

Mr. Donald Hansen, Chair  
Pacific Fishery Management Council  
7700 NE Ambassador Pl., Suite 200  
Portland, Oregon 97220

August 18, 2006

**RE: Whiting Mothership Sector Coop Proposal**

Dear Mr. Hansen,

The catcher vessel/mothership sector of the west coast whiting fishery continue to support the PFMC process to rationalize the West Coast groundfish trawl fisheries. Toward that end, we have supported the bifurcation of whiting management from the management of traditional groundfish due to their major differences. We have carefully reviewed the PFMC document “Stage 1 Draft-IFQ and Permit Stacking Alternatives in the Limited Entry Trawl Fishery” (TIQ) and concluded that the options considered will strongly benefit by the inclusion of a cooperative management program option.

Over the past year, United Catcher Boats (UCB) together with a majority of representatives of the mothership processors in the whiting catcher vessel/mothership sector have developed a coop management proposal for this sector. Collectively, we ask that the PFMC consider including the enclosed document entitled “Proposed Whiting Coop Structure in the Catcher Vessel/Mothership Sector of the West Coast Whiting Fishery” into the TIQ alternatives for further development and analysis.

This proposal is endorsed by the UCB membership and five of the six whiting mothership processors, except as noted herein. Specifically, Golden Alaska does not support the requirements in elements #6 and #11 that catcher vessels must deliver their initial allocation or any subsequent allocations to the processor that they most recently delivered the majority of their catch. Their preferred alternative is that the catcher vessels are free to deliver to any processor. Golden Alaska will elaborate on these issues before the TIQC and the Council. American Seafoods, the sixth of the traditional mothership processors, will make their objections known to the TIQC and the Council during the public process.

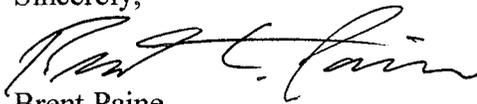
In developing this program we considered a wide range of options and narrowed most of the options down to a recommended preferred alternative. Further options certainly may be added to the analysis and we expect that they will be included, debated and decided during the Council process. Accordingly, with strong support for our Co-op style of management as proposed, we have agreed that some debate of option details is to be expected.

In our experience with fishery rationalization programs we believe that given the characteristics of the mothership whiting fishery, that a coop-style program is an optimal solution to the problems facing our fishery. Our proposal incorporates protections to both the harvesting and processing participants. One cornerstone of this proposal is that historic and current participants in the mothership fishery be included and that they be afforded the tools to address conservation issues while maximizing the value of the fishery.

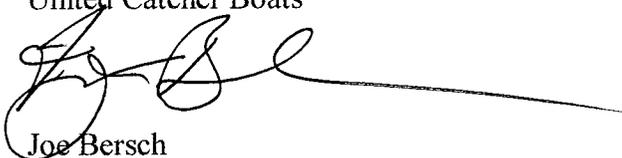
As mentioned, the companies and vessel owners supporting this coop proposal represent the vast majority of the participants in the mothership whiting fishery. United Catcher Boats represents the interests of 15 vessels that actively participate in the fishery. As noted above, five of the 6 current whiting mothership processing vessels support this proposal.

Thank you for consideration Mr. Chairman. We ask that the Council include this proposal in the current IFQ analysis and ask that the TIQ Committee review this proposal at its September 10, 2006 meeting.

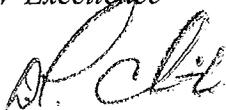
Sincerely,



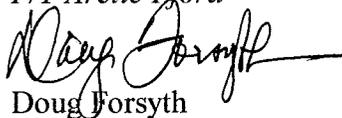
Brent Paine  
Executive Director  
United Catcher Boats



