June 10, 2008

Mr. Donald K. Hansen  
Chairman  
Pacific Fishery Management Council  
7700 NE Ambassador Place, Suite 101  
Portland, OR 97220-1384

Re: West Coast Groundfish Individual Fishing Quota Program: Critical elements for a preferred alternative

Dear Chairman Hansen:

We want to thank the Pacific Fishery Management Council and staff for the significant time and resources they have devoted to developing an IFQ program for the groundfish trawl fishery. We are aware that this has been a complex and time consuming task, but we are hopeful that once implemented, a well-designed program will not only provide significant ecological, economic and social benefits, but will also be much less time intensive than current management measures. Environmental Defense Fund sees this program as tremendously important for both the benefits it will offer to fishermen, processors, consumers and the resource, and also for its value as a model for other IFQ programs around the country. We are committed to assisting this process in any way we can and welcome guidance from the Council and staff on the most constructive way to help achieve a successful outcome.

With the June preferred alternative vote on an IFQ program the Pacific Fishery Management Council stands on the brink of a momentous opportunity. This program provides the chance to reduce wasteful discards and contribute to rebuilding overfished stocks, while offering the potential to substantially increase the value generated for resource users, communities, and ultimately the nation. But achieving that outcome relies on the right program design. Several program options will have a significant bearing on the ultimate success or failure of the program, and a number of other decision points likewise will alter the ability of the program to protect the resource or generate additional revenue. We have therefore prepared the following set of recommendations for the program elements we feel are an essential part of any preferred alternative the Council adopts in June.

The Council should not be dissuaded from adopting a preferred alternative that will create a strong, precedent-setting IFQ program for the West Coast groundfish fishery

Before discussing our specific recommendations on program design we wish to reiterate our ardent support for the program in general. As you are well aware, the Council made the decision to pursue IFQ management because it recognized that traditional management measures were incapable of solving certain persistent problems in the fishery. In particular, the Council recognized that despite a major federal buyback, the fishery remained both economically and ecologically unsustainable. There are simply too many boats with no direct incentive to avoid
sensitive rebuilding species. Although fishery managers have done an admirable job trying to balance the needs of rebuilding stocks while simultaneously providing stakeholders with maximum harvest opportunities, tools such as trip limits – vital to retain year-round landings under the current system – actually exacerbate discards.

In contrast, an IFQ system will provide fishermen the flexibility to maintain year-round landings, and the incentives to avoid sensitive stocks. It will enable fishermen to take better advantage of available yields for abundant stocks and it will inject individual accountability into the system. Ultimately, an IFQ program will facilitate the transformation of the groundfish fishery into a model of economic and ecological sustainability.

The fact that some stakeholders may be against the program (at least initially) or that others have reversed their earlier support because they may not receive an allocation is not an appropriate justification for veering from this necessary reform. It is to be expected that support will not be unanimous, and that some fishermen and processors may oppose the program. But just as happened in British Columbia after the adoption of an IFQ for their multi-species groundfish fishery, we firmly believe that all stakeholders will soon realize that an IFQ system is far superior to traditional management. This may be a case where fishery managers need to lead some stakeholders for the benefit of the entire fishery. And the level of benefits the program provides will depend in large part on the specific components the Council includes in its preferred alternative.

**Use the Adaptive Management Program to mitigate processor impacts (if any) from the transition to IFQ management**

Initial allocation of quota is undoubtedly one of the most contentious aspects of the groundfish IFQ program. Both fishermen and processors have raised concerns about the potential for quota allocation to unfairly augment the market power of one group over the other. Environmental Defense Fund believes that the program should avoid any deliberate attempt to benefit harvesters over processors or vice versa. We believe that this issue should be dealt with fairly for all parties involved. We also believe the issue should be evaluated empirically rather than on speculation.

Processors have articulated three primary concerns as justifications for a permanent allocation of quota. First, they argue that changing the management regime could devalue the investments they have made to process trawl-caught groundfish under current management rules (the “stranded” capital argument). Second, they argue that IFQs could change fish landing patterns and disrupt the flow of product into existing plants or force plant managers to pay more to fishermen to avoid that result. The concern implicit in this argument is that there will be a shift in marketing power away from processors reducing processing margins. The third justification has been that an initial allocation to processors is necessary to protect coastal jobs and communities. While all of these may be valid concerns, a permanent quota allocation is not the appropriate tool to address them for several reasons.

