



DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 660

RTID 0648-XA696

Fisheries Off West Coast States; West Coast Salmon Fisheries; Amendment 21 to the Pacific Coast Salmon Fishery Management Plan

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Notice of agency decision.

SUMMARY: NMFS announces the approval of Amendment 21 to the Pacific Fishery Management Council's (Council) Pacific Coast Salmon Fishery Management Plan (FMP). Amendment 21 establishes an annual Chinook salmon abundance threshold below which the Council and NMFS will implement specific management measures, through the annual ocean salmon management measures, to limit ocean salmon fishery impacts on the availability of Chinook salmon as prey for the Southern Resident killer whale (SRKW) distinct population segment (DPS) of *Orcinus orca*, which is classified as endangered under the Endangered Species Act (ESA).

DATES: The amendment was approved on August 31, 2021.

ADDRESSES: The amended FMP is available on the Council's website (www.pcouncil.org). The final National Environmental Policy Act (NEPA) environmental assessment (EA) is available on the NMFS website at <https://www.fisheries.noaa.gov/west-coast/laws-and-policies/west-coast-salmon-harvest-nepa-documents>.

FOR FURTHER INFORMATION CONTACT: Jeromy Jording at 360-763-2268, email at jeromy.jording@noaa.gov.

SUPPLEMENTARY INFORMATION: The ocean salmon fisheries in the exclusive economic zone (EEZ) (3-200 nautical miles, 5.6-370.4 kilometers) off Washington, Oregon, and California are managed under the FMP. The Magnuson-Stevens Fishery Conservation and Management Act (MSA) requires that each regional fishery management council submit any FMP or plan amendment it prepares to NMFS for review and approval, disapproval, or partial approval by the Secretary of Commerce (Secretary). The MSA also requires that NMFS, upon receiving an FMP or amendment, immediately publish a notice that the FMP or amendment is available for public review and comment.

The Notice of Availability (NOA) for Amendment 21 was published in the **Federal Register** on June 2, 2021 (86 FR 29544), with a 60-day comment period that ended on August 2, 2021. In the NOA, NMFS also announced that a draft EA analyzing the environmental impacts of the actions implemented under Amendment 21 was available for public review and comment. NMFS received nearly forty thousand comments during the public comment period on the NOA. The comments included 39,432 comments that reiterated 6 scripts verbatim, and 448 unique comments from individuals and organizations. The majority of comments received were supportive of Amendment 21; however, some comments raised issues with the amendment. NMFS' authority for this action is limited by the MSA to approval, disapproval, or partial approval of the amendment submitted by the Council. NMFS is not disapproving Amendment 21 in response to the comments received. NMFS summarized and responded to these comments in the final EA, and under **Comments and Responses**, below.

NMFS completed a biological opinion under section 7 of the ESA on the implementation of the FMP, including Amendment 21, and determined this action was not likely to jeopardize the continued existence of the SRKW distinct population segment

or destroy or adversely modify its designated or proposed critical habitat (NMFS Consultation Number: WCRO-2019-04074; biological opinion signed April 21, 2021).

NMFS determined that Amendment 21 is consistent with the MSA and other applicable laws, and the Secretary of Commerce approved Amendment 21 on August 31, 2021. The June 2, 2021, NOA contains additional information on this action. Amendment 21 will be implemented through the annual salmon management measures; no changes to existing Federal regulations are necessary.

Amendment 21 was developed by the Council to address impacts of the salmon fisheries managed under the FMP on Chinook salmon as prey for endangered SRKW. Amendment 21 establishes an annual Chinook salmon abundance threshold below which the Council and NMFS will implement specific management measures to limit ocean salmon fishery impacts on the availability of Chinook salmon as prey for SRKW. The development of Amendment 21 was informed by the risk assessment prepared by the Council's ad hoc SRKW Workgroup (Workgroup).¹ The risk assessment affirmed Chinook salmon as the primary prey of SRKW based on a review of the scientific literature. The risk assessment assessed the potential overlap between SRKW and ocean salmon fisheries and the effects of these fisheries on SRKW. Chinook salmon, as well as coho salmon, are targeted in ocean salmon fisheries managed under the FMP. The Council adopted Amendment 21 at its November 2020 meeting. Amendment 21 was transmitted to NMFS by the Council on May 25, 2021. A detailed description of Amendment 21 is included in the NOA (86 FR 29544, June 2, 2021).

