

Request for Emergency Action

Submitted by:

Pacific Whiting Conservation Cooperative, Aleutian Spray Fisheries (F/V Muir Milach, F/V Nordic Star), F/V Lisa Melinda, Midwater Trawlers Cooperative, and United Catcher Boats

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For the reasons below, we respectfully request that the Pacific Fishery Management Council (PFMC) recommend to the National Marine Fisheries Service (NMFS) implementation of 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 2021 Pacific whiting fishery.

The whiting mothership (MS) sector is managed under a cooperative system established as part of the Trawl Rationalization Program developed in Amendment 20 to the groundfish Fishery Management Plan (FMP). 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 MS in the MS sector may not also act as a catcher-processor (CP) in the same calendar year and a vessel that operates as a CP may not also act as a mothership.

During the 2020 whiting season several at-sea processing vessels were forced to stop fishing and processing whiting due to coronavirus outbreaks onboard. These outbreaks resulted in approximately four months of lost fishing time and stranding in excess of 15,000 mt of whiting worth approximately \$3 million. During the 2021 Alaska pollock season three shorebased processing plants and three CPs also experienced coronavirus outbreaks that resulted in nearly three months of lost fishing and processing time. At this time, it is uncertain whether this lost fishing time will result in stranding fish, however, the direct costs of addressing the outbreaks have resulted in excess of \$10 million. Moreover, when a processing plant or vessel experiences an occurrence of coronavirus, the result is an entire operational shutdown of three to four weeks where no fish is processed, further exacerbating foregone opportunities and increasing response costs. These outbreaks and resulting shutdowns and impacts illustrate the continuing and elevated risk the whiting fishery faces from the coronavirus pandemic. In addition to these issues specific to fishery operations, it was clearly unforeseen in 2020 how long the pandemic would last, that coronavirus variants would emerge, and that vaccines would take so long to become available. An emergency action to address these unforeseen events is warranted as the ability of managers to craft long-term solutions continues to be hobbled by the coronavirus, as evidenced by the PFMC being forced to hold virtual meetings and strictly curtail meeting agendas. This limitation, combined with the unforeseen and changing conditions, means the immediate benefits of an emergency action "...outweigh the value of advance notice, public comment, and deliberative consideration of the impacts on participants..." that typically occurs under normal rulemaking. Without emergency action, lost economic opportunity to the MS sector could result.

In 2020, NMFS issued an emergency rule allowing a vessel to operate as a MS and a CP in the same year. That emergency rule was in response to a single company electing to not operate a processing platform in the MS sector, which would result in stranding approximately 24% of the 2020 mothership sector allocation worth approximately \$5 million. There is an important reason why a processing platform did

not operate as both a CP and a MS in 2020. The single company that holds both a CP and MS permit started the season operating all its vessels as a CP to support full utilization of the CP allocation in the event a coronavirus outbreak sidelined a vessel. During the 2020 season, this same company experienced four coronavirus outbreaks resulting in three vessels losing a cumulative four months of fishing time, and stranding approximately 10,000 mt of whiting in the CP sector. A vessel acting as both a CP and MS in the same year was not feasible due to the magnitude of the coronavirus outbreaks, the long down time that was required to respond to coronavirus outbreaks, and the extended length of the Alaska pollock season. The available MS permit was made accessible to other at-sea processing companies free of charge, but because of the extended pollock season, shipyard schedules, and “COVID fatigue” after a long, difficult season, among other reasons, the MS permit and the 2020 emergency rule were unused.

In addition, industry did not request an extension of the 2020 emergency rule for two reasons. First, the initial 180 day emergency period covered the majority of the 2020 whiting season. By the time the emergency rule was set to expire, there was very few days left in the 2020 whiting season and all vessels had ceased fishing operations. Secondly, at that time it was unforeseen that the whiting industry would continue to be challenged by the pandemic in the following whiting season. Had an extension been requested at that time, it would have covered a lengthy period when the whiting fishery is closed by regulation; January 1-May 14 or 133 of the available 186 days of the theoretical extension.

While the requested regulatory remedy for this emergency petition is similar to the 2020 action, the underlying causes of this emergency are different than those that precipitated the emergency action in 2020. The emergency facing the whiting fishery in 2021 is that catcher vessels delivering to a MS will strand fish because, a) there is no available replacement MS processing platform if one experiences a coronavirus outbreak, and b) the company in 2020 that elected to put their vessel in the CP sector and not in the MS will be forced to again make the same operational decision that resulted in lost fishing opportunity for MS catcher vessels, again jeopardizing a significant portion of the MS allocation.