The stranded capital argument does not justify a permanent allocation of quota because it is not yet clear what amount of capital, if any, will be stranded as a result of the transition to IFQ management. In fact, a recent paper by Dr. James Wilen concluded that because most capital in the processing sector is malleable the amount of capital that will ultimately be stranded in the processing sector is minimal. Even more importantly, the paper concluded that the value of the quota the processors are seeking is close to $100 million, while the value of potential stranded
asset claims remain speculative at best and will not emerge until several years after the program is implemented. To grant a permanent right for a speculative problem is poor public policy. If the Council feels that stranded assets are likely to exist and should be compensated, then instead of granting a permanent quota allocation it should dedicate adaptive management quota pounds to processors for a period of years to compensate for documented losses traceable to the transition to IFQ management.

The argument for an initial allocation based on access to fish suffers from similar deficiencies. While we recognize that continued access to fish at prices that allow processors to maintain adequate processing margins is a valid concern, we question whether the processor’s proposal for a 25% non-whiting allocation and a 50% whiting allocation are necessary to maintain product flow, especially since processors will already control roughly 12% of non-whiting and 15% of whiting based on permit ownership. A 2008 study of six IFQ fisheries from British Columbia suggests that while ex-vessel prices paid to fishermen have increased, so too have processing margins. Rather than maintaining product flow, a significant initial allocation to processors is much more likely to grant processors a significant market advantage. Moreover, because an allocation to processors will be based on processing history, it will disproportionately assist a handful of large processors, possibly adding to the already considerable consolidation in the processing sector. A more sensible solution is the adaptive management program. We suggest that the Council assuage processor fears about access to fish and exorbitant ex-vessel prices by granting adaptive management quota pounds to harvesters who sign mutually agreeable preseason delivery agreements with processors.

Likewise, predicating a permanent allocation to processors on protecting coastal jobs and communities is lacking as nothing would prevent processors from moving groundfish quota out of a community or closing a plant. Plants have closed before at the expense of coastal jobs, and nothing about processor allocation would prevent it from happening again. If the Council believes some communities might be especially vulnerable to shifting landing patterns and decides it wants to protect those communities, a better solution would be to grant adaptive management quota pounds to fishermen who agree to deliver their catch to those communities.

EDF supports the GAC recommendation that there be no intial allocation to processors. We share their concern that an initial allocation to processors is not the appropriate remedy for possible impacts on communities or in the processing sector. We feel that it may undermine the goals of the program as well as the National Standards contained in the Magnuson-Stevens Act because it would give a handful of large entities excessive control. Specifically, National Standard 4(C) discussing allocation of fishing privileges provides that allocation be “carried out in such manner that no particular individual, corporation, or other entity acquires an excessive

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1 Economic Impacts of ITQ Fisheries in Pacific Canada, prepared for Canada Department of Fisheries and Oceans by G.S. Gislason and Assocs., March 2008, p. 32. The estimated processed value of the groundfish trawl fishery without IFQs for 2005 is $34 million. The 2005 value with IFQs was $84 million. Even without an initial allocation to processors, harvesters and processors roughly split the additional $50 million in resource rents.

2 In fact, based on the council’s preliminary analysis and discussions with stakeholders, we drafted a strawman proposal that would use adaptive management quota pounds to create incentives to land fish in vulnerable communities and in plants where fishermen have landed fish previously. This could address concerns about impacts of an IFQ program on communities and it would also help processors maintain product flow. For complete details, please see the proposal attached to this document.

3 While the National Standard language refers to allocation among “fishermen”, given that processors are seeking harvesting quota shares they must be included within that class. However, the fact that processors were not included in this provision suggests that Congress did not intend processors to be eligible for “fishing privileges”.
share of such privileges. The fact that some large processors may already need to have their existing shares grandfathered in suggests that a significant initial allocation to those same entities based on processing history would result in excessive shares. Likewise, National Standard 5 and TIO Program Constraints and Guiding Principles 4 both aim to avoid changing the marketing power balance between harvesters and processors. An allocation such that a fisherman would need access to processor quota just to have enough fish to make a living would transform fishermen into near indentured servants leaving fishermen with almost no bargaining power at all. An initial allocation to processors would be arbitrary and detrimental to the goals of the program as a whole.

Unlike an initial allocation to processors which could increase consolidation and marketing power in the processing sector, the adaptive management holdback is capable of addressing valid processor concerns without drastically upsetting the functionality of the program. The Council will not have to guess what amount of quota shares should be dedicated to processors to meet speculative concerns. Instead, by using the adaptive management program, the Council will be able to direct quota pounds to specific communities, processing plants, or companies, or encourage fishermen to partner with specific plants or companies in order to keep processors whole.

**Set accumulation caps high enough to protect historical participation and investments without fostering excessive control**

It is important that accumulation caps be set high enough to allow for appropriate while also ensuring that the entire fishery does not end up concentrated in too few hands. Initial analysis predicts potential consolidation under IFQ management to a fleet of 40-60 boats after rationalization. It is important that the Council envision what size fleet would best meet social as well as economic goals and choose accumulation caps accordingly.

