



Pacific Fishery Management Council

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Dan Wolford, Chairman | Donald O. McIsaac, Executive Director

October 30, 2012

Mr. Will Stelle, Regional Administrator
National Marine Fisheries Service, Northwest Region
7600 Sand Point Way NE, BIN C15700
Seattle, WA 98115-0070

Re: Transmittal of the Council Recommendations Pertaining to Regulatory Adjustments
Related to the Reconsideration of Whiting Quota Allocations for the West Coast Groundfish
Trawl Rationalization Program

Will

Dear Mr. Stelle:

This letter transmits the Council recommendations for proposed regulations in relation to the Council's reconsideration of the allocation of whiting quota shares (QS) for the shoreside whiting fishery (the allocations to both catcher vessel permits and processors) and the allocation of catch history assignments (CHA) for catcher vessel permits delivering to mothership vessels. This reconsideration was accomplished in accordance with the February 21, 2012 Court Order on Remedy process resulting from the December 22, 2011 District Court Judge Thelton E. Henderson decision in the case C10-4829-TEH: Pacific Dawn, LLC, et al. v. John Bryson, et al. The Council considered this matter at three Council meetings: at the April, 2012 meeting in Seattle, Washington, at the June, 2012 meeting in San Mateo, California, and at the September, 2012 meeting in Boise, Idaho.

Enclosed are three documents. The first provides a summary of the Council rationale for the recommendations contained herein pertaining to quota reallocation. The second is the preliminary draft environmental assessment produced to inform that recommendation in accordance with the National Environmental Policy Act. The third details specific areas of regulatory language that represent changes from current regulations, consistent with the Council reconsideration process. By this letter, I deem 50 CFR part 660 regulations, in their entirety as adjusted by the specific language changes shown in Attachment 3, as the proposed regulations that are necessary and appropriate to effectuate the final Council action taken September 18, 2012.

With respect to a comprehensive reconsideration of the allocations of whiting quota implemented for the trawl rationalization program, after hearing over eight hours of public testimony and reviewing hundreds of pages of additional analysis over the course of three

Council meetings, the Council has determined that the originally-adopted regulations on whiting QS and CHA initial allocation are more fair, equitable and consistent with the requirements of the Magnuson-Stevens Act (MSA) and other applicable law than any of the alternatives. Through this deliberative process, the Council has developed a complete and thorough explanation of the considerations relevant to this determination, including recent harvest history information that was not previously considered, the perspectives of the plaintiffs and the court in the aforementioned litigation, and case histories of other similar situations that have occurred under the authority of the MSA. As is noted in the preliminary draft Environmental Assessment (EA) the Council produced to support this decision:

It is important to the integrity of this program, and the veracity of the Council process and its ongoing success as a fishery management entity in which all stakeholders feel their interests are fairly heard, that the policy decisions made by the Council are fully and clearly explained. This reconsideration process has provided an opportunity to remedy a shortfall in this area with respect to the considerations relevant to the inclusion and exclusion of post-2003 history in the allocation formulas used in the program—considerations specified under the MSA and other applicable law.


It is notable that it was by unanimous action of those voting that the Council chose status quo Pacific whiting allocations as its final preferred alternative. It is also notable that the voting individuals were substantially different than those voting in the original 2008 Council decision, thus providing a substantial level of independent review in addition to a thorough reconsideration of new information. Seven of the eleven Council members who voted on this action were not on the Council when it took its original action on this issue in November 2008 (the three state agency representatives and one member of the California delegation were present to participate in the original November 2008 vote). A full transcript of public comment and Council discussion at the September 2012 Council meeting is provided as an appendix to the preliminary draft EA for the purpose of more fully describing the context of the Council decision.

To facilitate this consideration, a number of regulatory adjustments have been required. Several of these were implemented through emergency action in the first Reconsideration of Allocation of Whiting Rule and need to be extended through a normal regulatory action in order to facilitate the orderly completion of this process. First, the moratorium on QS trading that was originally set to expire at the end of 2012 was extended so that any needed reallocation could be achieved prior to the start of trading. Similarly, the implementation of a rule that would separate CHA from permits to allow its independent transfer was delayed. The Council is recommending that the moratorium on QS transfers be extended through January 1, 2014 to allow implementation of the additional regulations needed to accommodate such transfers. Similarly, implementation of the CHA severability should be targeted for September 1, 2014 to allow completion of these deliberations. Finally, accompanying the extension of the dates on which QS trading and CHA separability start, there should be an extension of the date by which quota holders are required to divest themselves of amounts that they hold in excess of accumulation limits. For QS holders, this

divestiture date should be extended to December 31, 2015 and for CHA holders this divestiture date should be extended to August 31, 2016.

Please let me know if our staff can be of any further assistance on this matter.

Sincerely,



D. O. McIsaac, Ph.D.
Executive Director

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Enclosures:

Summary of Rationale
Preliminary Draft Environmental Assessment
Deemed Regulations

C: Council Members

Ms. Mariam McCall

Mr. Ryan Couch

Ms. Ariel Jacobs

Mr. Steven Freese