

From: **Kelly, Lisa M** <LKelly@oig.doc.gov>
Date: Fri, Jun 7, 2013 at 8:53 AM
Subject: RE: Commerce OIG review of NOAA catch share programs - Sablefish Permit Stacking Program
To: "Mclsaac, Donald" <Donald.Mclsaac@noaa.gov>

Hello Don.

I will call on Wednesday at 9:30, using the number you've provided. I am including the questions I anticipate covering.

- **Is the FMC or its staff responsible for monitoring for compliance with any of the program requirements (or is NMFS handling all administration and oversight of the program)?**
- **Please describe any periodic reporting to the Council from NMFS and concerning the program (e.g., Frequency and type of communication; Describe the information NMFS includes in its communications to the FMC and FMC staff).**
- **Are there progress reviews for the program (or is the FMC planning to complete a review)?**

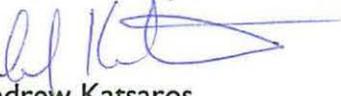
Thanks.

**Lisa Kelly, Auditor
U.S. Department of Commerce
Seattle Regional Office of Inspector General
Telephone [\(206\) 220-4715](tel:2062204715)**



February 11, 2013

MEMORANDUM FOR: Dr. Jane Lubchenco
Under Secretary of Commerce for Oceans and Atmosphere

FROM: 
Andrew Katsaros
Assistant Inspector General for Audit

SUBJECT: Review of NOAA's Catch Share Programs

In an August 17, 2011, letter to our office, Congressmen Barney Frank and John Tierney expressed concerns over the fisheries regulatory process at NOAA, the National Marine Fisheries Service (NMFS), and Fishery Management Councils (FMCs). In response, our office initiated a multiple-phase review of NMFS and FMCs related to developing rules for the commercial fishing industry. We issued our first report on January 16, 2013. As a continuation of that review, we are initiating a review of the controls and processes associated with NOAA's catch share programs.

The objective of our review is to determine the adequacy of controls NOAA has in place to make decisions related to catch share allocations.

We will contact your audit liaison to schedule an entrance conference. In the meantime, if you have any questions about this review, please contact me at (202) 482-7859 or David Sheppard, Regional Inspector General for Audit, at (206) 220-7970. We appreciate the cooperation of NOAA staff during this review.

cc: Samuel Rauch, Acting Assistant Administrator for Fisheries, NOAA
Carrie Selberg, Chief of Staff, Fisheries Regulatory Program, NOAA
Emily Manashes, Acting Director, Office of Sustainable Fisheries, NOAA
Mack Cato, Director, Office of Audit and Information Management, NOAA

(g) LIMITED ACCESS PRIVILEGE ASSISTED PURCHASE PROGRAM.—

(1) IN GENERAL.—A Council may submit, and the Secretary may approve and implement, a program which reserves up to 25 percent of any fees collected from a fishery under section 304(d)(2) to be used, pursuant to section 53706(a)(7) of title 46, United States Code, to issue obligations that aid in financing—

(A) the purchase of limited access privileges in that fishery by fishermen who fish from small vessels; and

(B) the first-time purchase of limited access privileges in that fishery by entry level fishermen.

(2) ELIGIBILITY CRITERIA.—A Council making a submission under paragraph (1) shall recommend criteria, consistent with the provisions of this Act, that a fisherman must meet to qualify for guarantees under subparagraphs (A) and (B) of paragraph (1) and the portion of funds to be allocated for guarantees under each subparagraph.

(h) EFFECT ON CERTAIN EXISTING SHARES AND PROGRAMS.—Nothing in this Act, or the amendments made by the Magnuson-Stevens Fishery Conservation and Management Reauthorization Act of 2006, shall be construed to require a reallocation or a reevaluation of individual quota shares, processor quota shares, cooperative programs, or other quota programs, including sector allocation in effect before the date of enactment of the Magnuson-Stevens Fishery Conservation and Management Reauthorization Act of 2006.

(i) TRANSITION RULES.—

(1) IN GENERAL.—The requirements of this section shall not apply to any quota program, including any individual quota program, cooperative program, or sector allocation for which a Council has taken final action or which has been submitted by a Council to the Secretary, or approved by the Secretary, within 6 months after the date of enactment of the Magnuson-Stevens Fishery Conservation and Management Reauthorization Act of 2006, except that—

(A) the requirements of section 303(d) of this Act in effect on the day before the date of enactment of that Act shall apply to any such program;

(B) the program shall be subject to review under subsection (c)(1)(G) of this section not later than 5 years after the program implementation; and

(C) nothing in this subsection precludes a Council from incorporating criteria contained in this section into any such plans.

(2) PACIFIC GROUND FISH PROPOSALS.—The requirements of this section, other than subparagraphs (A) and (B) of subsection (c)(1) and subparagraphs (A), (B), and (C) of paragraph (1) of this subsection, shall not apply to any proposal authorized under section 302(f) of the Magnuson-Stevens Fishery Conservation and Management Reauthorization Act of 2006 that is submitted within the timeframe prescribed by that section.

(c) REQUIREMENTS FOR LIMITED ACCESS PRIVILEGES.—

(1) IN GENERAL.—Any limited access privilege program to harvest fish submitted by a Council or approved by the Secretary under this section shall—

(A) if established in a fishery that is overfished or subject to a rebuilding plan, assist in its rebuilding;

(B) if established in a fishery that is determined by the Secretary or the Council to have over-capacity, contribute to reducing capacity;

(C) promote—

(i) fishing safety;

(ii) fishery conservation and management; and

(iii) social and economic benefits;

(D) prohibit any person other than a United States citizen, a corporation, partnership, or other entity established under the laws of the United States or any State, or a permanent resident alien, that meets the eligibility and participation requirements established in the program from acquiring a privilege to harvest fish, including any person that acquires a limited access privilege solely for the purpose of perfecting or realizing on a security interest in such privilege;

(E) require that all fish harvested under a limited access privilege program be processed on vessels of the United States or on United States soil (including any territory of the United States);

(F) specify the goals of the program;

(G) include provisions for the regular monitoring and review by the Council and the Secretary of the operations of the program, including determining progress in meeting the goals of the program and this Act, and any necessary modification of the program to meet those goals, with a formal and detailed review 5 years after the implementation of the program and thereafter to coincide with scheduled Council review of the relevant fishery management plan (but no less frequently than once every 7 years);

(H) include an effective system for enforcement, monitoring, and management of the program, including the use of observers or electronic monitoring systems;

(I) include an appeals process for administrative review of the Secretary's decisions regarding initial allocation of limited access privileges;

(J) provide for the establishment by the Secretary, in consultation with appropriate Federal agencies, for an information collection and review process to provide any additional information needed to determine whether any illegal acts of anti-competition, anti-trust, price collusion, or price fixing have occurred among regional fishery associations or persons receiving limited access privileges under the program; and