Should the Council decide grandfathering would result in an unacceptable consolidation of quota, we support a limited duration grandfather clause to allow entities with quota in excess of the accumulation caps an opportunity to divest that quota.

**Full accountability through 100% monitoring is vital to the success of the program**

Conservation and economic benefits will be directly tied to the fleet’s ability to avoid fish, specifically overfished and prohibited species. The only way to create incentives to avoid those species and to verify that they are being avoided is with a monitoring system based on full accountability. A monitoring program ensures that fishermen stay within their individual catch limits or cover overages in the allotted time by acquiring quota from other fishermen, and it ensures that the fleet as a whole does not exceed its allocation. A monitoring program also

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4 Magnuson-Stevens Fishery Conservation and Management Act, §301(a)(4)(C).

5 As discussed above, processing companies will already be allocated roughly 12% of non-whiting groundfish and 15% of whiting based on permit ownership. As the highest own/control cap is 3% groundfish in aggregate, a grandfather clause will be required to allow several processing companies to receive the quota they are eligible for even in the absence of an allocation to processors. No individual fishermen however, is likely to be over the own/control cap, so from the outset there will be a special class of large processors that have an advantage over every other fisherman and processor in the fishery. Any additional quota to processors cannot help but upset the market balance and will also make it nearly impossible for new processing entities to enter the business.
allows fishermen to make the best possible decisions for themselves and the resource. Without full accountability, fishery managers will have no choice but to continue to rely on fleet-wide bycatch rates which will prevent fishermen from accessing their full allotment of healthy target stocks, which is one of the primary incentives to fish cleanly and avoid overfished species.

We recognize that 100% monitoring will be expensive, but feel that it will pay for itself in the long run by enabling fishermen to access healthy target stocks and by making the fishery sustainable for the long term. We are open to helping the Council explore creative ways to fund full accountability and suggest looking into privatizing one or more elements of the program.

**A 10% carryover provides needed flexibility**

Environmental Defense Fund supports a 10% carryover provision. Experience in British Columbia suggests that a carryover provision can reduce total landings because it eliminates the incentive to fish to the limit each year in order to avoid a “forfeit” of the uncaught quota. Instead, fishermen have the flexibility to catch that fish the next year eliminating a mini-race against the clock at the end of the year to maximize landings which could have negative safety and conservation implications.

**Overfished species should not be allocated in the same manner as non-overfished species**

Allocating overfished species using the same formula as for non-overfished species could make the cost of acquiring quota for overfished species prohibitively expensive and could constrain a significant portion of the fleet. It may also reward those who contributed most heavily to the decline of overfished stocks. The proxy species approach will help ensure that each fisherman is able to fish in a way that approximates his historical catch pattern.

**A two year no fishing penalty is insufficient for uncoverable quota overages**

This feature runs counter to the basic design of the program and should be rejected. One of the main goals of an IFQ program is to reintroduce individual accountability to the management system. A two year no fishing penalty for quota deficits is insufficient because it weakens the level of accountability. In addition, it is not clear whether an individual would have to try to acquire quota to cover the deficit through the market. While opposing this provision may seem draconian, it is important to note that fishermen would be eligible to participate in non-groundfish fisheries until their overage is covered.

**Quota should be split at the 40.10.**

For those species that are managed using coastwide OYs, we support subdividing quota geographically at the 40°10’ line. In the absence of more definitive information of the range of distinct substocks, even this one split may help to prevent isolated geographical depletion due to shifting fishing patterns. We believe that a precautionary approach is advisable as it will be more difficult to subdivide quota after program implementation, especially once it has been traded.

**Gear switching will foster significant environmental benefits**
One of the laudable features of the proposed IFQ program is the gear switching component. It should enable fishermen to decrease bycatch by employing other legal groundfish gears that may be better at avoiding sensitive species. Bottom contact with trawl gear would also be reduced and fishermen may be able to increase revenue. While large boats may be unlikely to take advantage of this provision, skippers of smaller boats with lower overhead and smaller average landings have indicated enthusiasm for gear switching. We ask that the Council conduct analysis of the possible economic and ecological impacts if fishermen were offered a window period to try other gears, after which they would be required to choose a gear type.

Conclusion

EDF wishes to reiterate our support for the Council’s work on developing an IFQ program for the groundfish trawl fishery. We fully believe that this transformation will result in a healthier and more profitable fishery benefitting fishermen, processors, communities and the resource. We ask the Council to take the same thoughtful approach on selecting a preferred alternative as it has taken throughout this process, and to continue to build a strong record based on sound analysis to support that decision.

We look forward to continuing to work with stakeholders and the Council on this historic program. If you have any questions about these comments, please do not hesitate to contact me.

Sincerely,

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