Comments and Responses

¹ The SRKW Workgroup's risk assessment report can be found on the Council's website: <https://www.pcouncil.org/documents/2020/05/e-2-srkw-workgroup-report-1-pacific-fishery-management-council-salmon-fishery-management-plan-impacts-to-southern-resident-killer-whales-risk-assessment-electronic-only.pdf/>.

NMFS received 39,880 comments during the 60-day public comment period on the NOA and the draft EA. The comments included 39,432 comments that reiterated 6 scripts verbatim (*i.e.*, form responses), and 448 unique comments from individuals and organizations, during the 60-day public comment period. The majority of comments, 99.8 percent, were in support of Amendment 21 (39,432 of the form responses and 366 of the individual responses). To address the volume of comments, NMFS identified each unique theme raised in the comments that were not simply supportive of Amendment 21.

NMFS's responses to these themes are presented below.

Theme 1: General support of Amendment 21. Of the 448 individual responses NMFS counted, 366 responses were received in support of the amendment. The 39,432 form responses were also in support of the amendment.

Response: Thank you for your comment, your support for the amendment is noted and your participation in the public process is appreciated.

Theme 2: General opposition of the amendment or requested changes to the amendment. Eighty two individual comments were received that were in opposition of the amendment, with rationale for their opposition in the general themes listed in the comments below.

NMFS' response: Thank you for your comment, your opposition to the amendment is noted and your participation in the public process is appreciated. Responses to points made in your comments are addressed below.

Theme 3: Alter hatchery production. Seventeen commenters requested Amendment 21 alter hatchery production to address prey availability for SRKW before altering fishery management.

Response: The Council has no jurisdiction to alter hatchery production of salmon stocks, and NMFS's decision under Section 304 of the MSA is whether to approve, disapprove or partially approve Amendment 21. Therefore, altering hatchery production

is outside the scope of this action. However, hatchery production levels affect the overall abundance of Chinook salmon in the area north of Cape Falcon, OR, and could therefore affect the frequency at which abundance would fall below the low-abundance threshold included in Amendment 21 and additional management actions would be required.

Hatchery production was included in the range of abundances evaluated by the Workgroup's risk assessment that informed framework of Amendment 21. We considered varying levels of abundances of salmon for different thresholds that would trigger fishery management restrictions in our analysis. These different levels could result from either increased hatchery releases or from natural production increases, or combinations of the two; therefore, our analysis takes into account salmon abundance changes regardless of source. Should hatchery production initiatives increase salmon abundance in the Council area, because the conservation objectives used to manage the ocean salmon fishery are mostly based on impacts to wild fish, additional hatchery fish would likely be disproportionately available as prey for SRKW.

Theme 4: Address tribal fisheries. Forty-nine individual commenters requested addressing tribal fisheries equally as non-tribal fisheries in Amendment 21's requirements.

Response: Under Section 304 of the MSA, NMFS approves, disapproves or partially approves the FMP amendment recommended by the Council. Requiring additional measures from tribal fisheries is therefore outside the scope of this action. The Council, which includes representatives of the affected states and of the treaty tribes, did not recommend an alternative that would have required limits on tribal fisheries beyond those already required to avoid exceeding conservation objectives for salmon stocks. NMFS concluded in its biological opinion that the fisheries implemented with the Council's recommended amendment are not likely to jeopardize SRKW. We have further concluded that Amendment 21 is consistent with the MSA and other applicable laws,

including the ESA and treaty rights. Further, the fact that the Council did not recommend imposing limits on tribal fishing does not create an inconsistency with the MSA or other applicable laws.

Theme 5: Address dams. Eighteen individual commenters requested addressing dams simultaneously in Amendment 21.