Joe Bersch  
Supreme Alaska Seafoods  
*M/V Excellence*

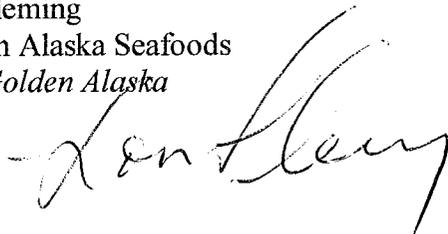


Doug Christensen  
*F/T Arctic Storm*  
*F/T Arctic Fjord*



Doug Forsyth  
Premiere Pacific Seafoods  
*S.S. Ocean Phoenix*

Lou Fleming  
Golden Alaska Seafoods  
*M/V Golden Alaska*



**Proposed  
Whiting Co-op Structure  
in the Catcher Vessel/Mothership  
Sector of the West Coast Whiting Fishery**

1. Existing allocations to remain intact between inshore sector (42%), Catcher Vessel/Mothership (CV/MS) sector (24%) and factory trawler sector (34%).
2. The legal registered owner of a valid WCGF permit(s) with qualified whiting catch history equal to or exceeding 500 mt aggregate whiting delivery to MS markets 1998-2004 shall be eligible to receive an initial whiting allocation.
3. Initial whiting allocations made to the legal registered owner of a valid WCGF permit(s) shall be based upon all catch histories accrued by or purchased by that owner during qualified catch history years.
4. Initial allocation of whiting will be based on a valid WCGF permits'
  - a. Catch history years 1998-2004, drop one, or
  - b. Catch history years 1994-2004, drop two.
5. Once an initial allocation of whiting has been made to a legal registered permit owner, that allocation with its associated WCGF permit may be transferred to the legal registered owner of any other valid WCGF CV trawl permit. Any vessel holding a valid WCGF CV trawl permit may harvest whiting for delivery in the MS sector. Whiting allocations are not permanently separable from a WCGP permit.
6. Owners of valid WCGF permits with whiting allocations may form co-ops or may elect to remain in open access. The first year of co-op formation, permit owners that join a co-op are required to deliver their whiting catches to the MS processor that they most recently delivered the majority of their whiting catch to in the last calendar year they participated. Alternatively, they may deliver their catches to another processor with the mutual agreement of the permit owner and the MS

to which they would otherwise be obligated to deliver their catch. Release by mutual agreement between processor and WCGF permit holder is on a year by year basis and does not exempt the permit holder from fishing one season in open access in order to effect a permanent move to a different mothership processor.

7. Co-op Formation
  - a. Formation of multiple co-op(s) is allowed.
  - b. Multiple co-ops are required to be formed based on the processor where CV permit holders delivered the majority of their most recent years' catch.
8. Owners of valid WCGF permits with whiting allocation must register annually with NMFS as a co-op member or register annually as an open access member.
9. NMFS will allocate whiting annually to co-op(s) and to open access consistent with the aggregate catch history attributed to the permits' registered to participate in the co-op(s) and/or open access as appropriate.
10. CV co-ops will be governed by private contract. Co-op whiting allocations to CV owners follow the golden rule – "allocation equals contribution to co-op but no more."
11. After the first year of co-op(s) formation, permit owners that are members of a co-op are required to deliver their catches of whiting to the MS processor that they most recently delivered the majority of their catches to or may deliver their catches to another processor 1) with mutual agreement established between the permit owner and the MS to which they would otherwise be required to deliver or 2) by withdrawing from the co-op and participating in open access for one season. Release by mutual agreement between processor and WCGF permit holder is on a year by year basis and does not exempt the

permit holder from fishing for at least one year in open access in order to effect a permanent move to a different MS processor.

12. If bycatch is allocated on a sector level, it should be done on a whiting tonnage pro-rata basis. Bycatch may be managed at a co-op level.
13. Owners of valid WCGF permits that are members of a co-op are permitted to transfer quota amongst other co-op members as long as such inter- or intra- co-op transfers are in accordance with 6 or 11. A co-op member may contract with any trawl vessel with a WCGF permit to harvest some or all of the allocation associated with the co-op member's permit.
14. No transfers of fish outside of sector by co-op members.
- 15a. Any rollover of whiting or bycatch between sectors to be determined and managed by NMFS, as is current practice.
- 15b. No rollovers of whiting between sectors permitted.
16. Ownership limits at the sector level (rather than TAC) to be developed by the Council.
17. The class of MS processors would be limited. MS processing permits would be issued to individuals or entities that operated as a processor in the MS sector and processed a minimum of 1,000 mt of whiting in any two of the years 1998-2004. (This should result in the six traditional MS processors receiving permits.) These permits are transferable.
18. In order to process whiting in the MS sector in a given year, a vessel must possess a valid MS processing permit. There will be no size limits placed on the permits, but a vessel that harvests whiting in any given year may not hold a MS processing permit in that same year. A MS processing permit may only be assigned to one vessel per year.