Solution

In the short term, the only vessels likely to serve as replacement MSs or CPs are the existing MSs and CPs. In order to give potential processors the necessary flexibility and to provide opportunity for catcher vessels that could be displaced due to COVID-19 pandemic, the at-sea harvester and processor participants request that the PFMC recommend NMFS implement an emergency regulatory change for the duration of the 2021 season. This emergency rule would allow a processing platform to be a MS and a CP in the same calendar year versus opting to be one or the other. Any processing platform in the MS sector would still need to obtain one of the six MS processing permits and a platform cannot be both a MS and CP simultaneously. This solution would potentially allow catcher vessels to ensure the harvest of their MS sector whiting and further provide potential opportunities to other vessels whose fishing plans are disrupted due to the ongoing COVID-19 pandemic and/or other operational problems that arise in 2021. Since the current request is similar to the 2020 action that was recommended by the Council and implemented by NMFS, the workload associated with the current request should be reduced because the PFMC, its advisory bodies, and NMFS already developed a record of decision in support of the action that was implemented in 2020.

While the rationale is distinct, the regulatory remedy is similar to that implemented under emergency action in 2020. In the rulemaking implementing the 2020 action, NMFS stated:

“Maintaining the prohibition on processing platforms operating as both a C/P and MS in the same calendar year would have serious economic impacts within the 2020 Pacific whiting season by limiting catcher vessel operations without providing the benefit of long-term competitive stability between the MS and C/P sectors. The prohibition on processing platforms operating as both an MS and C/P would place both sectors at an economic disadvantage by limiting the operational flexibility of the at-sea sectors to respond to recent unforeseen circumstances. This emergency action would allow a processing platform to operate as both an MS or a C/P in the same year, depending on the processing needs of the at-sea Pacific whiting sectors. Under these emergency measures, temporarily lifting the restriction on MS and C/P operations would increase the likelihood that MS catcher vessels have markets to deliver catch to throughout the 2020 fishing year. The operational flexibility provided in this emergency action would prevent significant direct economic loss to at-sea whiting fishery participants and fishing communities. These measures will allow at least three catcher vessels impacted by unforeseen circumstances to harvest MS sector Pacific whiting allocations and provide catch revenue to the respective vessel crews. In the event that additional processing platforms cannot commit to taking deliveries from catcher vessels for the remainder of the 2020 Pacific whiting season (due to changes in business plans or because a processing platform is rendered inoperable, for example) this emergency rule may provide additional harvesting and processing opportunities for at-sea Pacific whiting fishery participants.

“In light of this information, NMFS finds that an emergency exists, and regulations are necessary to address the emergency.”

Rationale

The rationale for this emergency request is substantively different than the 2020 request in several specific areas.

Global Pandemic: It is unforeseen that whiting fishery participants would still be dealing with the effects of a global pandemic over one year later. At the time of the emergency rule request in 2020, the state of knowledge of the coronavirus and potential impacts of the COVID-19 pandemic was limited at best. The effects on people, businesses, and the economy were still unfolding. Today, this body of knowledge is still growing, as evidenced by continuing updates to restrictions and guidance from Federal, State and local governments as well as health officials and the CDC.

Fishery Challenges: It is unforeseen that whiting fishery participants would still be dealing with the risk of stranding fish and operational shutdowns due to coronavirus over one year later.

Remedy to Pandemic: It is unforeseen that essential workforce members (which includes the fishing industry) would still not have ready access to coronavirus vaccines. Despite the fishing industry’s best efforts to prevent the coronavirus from gaining access onto fishing and processing platforms, there have been numerous vessels and shore based processors impacted with large outbreaks and lengthy closures. A key way to prevent shutdowns is ready access to a vaccine, which is unlikely to happen prior to the start of the whiting season.

Coronavirus Variants: The increase and spread of coronavirus variants is recent and unforeseen. It is unknown what the effect of variants will have on the fishing industry.

Outbreak Response: It was unforeseen how the development and implementation of local, State and national health directives would impact the fishing industry in response to a vessel outbreak in the fishing industry. In addition, the extent and magnitude of impact outbreak(s) could have on whiting participants was also unforeseen. Finally, it was unforeseen that current health directives guiding an outbreak of even a single positive coronavirus case on a vessel would result in the loss of nearly a month of fishing time.

While the remedy this request seeks, would be similar to that which is under consideration in the PFMCS MS Utilization action, the goal and purpose of each are substantively different. As outlined in the proposed Purpose and Need statement for that action, a primary “...purpose of this action is to improve the MS sector’s ability to utilize their whiting allocation...”, “...due to limited availability of motherships for delivery of catch due to seasonal overlap of the Alaska pollock fishery”. That action is analyzing and considering changes to address chronic under attainment of the entire MS sector. This emergency request is discretely focused on a cause and effect relationship, and associated negative impacts, of a global pandemic. The goal would be to prevent significant and direct economic loss to the sector that would be in addition to, or beyond the existing challenges the sector faces, and the Council is analyzing.

To date the COVID-19 pandemic has impacted numerous at-sea vessels and shoreplants in the Pacific whiting and Alaska groundfish fisheries. The impacts of these outbreaks have been severe, and every whiting MS, CV, and CP risks losing fishing time or a market due to further outbreaks and closures. It is critical to the catcher vessels, crews, and processing markets that companies have the broadest opportunity to bring in a replacement vessel if additional coronavirus outbreaks shutdown fishing or processing vessels in 2021.

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.~~