Response: The Council has no jurisdiction over the operation of dams in the United States, and under Section 304 of the MSA, NMFS' action, with respect to the Council's recommendation of Amendment 21, is approval, disapproval, or partial approval. Therefore addressing the effects of dams on SRKW is outside the scope of this action. We sought, to the degree possible, to compare alternatives by quantifying their relative effects across varying degrees of abundance of salmon stocks. Therefore, to the degree that freshwater dam operations would alter the level of salmon abundance, we have captured that impact in the analysis.

Theme 6: Address salmon predation by pinnipeds (i.e., seals and sea lions). Sixteen individual commenters requested managing seals or sea lions via Amendment 21 instead of taking action to limit the impacts of the fisheries on SRKW.

Response: The Council has no authority nor responsibility for managing pinnipeds in the United States, and under Section 304 of the MSA, NMFS' action, with respect to the Council's recommendation of Amendment 21, is approval, disapproval or partial approval. Therefore, it is beyond the scope of this action to address the impacts of pinniped predation on salmon populations. Our analysis determined that pinniped populations that may interact with ocean salmon fisheries are at stable and historically high levels.

Theme 7: Address salmon interception in Canadian, Alaskan, and inland fisheries, or interception in other sectors of the West Coast salmon fisheries. Thirty-three individual commenters requested that NMFS address the interception of salmon in other

fisheries or sectors via Amendment 21. Additionally, several of the letter comments brought up a similar theme that the EA was not addressing prior fishery interceptions.

Response: Under Section 304 of the MSA, NMFS' action with respect to the Council's recommendation of Amendment 21 is approval, disapproval or partial approval. Thus, it is not within the scope of this action to address fisheries managed under other Council FMPs. Also, as the Council does not have jurisdiction outside the EEZ off the coasts of the states of Washington, Oregon, and California, it would not be appropriate for the Council to recommend management measures to NMFS for salmon fisheries in other areas for implementation under the MSA. Finally, it is not within the scope of this action for NMFS to change the Council's recommended approach regarding different sectors of the ocean salmon fishery. We have accounted for the interception of salmon stocks in fisheries outside the Council's geographic areas of jurisdiction in evaluating the proposed action and alternatives. We recognize in the EA (page 5) that salmon fisheries in the Council area affect salmon abundances in other areas, including shoreward of the EEZ. With respect to interactions that occur before salmon reach the area under the jurisdiction of the Council, we note that salmon fisheries are managed consistent with the Pacific Salmon Treaty Agreement. The Council takes projected catch in fisheries in Canada and Alaska into account when designing its annual fishery recommendations, and that projected catch is factored into the estimation of Chinook salmon abundance that would be used to implement Amendment 21. The conservation objectives that the Council uses to manage fishery impacts to salmon stocks are in many cases overall exploitation rates that include catch in most or all of the fisheries that catch those stocks including those of interest to the commenters. The management for inside fisheries, including in fresh water and Puget Sound, similarly takes into account catch in the ocean. In the preseason planning process for the salmon fisheries, scientists from Federal, state, and tribal governments collectively analyze available data on salmon

stocks using peer-reviewed models to forecast stock abundance and the impacts of various fisheries scenarios on those forecast abundances. Post-season analyses are used to evaluate the effectiveness of salmon fisheries management in meeting the adopted goals. The models used for these analyses are routinely evaluated and updated.