August 20, 2006

To: Pacific Fishery Management Council  
7700 NE Ambassador Place, Suite 101  
Portland, Oregon 97220-1384

Attn: Mr. Donald K. Hansen, Chairman

Re: Trawl Individual Quotas: Stage I Alternatives and Progress Report on Stage II

Dear Mr. Hanson, members of the Council, and the TIQC,

I am writing this letter in regards to the Individual Trawl Quota program that is being worked on by the Council and the TIQ Committees. My concerns are about the LE Trawl Permits that are leased by a fisherman and not actually owned by the fisherman.

To date I have not heard any alternatives or discussion on how to handle the situation of leased LE Trawl Permits. This is of great concern to the fishers that lease their permits. They want to know what will happen to all of the tonnage that they have generated while leasing a permit. This is an area that needs attention and deliberation.

I would like to express a few of my own personal feelings and thoughts. The scenario of leasing a trawl permit usually goes something like this:

1. A permit owner owns a LE Trawl "A" permit that they cannot or for whatever reason decide that they do not wish to use.
2. A fisherman for whatever reason did not qualify for a permit, and cannot find one to buy or cannot afford to buy one and needs to lease one.
3. An agreement is made between the permit owner and the fisherman to lease the permit to the fisherman for X amount of dollars per year, per month, by a percentage of the catch, or by a combination of all.
4. The permit owner is paid by the fisherman and receives their money. The fisherman pays out and receives the right to catch fish and generate tonnage.

On one hand the permit owner owns the permit... they don't actively fish it but they own it. The fisherman that did not qualify for a LE Permit for whatever reason can not fish without one. On the other hand, by leasing a permit the fisherman is paying for his right to catch fish and generate the tonnage accrued. The fisherman has paid for that tonnage and the permit owner has received compensation for it.

The fisherman generates all of the tonnage associated with the permit. The fisherman and his fishing ability are what designate the amount of tonnage created. If the fisherman does not try very hard then there is not much tonnage generated. But if the fisherman is a highliner then there is a large amount of tonnage generated. Again, the right to generate this tonnage was paid for by the fisherman... and the permit owner was compensated for it. True, that the fisherman could not fish without leasing a permit, but the permit could also sit idle without being leased and no tonnage generated at all. So, the fisherman has paid for the tonnage and the permit owner has been compensated.

My opinion is that the tonnage generated while the permit was leased should remain with the fisherman. It does not seem fair at all if the permit owner is compensated monetarily by leasing the permit for the tonnage generated and then compensated again by being given the use of that tonnage on

the permit for resale purposes or anything else. The fisherman generated the tonnage not the permit owner. The permit owner was already compensated once for it.

The fisherman should be able to take his tonnage that he has worked so hard for AND paid for with him whether he continues to lease the same permit or needs to find a new one to lease or purchase. Fishermen with their own tonnage would atleast be able to have some quota to be able to continue their careers and fishing businesses. Also, the fishermen should have 100% of the tonnage too, not 50% to the fisherman and 50% to the permit owner. As I stated before, the permit owner was already compensated for that tonnage generated... they don't need to be compensated twice for it.

I strongly encourage the Council and the TIQC to assign the tonnage generated by a leased permit to remain with the fisherman and I urge you to support the fishermen that lease their permits in your decision making process. I know that all the alternatives involved with the TIQ are complex, and I very much appreciate everyone's hard work and efforts. This is an equally important issue and it needs to be addressed also.

Thank you for your time in reading my letter and I hope that you will support the fishermen that lease their permits and work so hard to generate the tonnage.

Sincerely,

Lee Ann Hightower  
F/V Sea Otter  
2260 Hastings Ave. W.  
Port Townsend, WA 98368

**Preston|Gates|Ellis** LLP

August 23, 2006

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PFMC

Don Hansen, Chairman  
Pacific Fishery Management Council  
7700 NE Ambassador Place, Suite 101  
Portland, OR 97220-1384

Re: Stage 1 Draft EIS of the Environmental Impact Statement for IFQs and Permit Stacking  
Alternatives in the Limited Entry Trawl Fishery (May 2006)

Dear Don

I am writing on behalf of Environmental Defense to comment upon the May 2006 draft of the Environmental Impact Statement for IFQs and Permit Stacking Alternatives in the Limited Entry Trawl Fishery ("the Stage 1 draft EIS"). At the outset, please accept our appreciation for and support of the Council's continued efforts to implement critical reforms in the economically and environmentally valuable West Coast groundfish fisheries. We appreciate the opportunity to work with you on this EIS. As described below, we have serious reservations about the current scope of the alternative IFQ programs as framed in this Stage 1 draft, but we also believe that they can be readily rectified through proper revisions to the draft in response to comments. We stand ready to work with you on those revisions.

