented on each in detail in April 2012; we reaffirm and incorporate those comments by reference. Of most concern are Chinook salmon bycatch impacts. The entire whiting fishery – shorebased, mothership, catcher processor, and tribal sectors – all operate under an annual threshold limit of 11,000 Chinook salmon. Catch in excess of this limit triggers reinitiation of Endangered Species Act consultation, which we seek to avoid. Changing the start date for the shoreside fishery from June 15 to May 15 will likely increase overall Chinook salmon bycatch.

The draft analysis relies on outdated and incomplete information

The draft analysis relies on the 1997 Environmental Assessment prepared in support of the original decision to establish the June 15 start date, ignoring information presented in the 1999 Biological Opinion (BiOp) and Incidental Take Statement (ITS) for the groundfish FMP,¹ and that contained in the 2006 Supplemental BiOp,² which reaffirmed the ITS. While the draft analysis acknowledges the existence of these documents, it does so by stating a changed date would be within the existing consultation. But this ignores the information within the BiOps relevant to a decision under the Magnuson-Stevens Act – the 1997 EA does not represent the best scientific information available.

¹ NMFS, December 15, 1999, *ESA Section 7 Consultation on Pacific Coast Groundfish Fishery Management Plan for the California, Oregon, and Washington Groundfish Fishery*, Northwest Region, Sustainable Fisheries Division.

² NMFS, March 11, 2006, *Endangered Species Act Section 7 Consultation - Supplemental Biological Opinion: Reinitiation of Section 7 Consultation Regarding the Pacific Fisheries Management Council's Groundfish Fishery Management Plan*, Northwest Region, Sustainable Fisheries Division.

The 2006 Supp'l BiOp shows higher salmon bycatch by the shoreside sector early in the season

The 2006 Supp'l BiOp notes that “higher bycatch tows tend to occur in shallow water[,]” that “[t]he shorebased fleet in particular tends to fish closer to shore largely because of the time savings and fuel costs associated with moving offshore[,]” and that “[a]s a result, the bycatch rate tends to be higher in the shorebased fishery.”³ Moreover, “bycatch rates tend to be highest earlier in the season.”⁴ The draft analysis does not acknowledge these findings, the differences in Chinook salmon impacts between the at-sea and shoreside whiting fisheries, or how these impacts occur over time. It would not take much analysis to show this –tables similar to Figures 3-1 and 3-2 should be prepared to analyze weekly Chinook salmon bycatch for the past ten years (both in absolute numbers and rates per metric ton).

Inadequate range of alternatives

Despite increased Chinook salmon impacts, the draft analysis does not include alternatives to mitigate such impacts. For instance, the WMC has adopted a performance standard with sanctions that apply to vessels that exceed acceptable bycatch rates.⁵ The failure to analyze mitigation measures such as these is another deficiency of the draft analysis.

Potential for increased non-whiting fishery impacts

There is also increased risk of bycatch due to non-whiting fishing under the guise of participation in the shoreside whiting fishery. Targeted fisheries for widow and yellowtail rockfish currently occur coincident with the shoreside whiting fishery, with increasing effort early in the year.⁶ These non-whiting fishermen are able to access the Rockfish Conservation Area by declaring into the Pacific whiting IFQ fishery. While the need to obtain QP to cover catch of IFQ species “may constrain total harvest,”⁷ it does not eliminate the risk of “lightning strikes” due to the risky behavior of fishing for rockfish in the RCAs. Moving the start date exacerbates this risk. What would happen when a non-whiting fisherman fishing in the RCA catches enough yelloweye and/or canary rockfish to shut down the entire trawl fishery? The draft analysis does not answer this, or even ask the question.⁸

Status quo minimizes bycatch to the maximum extent practicable

Any regulation promulgated to implement an FMP must be consistent with the National Standards of the Magnuson-Stevens Act, including National Standard 9, which requires minimization of

³ *Id.* at 17.

⁴ *Id.*

⁵ See November 2012 PFMC Meeting, Supplemental Information Report 5, *Whiting Mothership Cooperative, Preliminary Report on the 2012 Pacific Whiting Fishery*, at 23.

⁶ Attachment 6 at 15, see also September 2012 PFMC Meeting, Agenda Item H.5.b, NMFS Report, *West Coast Groundfish IFQ Fishery, Mid-year Catch Report (January-June) 2012: Emerging Trends*, at 21, Table 12.

⁷ Attachment 6 at 15 (emphasis added).

⁸ The unsupported argument that the QP incentive “may constrain total harvest” also fails to address risks of increased bycatch of non-IFQ groundfish species.

bycatch “to the extent practicable[.]”⁹ The Merriam-Webster dictionary defines practicable as “capable of being put into practice or of being done or accomplished: feasible.”¹⁰ The last fifteen years of shoreside whiting harvests demonstrate the feasibility of starting the Pacific whiting shoreside fishery on June 15. Absent any showing otherwise, the proposed change is inconsistent with National Standard 9.

There is no demonstrated need for the proposed action

Actual harvests in the shoreside whiting fishery show that landings have shifted later in the year. As NMFS’ June 2012 Report on the IFQ fishery shows, the amount of shoreside Pacific whiting caught in the first half of 2012 has declined by more than 13 million pounds, less than half of what was caught in the same period in 2011 and a ~25% reduction in harvests relative to the available allocation.¹¹ This continues the trend shown in Figure 3-1, which also shows shoreside whiting harvests shifted later in the year, and argues against a need to move the start date earlier in the year.

There is no industry agreement

Finally, the proposal to move the Pacific whiting primary season start date for the Shorebased IFQ Program does not, in fact, enjoy industry consensus. PPLP opposes the proposed action; so too does United Catcher Boats. There is no unanimous industry agreement; we consider this a contentious issue. In our view, it would be irresponsible to change the whiting start date for a single entity when such action increases the risks to the entire groundfish fishery.

This disagreement underscores the need for thorough analysis. Deferring action would provide an opportunity to incorporate information from the BiOps and also more recent and improved data from observer information collected under the trawl rationalization program. The Situation Summary on this agenda item notes that implementation in 2013 “might not be possible,” which is all the more reason to take no action until the analysis can be prepared. PPLP urges the Council to select the no action alternative and not schedule this proposal for consideration again unless and until a commitment can be made to correct the deficiencies in the draft analysis.

Respectfully Submitted,

James M. Mize

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On behalf of Phoenix Processor Limited Partnership

⁹ 16 U.S.C. 1851(a)(9).

¹⁰ 2012. Merriam-Webster Online Dictionary. Available at <http://www.merriam-webster.com/dictionary/practicable> (last visited October 31, 2012).

¹¹ September 2012 PFMC Meeting, Agenda Item H.5.b, NMFS Report, *West Coast Groundfish IFQ Fishery, Mid-year Catch Report (January-June) 2012: Emerging Trends*, at 21, Table 12. Whiting harvests in the shoreside whiting fishery in 2011 through June 30 were 23,832,545 pounds, equal to ~12% of the total 2011 allocation; for the same period in 2012, the harvest was 10,860,236, equal to ~9% of the 2012 allocation.