We disagree with comments that there is no explanation or guide to explain to the reader how information was modeled in the EA to address the effects of these other fisheries. We offer this clarifying response by pointing out the multiple elements of the EA. We point to Section 4.1.2, Fish & Fisheries, where we explain how we included the suite of all fisheries restrictions that occur along the West Coast that might affect the SRKW in order to isolate the effects of implementing the proposed action from the effects of other fisheries that affect salmon abundance in the EEZ. We explain in the EA (page 59) that the catch that occurred in the past, notably in the 1990s, occurred under fishery management regimes that were not as restrictive as of those today, now that additional ESA restrictions for salmon stocks are in place. We describe the newly negotiated Pacific Salmon Treaty Agreement, which places further restrictions on fisheries from those that occurred in the past. Under Section 304 of the MSA, NMFS' action with respect to the Council's recommendation is approval, disapproval or partial approval, but we still account in our analysis for the removal of all fish in areas regulated in other management forums that would otherwise reach the EEZ. In fact, the Council's Workgroup report and methodology, which we explain in the EA at Appendix A (Description of modeling methods and results), very specifically stated that "[f]or fisheries from Southeast Alaska (SEAK) to Cape Falcon, Oregon, we modified the postseason fishery data in an effort to ensure compliance with some of the key contemporary conservation requirements that currently drive fishery planning." More simply put, this means we set harvest levels in Alaska, Canada, and Puget Sound fisheries at levels consistent with the regulatory framework in place in 2020, and ran coast-wide

abundance estimates from years prior to 2020 through these contemporary fisheries. This gave us an estimate of the remaining abundance in the area under the jurisdiction of the Council, to which Amendment 21 would be applied.

Theme 8: Evaluate a higher threshold or add in additional alternatives in the EA. Multiple letters commented that evaluating either higher thresholds, or a no fishing alternative, would have been more informative.

Response: Thank you for your comments. We have updated the EA incorporating a “no fishing scenario” alternative incorporating the analysis the Workgroup had already performed in order to examine the impacts to the environment of a no fishing scenario.

Therefore, by incorporating an alternative that completely closes Council-area salmon fisheries, including a threshold higher than those in the range of alternatives analyzed in the EA is unnecessary. Alternative 4 captures the maximum amount of prey that could be available to SRKW in the absence of fisheries. Comments requesting evaluating higher thresholds were focused on assuming that a particular threshold level of Chinook salmon abundance would promote sustained growth of SRKW. The results of evaluating Alternative 4, based on the available data, indicate a complete closure of ocean salmon fisheries within the EEZ would not significantly benefit SRKW.

The preferred alternative was developed through the Council process, and the action before NMFS is to approve, disapprove, or partially approve Amendment 21. NMFS does not have the authority to substitute one threshold for another, and has now evaluated multiple levels of abundance that would act as threshold for SRKW as prey to determine if there is a specific level that provides a significant benefit to the whales. Our analysis, consistent with that of the Workgroup, could find no significant quantifiable benefit, even when Council-area salmon fisheries were completely closed. The preferred alternative, analyzed under the ESA, and concluded the action was not likely to jeopardize the continued existence of SRKW or adversely modify their critical habitat,

provides more benefit to SRKW than continuation of the No Action alternative, and therefore, NMFS approved the Amendment.

Theme 9: Require additional management measures as part of the responses required [*e.g.*, multiple letters commented vessel-monitoring systems (VMS) should have been required].

Response: Under Section 304 of the MSA, NMFS' action, with respect to the Council's recommendation, is approval, disapproval or partial approval of Amendment 21. Additional management measures are therefore outside the scope of this action. The commenters have not identified any inconsistency of Amendment 21 to the MSA and other applicable law resulting from the lack of a VMS requirement or other specific measures suggested.

Theme 10: Amendment 21 will not recover SRKW.

Response: Under Section 304 of the MSA, NMFS' action is to approve, disapprove, or partially approve Amendment 21. Recovery of SRKW, such that listing under the ESA is no longer required, will take actions, in addition to those proposed under Amendment 21, that are outside the scope of this action. NMFS' final recovery plan for SRKW (which we provide a link for in the EA at page 74) reviews and assesses the potential factors affecting their survival and recovery, and lays out a recovery program to address each of the threats (reduced prey availability and quality, high levels of contaminants from pollution, and disturbances from vessels and sound). The recovery plan also emphasizes that these threats act synergistically, and that addressing one factor on its own will not recover the species. ESA recovery plans provide important context for NMFS' determinations pursuant to section 7(a)(2) of the ESA including assessment of the management framework under Amendment 21. NMFS issued a biological opinion analyzing the effects of salmon fisheries managed under the FMP, including Amendment 21, and concluded such action was not likely to jeopardize the continued existence of

SRKW or adversely modify their critical habitat. The goal of Amendment 21 is to help ensure that Council's harvest management is responsive to the status of SRKWs and supports recovery. The Council's ocean salmon fisheries are required to be consistent with the conservation and management objectives of the FMP, the MSA, and the ESA.

