



Mr. Barry Thom, West Coast Regional Director
National Marine Fisheries Service
Portland, OR

RE: Emergency Rule Request for 2020 Whiting Season

April 8, 2020

Dear Mr. Thom,

Please find attached a request from Midwater Trawlers Cooperative (MTC) and United Catcher Boats (UCB) for an Emergency Rule to address an unexpected and emergent issue in the Mothership whiting sector. MTC and UCB represent essentially all of the trawl catcher vessels that participate in the Mothership sector. In addition, this emergency request is supported by the processing companies that hold the six mothership processing permits. We would like to meet with you as soon as possible to discuss.

We stand ready to assist the agency in any way that helps facilitate this request.

Thank you for your consideration.

Heather Mann

Heather Mann, Midwater Trawlers Cooperative

Brent C. Paine

Brent Paine, United Catcher Boats

Request for Emergency Action
Submitted by:
Brent Paine, United Catcher Boats
Heather Mann, Midwater Trawlers Cooperative
April 8, 2020

For the reasons below, we respectfully request that the National Marine Fisheries Service (NMFS) initiate an Emergency Rule to allow an at-sea Pacific Whiting processing platform to operate as both a mothership and a catcher processor in the same calendar year during the 2020 Pacific Whiting fishery.

The whiting mothership sector (MS) is managed under a cooperative system that was implemented with the Amendment 20 Trawl Rationalization Program. Amendment 20 established a closed class of MS processors. The amendment provided for a total of six MS processing permits which are presently owned by four companies. Under the Amendment 20 regulations, a vessel that operates as a mothership in the mothership sector may not also act as a catcher processor in the same calendar year and a vessel that operates as a catcher processor may not also act as a mothership.

On March 31, 2020 a company that owns one of the mothership processing permits informed the owners of the three MS trawl catcher vessels that had committed to fish for them in 2020 that they would not be using their vessel as a mothership in the 2020 whiting fishery. The company owns five catcher processor permits and one mothership permit. In the past several years, the company has operated four of its vessels in the catcher processor sector and one in the mothership sector. The company explained to the CV owners that because its economic returns are far superior on its catcher processors and because of the unknown but significant risk that one or more of its vessels could be shut down because of a COVID-19 pandemic, the company had decided to not put a vessel into the mothership sector which would disqualify its use in the catcher processor sector for the balance of 2020.

This decision comes just six weeks before the start of the May 15th opening of the 2020 whiting fishery and has resulted in three catcher vessels losing their market. These three vessels' share of the MS Whiting sector (owned and leased) is roughly 24% of the mothership sector allocation. This is a significant amount of fish. At last year's ex-vessel price, this amount of stranded fish is valued at more than \$5 million. This includes the loss of employment for approximately 15 crew members and captains, along with the loss of revenue to the CV companies. Unfortunately, the remaining mothership processing companies do not have the capacity to offer markets to the displaced catcher vessels.

While to date the COVID-19 pandemic risk has only changed the operating plans of a single mothership operation, every mothership and catcher processor is facing the risk of having their vessels shut down by a COVID-19 pandemic incident. The Coast Guard and CDC have not provided guidance on how vessels with an infected crewmember will be treated and every

vessel is facing the possibility of quarantine. It is critical to the catcher vessels, crews and markets that companies have the broadest opportunity to bring in a replacement vessel if this occurs.

Solution

In the short term, the only vessels likely to serve as replacement motherships or catcher processors are the existing motherships and catcher processors. In order to give potential processors the greatest flexibility and in order to provide opportunity for these three catcher vessels that have been displaced due to COVID-19 pandemic, the mothership sector harvester and processor participants are requesting that NMFS take emergency action to implement a regulatory change for the duration of the 2020 season. This emergency rule would allow a processing platform to be mothership and a catcher processor in the same calendar year versus opting to be one or the other. Any processing platform in the mothership sector would still need to obtain one of the six mothership processing permits and a platform cannot be both a mothership and a catcher processor simultaneously. This solution would potentially allow the three catcher vessels to harvest and sell some of their MS sector fish and further provide potential opportunities to other vessels whose fishing plans are disrupted due to COVID-19 pandemic concerns if the need arises.

Standard for Emergency Relief

Section 305(c) of the MSA allows the Secretary of Commerce to promulgate emergency regulations when the Secretary finds that an emergency exists involving any fishery. NMFS policy guidance defines an emergency as a situation that: (1) results from recent, unforeseen events or recently discovered circumstances; (2) presents serious conservation or management problems in the fishery; and (3) can be addressed through emergency regulations for which the immediate benefits outweigh the value of advance notice, public comment, and deliberative consideration of the impacts on participants to the same extent as would be expected under the normal rulemaking process.

NMFS guidance further states that

[i]f the time it would take to complete notice-and-comment rulemaking or complete a fishery management plan or amendment would result in substantial damage or loss to a living marine resource, habitat, fishery, industry participants or communities, or substantial adverse impacts to the public health, emergency action might be justified under one or more of the following situations:

1. Ecological-
 - a. to prevent overfishing as defined in a Fishery Management Plan (FMP), or as defined by the Secretary in the absence of an FMP, or
 - b. to prevent other serious damage to the fishery resource or habitat; or
2. Economic- to prevent significant direct economic loss or preserve a significant economic opportunity that otherwise might be foregone; or
3. Social- to prevent significant community impacts or conflict between user groups; or

4. Public Health- to prevent significant adverse effects to health of participants in a fishery or to the consumers of seafood products.

