

ENFORCEMENT CONSULTANTS REPORT ON REGULATORY DEEMING FOR  
FISHERY MANAGEMENT PLAN AMENDMENT 20 (TRAWL RATIONALIZATION) AND  
AMENDMENT 21 (INTERSECTOR ALLOCATION)

The Enforcement Consultants (EC) have reviewed Agenda Item 1.1.b, Supplemental NMFS Reports 2, and 3, and the supplemental PSMFC Report, and have the following comments.

Report 2: Issues for Further Deliberations

Issue 3: 30-day clock. As outlined at the March Council meeting under Agenda Item E.6.b, Supplemental EC Report, we reiterate our support of Option B (National Marine Fisheries Service [NMFS]-preferred), start the clock when any data/documentation from the trip which caused the overage is available or the vessel account shows there is an overage.

Issue 4: 10 percent Carryover. As with Issue 3, we reiterate our support for Option A (NMFS-preferred for deficit or surplus) The 10 percent carryover is 10 percent of the quota pounds (QPs) in a vessel's account based on the balance as of a certain date early in the year (for example: 45 days after QPs have been initially issued for that year by NMFS).

We recognize the Groundfish Advisory Subpanel's (GAP) endorsement of Option D, and believe Option D to be enforceable, though it causes greater complexity in tracking potential deficits/overages, and erosion of the incentive to load QPs onto vessel accounts created by Option A.

Report 3: NMFS Interpretation of Council Intent

No Split IFQ deliveries:

We believe the interpretation to be consistent with current law. Under current Federal law, once a groundfish landing has commenced, all fish onboard the vessel are accounted as part of the landing. All three west coast states have adopted this Federal requirement. We have reviewed the Federal law and the language of the three corresponding state laws, and believe the three state laws to be consistent with Federal law. What is not consistent are the interpretations of that language and the subsequent application of those laws. In Washington and California, once the offload begins, the offload must proceed at one offload site until completed, and the entire catch must be recorded on a single fish ticket. Oregon's interpretation and application of their law allows fishermen to deliver their catch to more than one receiver and/or offload site during the delivery process. Further, Oregon allows this landing to be recorded on multiple state fish tickets.

Going forward under trawl rationalization the EC notes that Trawl Individual Quota (TIQ) deliveries will be made by vessels which are fully observed, to an offload site that has a site license, state buyers license, and catch monitor plan with the actual delivery monitored by a Catch Monitor and recorded on an electronic fishticket.

Given this level of monitoring, we believe split deliveries can be monitored effectively and are thus enforceable with one additional requirement. The observer must remain with the vessel until that vessel arrives at its final delivery site. This ensures 100 percent monitoring and consistency with the level of oversight already provided in a single offload location scenario.

#### No Stacking Limited Entry Permits

We believe the interpretation to be correct and consistent with the application of current law. We also believe that if the Council wishes to allow stacking of a single limited entry trawl permit and multiple limited entry tier permits up to the allowable number of tier permits, that proposal program element could be effectively enforced using a declaration system. One noted requirement would be to limit the vessel to a single strategy per trip, e.g. the vessel would be required to declare whether the trip was a TIQ or Tier trip prior to leaving port. Depending on the actions of the Council, additional requirements may be required.

#### Supplemental Pacific States Marine Fisheries Commission Report

We have been made aware that in the development of this document and all the ancillary issues raised by this document, a concern was once again raised by the NW Science Center that the state of Washington in particular, could not hold Magnuson Act data confidential.

Information collected by Observers is protected by the Magnuson Act under 50 CFR 600.415 and allows state employees to access this information when (1) State employees demonstrate a need for confidential statistics for use in fishery conservation and management. And (2) the state has entered into a written agreement between the Assistant Administrator and the head of the state's agency that manages marine and/or anadromous fisheries. The agreement shall contain a finding by the Assistant Administrator that the state has confidentiality protection authority comparable to the Magnuson-Stevens Act and that the state will exercise this authority to limit subsequent access and use of the data to fishery management and monitoring purposes.

The States of Washington, Oregon and California have entered into agreement with NOAA Office of Law Enforcement (OLE), authorized by the Secretary of Commerce, providing state officers' deputized status as NOAA OLE officers. Please be assured that in addition to these deputization agreements, these states have met the confidentiality requirement as verified by OLE, and have proven that they can ensure the confidentiality of data received from NMFS, including data from the Fisheries Science Center. As an example of this demonstrated confidentiality ability please see the statutory reference: Revised Code of Washington (RCW) 42.56.430 Sub (4).

PFMC  
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