NMFS is committed to working with the Council, states, tribes and our other partners to take actions to improve conditions for the whales, and we recognize the fisheries are only one activity that has contributed to the current SRKW condition, and only one source of potential risk. Federal funding associated with the 2019 Pacific Salmon Treaty Agreement is currently being used to produce additional hatchery fish to increase prey availability for SRKW, and to improve the status of Puget Sound Chinook salmon populations through habitat restoration and conservation hatchery production, which is expected to further increase prey availability. As noted above, the 2019 Pacific Salmon Treaty Agreement itself includes reductions to fisheries. In addition we are working closely with state and local partners to improve water quality in SRKW habitat, and reduce vessel disturbance and interference with foraging so that the existing Chinook salmon are more accessible to the whales. Working with a variety of partners, we are implementing actions identified in our review of the existing vessel regulations to improve compliance with regulations and guidelines to improve habitat conditions for the whales. NMFS recently designated critical habitat for SRKW along coastal waters of Washington, Oregon, and California (86 FR 41668, August 2, 2021), and additionally we are implementing actions recommended through the Governor of Washington's SRKW Task Force process. For more information about SRKW conservation and recovery actions underway, please refer to NMFS' West Coast Region website:

<https://www.fisheries.noaa.gov/west-coast/endangered-species-conservation/southern-resident-killer-whale-orcinus-orca>.

Theme 11: NMFS failed to directly respond to public comments during this process. Several letters commented that written comments submitted by organizations throughout the process did not receive written responses.

Response: NMFS is responding to public comments on proposed Amendment 21 and the draft EA, consistent with legal requirements. Until this point, the process that has occurred has been through the Council and is governed by the MSA. Both the Workgroup and Council meetings were open to the public and public participation was encouraged. Each Workgroup meeting and Council meeting were noticed in the Federal Register at least 23 calendar days prior so the public was informed and able to attend. The Council heard input from members of the public at all stages of the Council's development and consideration of Amendment 21, and the Council considered the public's input in making its decision to recommend Amendment 21 to NMFS.

Theme 12: NMFS failed to prepare an Environmental Impact Statement (EIS) instead of an EA. Several letters commented that NMFS should instead have performed an EIS.

Response: NMFS determined that preparing an EA here was the appropriate level of analysis. NMFS did not receive any comments that indicate the methodology utilized for assessing the effects of the fisheries from the alternatives considered in the EA is inadequate, was not based on the best available scientific information, or otherwise flawed. The comments also did not reveal new information that had not been considered by the Workgroup, the Council, or NMFS in their analysis or decision making or identify any significant effects of the proposed action. NMFS used this methodology to evaluate the effects of the alternatives, including proposed Amendment 21, on the environment including SRKW, and concluded there are no significant impacts to the environment from the preferred alternative.

Theme 13: NMFS should alter critical habitat or designate Marine Protected Areas through the proposed action (*e.g.*, designate critical habitat in Hood Canal and should "enforce " critical habitat).

Response: Under Section 304 of the MSA, NMFS' decision is to approve, disapprove, or partially approve Amendment 21. Therefore, alterations to critical habitat or Marine Protected Areas are outside the scope of the action.

Theme 14: Address or construct management measures that include climate change considerations (*e.g.*, multiple letters commented on recommending risk-averse Chinook salmon management procedures in the context of rising environmental stresses on Chinook salmon populations due to effects from climate change).

Response: Basing the proposed action's triggered response on an aggregate abundance threshold of Chinook salmon is inherently responsive to climate change, as this approach anticipatorily incorporates any effect that climate change may have on Chinook salmon abundances.

Authority: 16 U.S.C. 1801 *et seq.*

Dated: September 8, 2021.

Jennifer M. Wallace,
Acting Director of Sustainable Fisheries,
National Marine Fisheries Service.