

Mr. Chairman, Council, Ladies and Gentlemen:

Last summer U.S Senator Gordon Smith of Oregon, introduced Senate Bill S.1549. This Bill is to rationalize the shore-based Pacific whiting fishery by providing cooperative shares only to specific processors and fishermen. Senator Smith has asked for the Council to provide his staff with substantive comments.

One obviously needed comment in the proposed Bill, is that it allows for only 1% of the total non-tribal allocation of Pacific whiting to be set aside for an a non –cooperative shareholder component of the Pacific whiting fishery. One percent is insufficient to accommodate the incidentally caught Pacific whiting in other fisheries, to accommodate the smaller operations processing Pacific whiting, and to accommodate new entrants (on both the processing and fishing side).

To actually accommodate the non-cooperative shareholder component of the Pacific whiting fishery, a set aside of between 6% and 9% of the total non-tribal allocation of Pacific whiting is more appropriate to meet the needs. If you look at the crab rationalization program in Alaska, the American Fisheries Act Pollock Cooperatives, and the draft of the Alaska Rockfish rationalization, (all of which involve processors). All have some amount set aside for this sort of a non-cooperative shareholder feature. They have all recognized the small operation's needs; and therefore it would make sense to have it here too, to accommodate our non-cooperative shareholder needs of the Pacific whiting fishery. With this change of the non-cooperative shareholder component, I support this Bill.

Thank you!

Barry Cohen

Agenda Item B.3.d
Supp Public Comments
September 2005

Muir Milach, Inc. Recommendation on S-1549

Our company has operated the FV Muir Milach and fished whiting since 1979, and currently deliver in Illwaco.

- We support the position put forward to the Council by the majority of the GAP.
- We encourage the Council to maintain the position it took at the June meeting.
- We support the TIQC process for rationalizing whiting and trawl groundfish.

If an analogy can be made to TIQC committee process, it is like designing a new car. The request for input on S-1549 is akin to a salesman interrupting your consideration of Consumer Reports with a cold call, trying to sell you a particular vehicle.

The checklist of questions presented to the legislative committee is akin to that salesman asking you a series of questions about peripheral features such as:

- Upholstery - Paint colour - Air conditioning - Brand of CD player

While trying to distract you from looking under the hood at the most important feature:

- The Engine

The most important single feature of S-1549 is the 'share-matching' or two pie allocation. It is the only aspect of rationalizing whiting that can't be done by the Council.

For all the reasons cited in the GAP majority position, we think this is a bad idea and that S-1549 should not go forward.

However – IF AND ONLY IF – the Senate proceeds with S-1549 against the recommendation of the Council, and without the quality of analysis that Congress demands of the Council - then we would hope the Council comments focus on the most important issue:

- The allocation of share-matching quota to processors.

In those circumstances, we would ask the Council to recommend the following modification of the share matching allocation:

- **Harvesters would receive 50% of the allocation as traditional IFQ**
- **Harvesters would receive 25% of the allocation as "share-matching" IFQ**
- **Processors would receive 25% of the allocation as "share-matching" IFQ**

Though our 1st preference remains that the Council control the process and do the appropriate analysis, IF the process is being taken out of the Council arena, then the foregoing alternative is akin to ordering a hybrid engine, rather than going with a 100% experimental technology.

This hybrid proposal lacks analysis, just as the draft S-1549 lacks analysis. But if we are being forced to buy a vehicle in this manner, we would believe that it is necessary to moderate the anti-competitive nature of the draft proposal.

Thank you,

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Clearing Up Obfuscations About S-1549 and Its Precedents

AFA Pollock

- Processors are not guaranteed any fixed amount of quota between years.
- Harvesters are allowed to sell 10% of their pollock on the 'free market' annually
- Harvesters are only required to make a one year commitment to a processor.

Bering Sea Crab

- Harvesters are allowed to sell 10% of their crab on the 'free market' annually.
- Binding Arbitration exists as a "safety net" against the lack of a competitive price.
- The Council is free to increase the percentage of 'free market' crab.
- Processors are required to submit economic data to allow DOJ and Council oversight.
- This experimental program was developed by the Council with Congressional oversight.
- It was authorized together with a prohibition on other processing quota programs.
- The prohibition should be maintained until the results of the experiment are known.

Processing Quotas are not supported by:

- The National Academy of Science "Sharing the Fish" study requested by Congress
- The Department of Justice Anti-trust division letter to NOAA about the crab plan
- The Administration's draft MS_FCMA re-authorization bill

The senate draft MS_FCMA re-authorization bill does authorize processing quota programs, but ONLY under strict guidelines with standards both for findings of pre-requisite conditions and for feature to be included in the program.

S-1549 doesn't meet the standards of the Senate draft MS_FCMA for:

Pre-requisite findings based on analysis:

- Are they are necessary to protect fishing communities?
- Are they are necessary to maintain balance between processors and harvesters?
- Will they result in anti-competitive practices?
- Will they result in a reduction of ex-vessel prices
- Is there sufficient economic data from the processing sector to even make these judgments?
- Do they address impacts that couldn't be addressed by other means?

Legislative provisions of the S-1549 program

- DO NOT contain - Excessive Share Caps
- DO NOT contain - US Ownership Requirements
- DO NOT provide - Dept. Of Justice Oversight
- DO NOT require - Mandatory Economic Data Collection
- DO NOT contain - A Waiver of Confidentiality on Processor Economic Data

S-1549 is a "two-pie" program with processing quotas.

- The harvester allocation determines who will harvest and how much they can harvest.
- The processor allocation determines who will process and how much they can process.
- Section 9 of S1549, stating "The provisions of this Act shall be deemed not to violate section 804" would be un-necessary if it didn't violate the Congressional prohibition on "two-pie" programs.