



UNITED STATES DEPARTMENT OF COMMERCE  
National Oceanic and Atmospheric Administration  
NATIONAL MARINE FISHERIES SERVICE  
West Coast Region  
7600 Sand Point Way N.E.  
Seattle, Washington 98115

May 20, 2014

RECEIVED

Dorothy Lowman  
Chair  
Pacific Fishery Management Council  
7700 Ambassador Place, Suite 101  
Portland, OR 97220-1384

MAY 22 2014

PFMC

Dear Chair Lowman:

This letter is to inform the Council of the list of species for which surplus carryover will be issued from 2013 into the 2014 season of the Shorebased Individual Fishing Quota (IFQ) Program. NMFS has decided to issue surplus carryover for 19 IFQ species that have 2014 Annual Catch Limits (ACLs) established at a level lower than their corresponding 2014 Acceptable Biological Catches (ABCs). NMFS will not issue surplus carryover for the remaining IFQ species that have 2014 ACLs established equal to their 2014 ABCs. This decision is the result of a recent court decision discussed below.

#### Court decision

On April 4, 2014, the D.C. District Court issued its decision in Conservation Law Foundation's (CLF's) challenge to Framework 50 to the New England Groundfish Fishery Management Plan (FMP), *Conservation Law Foundation v. Pritzker*, No. 13-00821 (D.D.C. Apr. 4, 2014). The primary issue in that case was a challenge to NMFS's authority to allow carryover of unused catch in fishing year 2013 that resulted in a total allocation of catch higher than the ABC recommended by the Scientific and Statistical Committee (SSC). The court held that carryover is inconsistent with the Magnuson-Stevens Act if it results in a total potential catch level that exceeds the ABCs recommended by the SSC.

In light of the court's holding, NMFS West Coast Region has decided that 2014 ACLs, including carryover from 2013, should not exceed the ABCs recommended by the SSC. Thus we will not be issuing carryover for any IFQ species where adding 2013 carryover onto the 2014 ACL would result in exceeding an IFQ species' ABC.

There are 19 IFQ species/area categories for which the ABC is greater than the corresponding ACL, and NMFS will issue surplus carryover in 2014 for all of them: Bocaccio Rockfish South of 40°10' N., Canary Rockfish, Cowcod South of 40°10' N., Darkblotched Rockfish, Dover Sole, Longspine Thornyheads North of 34°27' N., Minor Shelf Rockfish North of 40°10' N., Minor Shelf Rockfish South of 40°10' N., Minor Slope Rockfish North of 40°10' N., Other Flatfish, Pacific Cod, Pacific Halibut (IBQ) North of 40°10' N., Pacific Ocean Perch North of 40°10' N.,



Sablefish North of 36° N., Sablefish South of 36° N., Shortspine Thornyheads North of 34°27' N., Shortspine Thornyheads South of 34°27' N., Widow Rockfish, and Yelloweye Rockfish. These species will receive full eligible surplus carryover pounds, after application of any necessary reductions according to regulation.

Consistent with the PFMC recommendation, NMFS will not issue surplus carryover for Pacific whiting due to the need for adherence to the international whiting agreement, where a method for addressing carryover of unused Pacific whiting already exists. Since the Pacific halibut Total Constant Exploitation Yield for area 2A (Washington, Oregon and California) is set by international agreement, and there is no ACL, the court's holding is not applicable to this species, and NMFS will continue with its past practice.

As listed above, NMFS is issuing surplus carryover for Sablefish North of 36° N. In the first 3 years of the catch shares program, NMFS had established a policy that we would not issue surplus carryover for IFQ species with overall attainment at or above 100 percent of the Shorebased IFQ Program allocation in the prior year. This policy would have precluded issuance of carryover for Sablefish North of 36° N. into the 2014 season. However, now that the program is in its fourth year, we have available three years of catch data that show: 1) The fleet has not gone into deficit in aggregate for any species, and 2) When NMFS issues carryover for high attainment species the fleet tends to catch more, but stays within the total amount issued. Given the performance of the fishery during the first three years, NMFS revisited the initial policy regarding high attainment of the allocation.

NMFS will make the decision of whether or not to issue carryover for species with very high attainment of the previous year's shorebased trawl allocation on a case-by-case basis, rather than automatically dismissing this possibility. The case-by-case analysis will at the minimum include a review of fleet behavior in the prior year, as well the potential for impacts of carryover on non-trawl sector allocations. NMFS may still deny issuance of carryover, especially if we determine that the risk of exceeding the ACL is unacceptably high, and we will continue to maintain a higher level of precaution for overfished species.

NMFS conducted additional analyses of Sablefish North of 36° N. based on the new policy. After considering our additional analyses, NMFS has decided to issue full eligible surplus carryover of sablefish north of 36 degrees N. latitude. We will carefully monitor catch throughout the year, and we are prepared to initiate AMs, should catch exceed expectations. Catch in 2014 is projected to remain within the coastwide OFL and ABC as well as the northern ACL, and the risk of exceeding the ACL is acceptably low.

NMFS also recommends that the Council explore measures to make the annual surplus carryover process in the Shorebased IFQ Program more efficient and predictable, while adhering to Magnuson-Stevens Act requirements and the recent court decision. Creating a solution will likely require a non-trivial amount of effort, and NMFS is prepared to participate in developing constructive solutions. We suggest that it may be most appropriate to include this issue as part of the 5-year review of the catch share program, but we are open to other schedule suggestions.

If you have any questions or comments regarding this letter, please contact me directly.

Sincerely,



Frank Lockhart  
Program Director for Groundfish and CPS  
Sustainable Fisheries Division  
West Coast Region  
National Marine Fisheries Service

cc: Dr. Donald O. McIsaac  
Vice-Chair Herb Pollard