By way of background, Environmental Defense has worked for the development and implementation of a major IFQ program for the West Coast groundfish fishery in the belief that it will provide powerful long-term conservation incentives and economic efficiencies for the fishery and for those who depend upon it. We are therefore dedicated to working with a broad segment of harvesters, processors, community representatives, other environmental groups, and government officials to develop a catch shares system that will ensure the long-term viability of the whiting fishery and coastal communities. We believe that properly designed quotas can provide: (1) expanded conservation benefits to the fishery; (2) increased economic efficiencies to the harvesters, processors and distributors that comprise the industry; (3) increased economic stability to the coastal communities that depend on these fisheries; and (4) increased stability of supply and quality to the ultimate consumers. We therefore enthusiastically encourage the Council to continue with this important effort.

If designed or implemented incorrectly, however, a fishing quota program could have certain adverse impacts on several of these overall program objectives, as the draft EIS notes in numerous places. These might either compromise the ability to achieve needed reductions in

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biological or economic waste and inefficiencies in the fishery, or result in a significant shift in the relative market power of harvesters and processors, thereby accelerating consolidations and undercutting desired community stability.

It appears that the effort to design an effective IFQ program is being overshadowed by the ongoing dynamics between the harvesting and processing sectors, with each trying to frame the IFQ alternatives to their maximum relative benefit vis-a-vis the other sector. In particular, we have genuine reservations about the wisdom of a harvest quota system that allocates significant portions (up to 50%) of that harvest quota to processors. We know of no other quota system where harvesting quota has been allocated on the basis of processing history, as is proposed in this EIS. We caution the Council that any such decision would be an important precedent for other U.S. fisheries. Therefore, the EIS must contain a clear articulation of the underlying rationale for these alternatives, a robust analysis of all their reasonably foreseeable effects, and an explanation of how these alternatives may (or may not) achieve the purpose and need of the proposed action. This Stage 1 draft EIS does not measure up in this respect and needs to be bolstered substantially. We believe, as explained below, that the proposed three IFQ programs are too narrowly framed and inappropriately limit the range of alternatives that the Council should consider to meet the purposes and need of the IFQ program itself. As currently framed, the draft EIS contains scant analysis of how initial allocation based on processing history meets the goals of the programs, and fails to fully explore alternative methods to address potential processor concerns.

A. The Purpose and Need Statement is Well Framed.

The heart of the NEPA analytical process is the articulation of the purpose and need of the proposed action, and a clear and well-defined statement of the overall objective of the effort. In this case, we believe that the Council has done a good job at articulating clearly and properly in section 1.1 the overall purpose and need of this proposal. We commend you for it, and note only that evaluating the ability of the alternatives to achieve these numerous discrete goals and objectives in a quantifiable and defensible manner presents a considerable analytical challenge.

B. The Framing of the Alternative Management Regimes Makes Sense.

Environmental Defense recognizes the complexity of the shaping of alternative designs for an effective IFQ program for the West Coast groundfish fishery. It further believes that the Council in this draft EIS has developed an effective way to capture some of this complexity by the use of a range of alternative species that would be the subject of an IFQ program, inclusion of a permit stacking alternative, and the parallel use of alternative IFQ program designs for each of those fisheries. While this introduces some tedious analytical complexity, it also reflects a solid and responsible mechanism for shaping what is, in fact, a wide range of alternative designs for the program. We further believe that the five basic alternatives for which species to manage with IFQs or, alternatively, permit stacking is the proper range of alternative management

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regimes, and we recommend that the Council continue with these five basic management regimes as it continues with its draft EIS.

C. The "IFQ Program Design" Alternatives are Too Narrow.

The draft EIS proposes three IFQ program designs (referred to as programs A through C), and then applies those three "programs" selectively to the five alternative management regimes resulting in seven total options. The three alternative IFQ "programs" however, are nearly identical in terms of most design elements. One (program C) would provide for a quota-pounds based annual community stability holdback. The remainder of the elements for each programs show little variability, except for the initial allocation of quota and accumulation limits. When these programs are applied to the management regime alternatives, four of the five IFQ-related options would allocate significant quota shares to processors. However, the draft EIS fails to explain adequately the basic rationale for providing these processor allocations in the first place, or how these allocations will satisfy the fundamental purpose and need of the proposal itself. Our fundamental criticism of this draft EIS is therefore that the three IFQ programs are too narrowly framed and need to be reshaped to better achieve the purposes of the proposal.

