Agenda Item E.9.d
Public Comment
June 2007

ASTORIA HOLDINGS, INC.

March 8, 2007

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PFMC

Pacific Management Council

Our company opposes any plan to restrict access for processing Pacific Whiting to a select group under a rationalization plan. It is our position that all fish plants should have the option to participate in the Pacific Whiting Fishery at any time. Limiting this option will only result in the restriction of economic benefits to local companies, which may need access to this fishery.

Regards,

Jerry Thon
Astoria Holdings
Astoria, Oregon

One 9th Street, Astoria, OR 97103 (503) 338-1288
Mailing Address: 12 Bellwether Way #209, Bellingham, WA 98225

NRDC
THE EARTH'S BEST DEFENSE

March 16, 2007

BY EMAIL and U.S. MAIL

Dr. