



Quileute Natural Resources

QUILEUTE INDIAN TRIBE

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Testimony of Mel Moon in Support of Tribal Request for Whiting Allocation

As the National Marine Fisheries Service (“NMFS”) and the Pacific Fishery Management Council (“PFMC”) are well aware, the Quileute Indian Tribe intends to participate in the Pacific whiting fishery commencing in 2009. Since late 2007, the Tribe has made its intentions clear, both in writing and orally, to NMFS and the PFMC. The Tribe is here today to again reiterate its intention to participate in the 2009 Pacific whiting fishery and, more specifically, to support the Makah Tribe's request for an increase in the tribal whiting allocation to 20.5% of the United States Optimum Yield (“OY”).

As you know, the Secretary of Commerce, through NMFS, has issued regulations allocating whiting to the coastal tribes since approximately 1996. The Quileute Tribe has not previously participated in this fishery. In 2009, however, one or more Quileute members intend to participate in this fishery. The Tribe informally advised NMFS of its intent to enter this fishery at the last PFMC meeting in November, 2007. By letter dated January 10, 2008 and pursuant to 50 C.F.R. § 660.324(d), the Quileute Tribe formally provided NMFS with written notification of its intent to participate in the Pacific whiting fishery commencing in 2009. By reply letter dated April 2, 2008, NMFS advised the Tribe that its request had been forwarded to the PFMC for consideration at its April meeting. At that time, NMFS advised that “any whiting allocation will be an overall tribal allocation, and the intertribal distribution of the overall tribal allocation is an intertribal issue.” At the April 2008, PFMC meeting, the Tribe again reiterated its intent to participate in the 2009 Pacific whiting fishery.

Subsequently, the Quileute Tribe has met in good faith with other coastal tribes and NMFS to further discuss the specifics of the coastal whiting fishery. Specifically, on May 2, 2008, representatives of the Quileute, Makah, and Quinault tribes met with representatives of NMFS to discuss the tribal whiting fishery. At that time, and pursuant to NMFS’s request, the Quileute Tribe provided additional information about the nature and scope of its anticipated 2009 whiting fishery. Specifically, Quileute:

- (1) Anticipated one vessel between 95 – 125 feet to participate in the 2009 whiting fishery,
- (2) Estimated a whiting harvest of approximately 4,000 to 8,000 metric tons based on historical catches of similarly sized vessels,

- (3) Indicated that its whiting fishery would take place between May 15-December 15, 2009 for catcher/processor or "mothership", and June 15-December 15, 2009 for shore-based delivery.
- (4) Provided estimates of its bycatch based upon the groundfish management team's weighted average approach;
- (5) Stated that it would be working with the NOAA staff and regional science center for time and area management measures to minimize bycatch in the Quileute whiting fishery.

Subsequent to this meeting, the Quileute, Quinault, and Makah tribes engaged in further discussions about the 2009 whiting fishery. At that point, the Quinault tribe made clear that it would not be participating in the whiting fishery until at least 2010. Thereafter, the Quileute and Makah tribes agreed that the total tribal allocation for 2009 should be 20.5% of the OY, which represents a 3% increase on the maximum amount of the prior tribal allocation under the "sliding scale" approach. Accordingly, the Quileute Tribe hereby supports the Makah's request for a total tribal allocation of 20.5% to meet the needs of the Quileute and Makah Tribes who will be participating in this fishery in 2009. Considering that the best available science shows that all harvestable whiting pass through the Quileute and Makah U&As, this amount is clearly well-within their treaty right to harvest up to 50% of the OY.

Although the Quileute and Makah tribes agree upon the total tribal whiting allocation for 2009, they are continuing to negotiate over the proper intertribal distribution of that allocation. To be clear, however, any tribal whiting allocation must be made to the coastal tribes as a whole, and must not be split-up by tribe or made to any specific tribes. In all of its discussions with NMFS, PFMC, and other tribes, the Quileute Tribe has been very clear that NMFS must, as it has in every prior year and in every other federally managed fishery, make a *total tribal whiting allocation* and must not take the unprecedented step of allocating groundfish on a tribe-by-tribe basis. Tribal allocations of all federally-managed fisheries, including Pacific whiting, have always been made to *all coastal tribes*, leaving it up to the tribes to decide the appropriate intertribal distribution. The federal regulations make clear that once NMFS receives a tribal request to participate in a groundfish fishery, as it has here, it must implement that right "through an allocation of fish **that will be managed by the tribes...**" 50 C.F.R. § 660.324(d) (emphasis added). In other words, it is up to the tribes to decide how to manage a total tribal groundfish allocation. NMFS could not have been more clear on this point in 1999 when it stated in federal regulations that: "**NMFS believes that the intertribal distribution of the overall tribal allocation is an internal tribal issue, and herein issues only a total allocation for the affected tribes.**" 64 Federal Register 27,929 (May 24, 1999) (emphasis added). The Quileute Tribe would strenuously object to issuance of any "separate allocation" to the Quileute or any other action which purports to restrict Quileute's right to harvest from the overall "tribal allocation."

Last, the Quileute Tribe's participation in the whiting fishery will not result in the excessive harvest of overfished species. First, the Quileute Tribe intends to model its observer and bycatch-avoidance programs after those successfully implemented by the

Makah Tribe. The Quileute Tribe continues to research and study those programs and looks forward to working with the Makah tribe to better understand its processes. The Quileute Tribe is confident that by the time it commences this fishery nearly one year from now that it will have an adequate observer program and other steps to minimize bycatch, such as time and area restrictions. Second, although new to this fishery, Quileute fishermen are responsible and very experienced in other fisheries. They have a proven track record of successfully minimizing bycatch in other fisheries, such as halibut and blackcod. Third, there is no evidence suggesting that the Quileutes's U&A is home to higher concentrations of sensitive or protected species of groundfish. To the contrary, analysis of variance (or ANOVA) studies of the bycatch rates for overfished species for the years 2003 to 2007 for the non-tribal at-sea fleets showed no significant differences in the concentration of overfished species between the various tribal U&As.

In short, the Quileute Tribe hereby joins and supports the Makah Tribe's request for a total tribal whiting allocation in 2009 of 20.5% of the OY. This represents a relatively minor increase to the total tribal allocation and remains well-within the treaty right.