As the draft EIS notes, both harvesters and processors have raised concerns during the course of these deliberations about the impact of transitioning to an IFQ program on the relative market power of each sector vis-à-vis the other. Environmental Defense recognizes and respects these concerns, and is of the fundamental view that the design of an IFQ program should be shaped in a manner that seeks to minimize any deliberate shift in the relative market powers of either sector that might occur as a result of the transition to an IFQ program. We note further approvingly that the Council itself in its basic goals and objectives embraces a similar objective.

From a processor perspective, these concerns evolved around several claims that a harvester IFQ program might: (1) shift bargaining power toward harvesters;<sup>1</sup> (2) decrease processor access to the product; (3) eliminate processors' marketing role; (4) lead to stranded capital; and (5) would not reward processors for their investment in the fishery. Environmental Defense believes that while there may be a swirl of speculation about these potential shifts in the relative market power of harvesters and processors, there has been little discussion about how the prevailing trend towards processor consolidations and a parallel increase in the relative bargaining power of the processing sector has already shifted relative bargaining powers towards processors from historical norms. Environmental Defense encourages the Council to take a hard look at all of these issues, and evaluate the likelihood and degree of such impacts resulting from an IFQ program itself.

The range of the proposed initial allocations thus inappropriately tilts towards an initial allocation of a portion of the quota shares to the processing sector without having established the

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<sup>1</sup> The Draft EIS recognizes this argument at section 4.2.2.2.

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need or underlying rationale for such an allocation in the first place. At present, the draft EIS would evaluate only one permit owner-only alternative out of the five total quota share alternatives. The draft EIS suggests, however, that the Council may "mix and match" the components of the various alternatives at the time of its final action, as long as the impacts of the result may be reasonably inferred from the existing analysis.<sup>2</sup> In its current form, the draft EIS does not include permit owner-only initial allocation quota share options for either Alternative 2 (IFQs for whiting and Trawl Target Species) or Alternative 4 (IFQs for all groundfish species). Only Alternative 3, which proposes IFQs for all groundfish species except Other Species, recommends a initial allocation to permit owners-only under its Program B.<sup>3</sup> Because it could prove difficult to extrapolate impacts of initially allocating only to permit holders from such a limited sample size, and to ensure that the Council does not preclude selection of a permit owner-only program by default in the absence of sufficient analysis, the draft EIS should analyze initial allocation to permit owner-only program for each alternative.

These three IFQ program designs, in turn, fail to examine other approaches to an initial allocation that might serve to address more directly the potential negative consequences of a transition to a harvester-based IFQ program. These might include the potential for a localized instance of stranded capital from a harvester-only IFQ program or a localized anomaly in processor access to product due to an excessive initial concentration of quota among a small number of major harvesters. Environmental Defense therefore secondly recommends that the Council reshape these allocation programs to address the potential for these localized anomalies through other mechanisms than initial allocation. For example, just as vessel buyback programs help alleviate stranded capital held by harvesters, the proposed alternatives could include a processing capacity buyback to ameliorate processors' documented stranded capital during an extended fishing season requiring less overall processing capacity. Additionally, the Council could address the product access issue by modifying its Community Stability Holdback option to include the condition that harvesters must work with processors and demonstrate that they have a plan for harvesting and processing the quota in a manner that meets certain community objectives before obtaining holdback shares. If assuring current patterns of processor's access to product is important to both processor and community stability, then this could be explicitly identified as an important objective to be met through the community stability holdback program. A modified community stability program could hold promise as an alternative to initial allocation to processors as a means of addressing issues of concerns.

Furthermore, the draft EIS should accurately identify the percentage of permits currently held by either harvesters or processors. At least some of the companies currently processing groundfish own permits that would be allocated quota under a program that initially allocated only to permit holders. The Council needs to identify the percentage of quota that would be held by the processing sector even without any additional initial allocation based on processing

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<sup>2</sup> Draft EIS, at 4 (Section 2.1).