Emergency Rule Rationale

An emergency rule is a tool that the agency has to address unforeseen circumstances that result in conservation, biological, economic, social, and health emergencies. Under the COVID-19 pandemic the concerns described here clearly meet the economic, social and health emergencies component of the rules criteria.

The guidance says emergency rules should be limited to “extremely urgent, special circumstances where substantial harm to or disruption of the resource, fishery, or community would be caused in the time it would take to follow standard rulemaking procedures.” If the 2020 TAC is similar to 2019 (which it is expected to be) the allocation being stranded is over 51 million pounds of whiting which is worth approximately \$5 million dollars. The owners and crew of the three vessels that are immediately impacted will be significantly harmed if they are not able harvest fish in 2020. We still do not know if other catcher vessels may find themselves without a market due to the COVID-19 pandemic and this emergency action could allow relief for other catcher vessels as well.

The emergency rule is only authorized for 180 days and it does not alter the underlying program structure for the long-term.

The fishing industry is categorized as essential because we are providing food to the nation and providing food security in this time of uncertainty. If these three MS CVs can harvest their whiting quota this will provide additional protein to the nation. The whiting industry employs hundreds of people and generates millions of dollars. This emergency rule will proactively address the unforeseen challenges the industry will surely face during the 2020 season. This emergency action addresses National Standard 1 and allows achievement of Optimum Yield. At a time where everything is uncertain, providing the tools to the industry to meet the upcoming challenges makes good management sense and is the right thing to do.

The situation here results from a very recent action by the owner of the MS permit that was also very unforeseen and recently discovered.

We also believe that the situation faced by the owners of the CV permits can be addressed through emergency regulations for which the immediate benefits outweigh the value of advance notice, public comment, and deliberative consideration of the impacts to the same extent as would be expected under the normal rulemaking process.

Proposed Emergency Rule Regulatory Changes:

Mothership Sector Regulations –

At 50 CFR §660.150(b),

(b) Participation requirements and responsibilities—(1) Mothership vessels. (i) Mothership vessel participation requirements. A vessel is eligible to receive, and process catch as a mothership in the MS Coop Program if:

(A) The vessel is registered to an MS permit;

(B) The vessel is not used to fish as a catcher vessel in the mothership sector of the Pacific whiting fishery in the same calendar year; and

~~(C) The vessel is not used to fish as a C/P in the Pacific whiting fishery in the same calendar year.~~

At 50 CFR §660.150(f),

(2) Renewal, change of permit ownership, or vessel registration

(i) Renewal. An MS permit must be renewed annually consistent with the limited entry permit

regulations given at §660.25(b)(4). ~~If a vessel registered to the MS permit will operate as a mothership in the year for which the permit is renewed, the permit owner must make a declaration as part of the permit renewal that while participating in the whiting fishery it will operate solely as a mothership during the calendar year to which its limited entry permit applies. Any such declaration is binding on the vessel for the calendar year, even if the permit is registered to a different permit owner during the year, unless it is rescinded in response to a written request from the permit owner. Any request to rescind a declaration must be made by the permit owner and granted in writing by the Regional Administrator before any unprocessed whiting has been taken on board the vessel that calendar year.~~

Catcher Processor Regulations –

At 50 CFR §660.160(b),

(b) Participation requirements and responsibilities—(1) C/P vessels—(i) C/P vessel participation requirements. A vessel is eligible to fish as a catcher/processor in the C/P Coop Program if:

(A) The vessel is registered to a C/P-endorsed limited entry trawl permit.

(B) The vessel is not used to harvest fish as a catcher vessel in the mothership coop program in the same calendar year.

~~(C) The vessel is not used to fish as a mothership in the MS Coop Program in the same calendar year.~~

At 50 CFR §660.160(e),

(2) Renewal, change in permit ownership, vessel registration, or combination.

(i) Renewal. A C/P-endorsed permit must be renewed annually consistent with the limited entry permit regulations given at §660.25(b)(4). ~~If a vessel registered to the C/P-endorsed permit will~~

~~operate as a mothership in the year for which the permit is renewed, the permit owner must make a declaration as part of the permit renewal that while participating in the whiting fishery they will operate solely as a mothership during the calendar year to which its limited entry permit applies. Any such declaration is binding on the vessel for the calendar year, even if the permit is registered to a different permit owner during the year, unless it is rescinded in response to a written request from the permit owner. Any request to rescind a declaration~~

~~must be made by the permit owner and granted in writing by the Regional Administrator before any unprocessed whiting has been taken on board the vessel that calendar year.~~

If the action were to include an increase to the number of transfers –

At 50 CFR §660.25 (b)(4)(vii),

(C) Limited entry MS permits and limited entry permits with an MS/CV or a C/P endorsement. Limited entry ~~MS permits and limited entry~~ permits with an MS/CV ~~or a C/P~~ endorsement may be registered to another vessel up to two times during the calendar year as long as the second change in vessel registration is back to the original vessel. The original vessel is either the vessel registered to the permit as of January 1, or if no vessel is registered to the permit as of January 1, the original vessel is the first vessel to which the permit is registered after January 1. After the original vessel has been established, the first change in vessel registration would be to another vessel, but any second change in vessel registration must be back to the original vessel. For an MS/CV-endorsed permit on the second change in vessel registration back to the original vessel, that vessel must be used to fish exclusively in the MS Coop Program described §660.150 for the remainder of the calendar year, and declare in to the limited entry mid water trawl, Pacific whiting mothership sector as specified at §660.13(d)(4)(iv). ~~There is no limit on the number of transfers during a calendar year for limited entry MS permits or limited entry permits with a C/P endorsement.~~