Control Rule for Trawl Rationalization
Written Testimony submitted by The Nature Conservancy

As a follow-up to our conversations with you, we offer the following comments on the draft regulations implementing the Amendment 20 accumulation limits.

1. The regulations should include a general statement concerning the application of trawl IQ program accumulation limits. We suggest “no person shall own or control by any means whatsoever an amount of QS or QP that exceeds the IFQ program accumulation limits”. This is consistent with the accumulation limit motion adopted by the Council, which provides that “QS controlled by a person shall include those registered to that person, plus those controlled by other entities in which that person has a direct or indirect ownership interest, as well as shares that the person controls through other means”.

For purposes of this provision, the QP control limit would be the vessel use limit adopted by the Council. The regulations should apply the accumulation limits to persons who own or control QP as well as QS, because otherwise the QS accumulation limit could be circumvented by controlling the related QP.

2. The regulations should include a definition of “person”. We suggest the definition of “person” be based on the definition in the Magnuson Stevens Act, i.e., person means “any individual, any corporation, partnership, association or other entity (whether or not organized under the laws of any State) and any Federal, State, local or foreign government or any entity of such government.”

3. The method for calculating QS owned by a person in the draft regulations appear to be consistent with Council’s adoption of the “individual and collective” rule. However, consistent with our comment above, we suggest that draft section 660.140(d)(4)(ii) regarding the application of that rule be amended as follows. (The additions are in red text.)

The QS or QP that counts toward a person’s accumulation limit will include:

(A) the QS or QP owned by them, and
(B) a portion of the QS or QP owned by an entity in which that person has an interest, where the person’s share of interest in that entity will determine the portion of that entity’s QS or QP that counts toward the person’s limit.

4. We suggest the following changes to the control provisions of the regulations (i.e., 660.140(d)(4)(iii)). (The additions are in red text and underlined.)

“(iii) Control means, but is not limited to the following:
(A) the person has the right to direct, or does direct, the business of the entity to which the QS or QP are registered;

(B) the person has the right to direct or restrict, or does direct or restrict, the delivery of groundfish harvested under QP permits registered to a different person;

(C) the person has the right in the ordinary course of business to limit the actions of or replace, or does limit the actions or replace, the chief executive officer, a majority of the board of directors, any general partner, or any person serving in a management capacity of the entity to which the QS or QP is registered;

(D) the person has the right to direct, or does direct, the transfer of QS or QP;

(E) the person, through loan covenants or any other means, has the right to restrict, or does restrict, the day to day business activities or management policies of the entity to which the QS or QP is registered;

(F) the person, through loan covenants or any other means, has the right to restrict, or does restrict, use of QS or QP, or disposition of fish harvested under QP;

(G) the person has the right to control, or does control, the management of, or to be a controlling factor in, the entity to which the QS or QP is registered;

(H) the person has the right to cause, or does cause, the sale, lease or other disposition of QS or QP; and

(I) the person absorbs all of the costs and normal business risks associated with ownership and operation of the entity to which the QS is registered; and

(J) the person has the ability through any means whatsoever to control the entity to which QS or QP is registered.

Please feel free to contact me if you have any questions or concerns.