<sup>3</sup> *Id.* at 22-23.

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history and, within the limits of confidentiality, how that quota would be distributed among the processing sector participants. If the concern is that some processors' access would be differentially impacted, then an initial allocation scheme that provides even more quota to those processors who would already receive quota initially under a permit history initial allocation scheme might not be the appropriate response to the concern.

Careful selection of the accumulation limits for any quota holder may also be a mechanism to minimize adverse impacts of the IFQ program. The program alternatives vary significantly with regard to accumulation limits and may need more specificity to be effectively analyzed. We recommend that the Council examine the range of accumulation limits for analysis closely to assure that an appropriate range of limits are analyzed.

D. Examine if Processor Shares May Undermine the proposed IFQ program goals.

Stage 1 of the draft EIS admittedly does not analyze whether the proposed alternatives are consistent with the IFQ program goals, objectives, constraints and guiding principles.<sup>4</sup> However, recent experience with the Bering Sea/Aleutian Islands Crab Rationalization Program suggests that designing the IFQ program with a significant initial allocation of shares to the processing sector could compromise the ability of the IFQ program to achieve its stated goals and objectives. The majority of the negative impacts under the two-pie system in the crab fishery appear to be resulting from the required pre-season pairing of harvester quota with processor quota. Anecdotal evidence suggests that this tying of interests created an anticompetitive structure that permitted processors to impose conditions upon harvesters that compromised the conservation, stability, operational flexibility, and safety goals for that program.

For example, during the 2005-06 season, many processors changed the pricing structure for crab, paying for the first time significantly less for crabs that had any barnacles on them or that were somewhat darker in color. As a result, estimates of at-sea high grading suggest that harvesters discarded more than 20% of harvestable crab, an eight-fold increase over the previous season.

In addition, the crab rationalization program replaced the race for fish with a race to the processor. Harvesters engaged in an intense pre-season race to match up with processors, leading some to sign agreements that provided little or no protection under the binding arbitration provisions just to avoid being the "last man standing" with few options for matching quota. Moreover, provisions in some of these agreements established a cut-off date for crab deliveries, compelling an accelerated crab harvest to meet these deadlines and avoid stranding harvesters' quota shares, which compromised traditional safety enhancements offered by quota programs.

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<sup>4</sup> Draft EIS, at 265 (Section 6.1 contains a placeholder for this analysis).

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The Bering Sea/Aleutian Islands Crab Fishery differs from the IFQ programs framed in this draft EIS as it was a "two-pie" system of parallel harvesting and processing quota programs while all of the alternatives under this EIS deal only with allocation of harvesting quota. However, a significant allocation of harvest quota shares to processors could have some parallel effects. If the Council were to allocate upwards to 50% of the harvesting quota to processors, no fishermen would have enough quota to continue to fish without acquiring significant additional quota; the primary source being quota held by processors. The draft EIS should therefore examine whether the effects of a significant allocation of quota shares to the processing sector, as is currently proposed, might generate some of the same adverse consequences as appear to be occurring in the crab fishery under its "two pie" system.

E. Conclusion.

Environmental Defense wishes to express its strong support for the work of the Council on the groundfish IFQ program and believes that this Stage 1 draft EIS constitutes an excellent foundation for proceeding. We furthermore urge you to continue with this process in the belief that it holds the promise of substantial reforms to the fishery that can result in a healthier fishery, a more profitable fishery for both the harvesting and processing sectors, and a more biologically sustainable and economically efficient fishery.

Environmental Defense recognizes the complexity of this effort, and believes that the draft EIS provides a thoughtful and reasonable approach to that complexity. We are concerned that the range of the IFQ program design proposals are both too narrow and too heavily tilted towards initial allocation of significant portions of the harvesting quota to processors, that the draft has not provided an adequate justification for this, and that it should examine other program design strategies outside of initially allocating processors harvesting quota that address the underlying concerns.

We look forward to the opportunity to continue to work with the Council, the industry and the National Marine Fisheries Service through the completion of this important work. If we can be of any assistance to you in this effort, or if we can otherwise answer any questions that may arise from these comments, please do not hesitate to contact me directly, or have the Council staff do so. I can be reached at 206.623.7580, or [wills@prestongates.com](mailto:wills@prestongates.com).

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Very truly yours,

PRESTON GATES & ELLIS LLP

By 

William W. Stelle

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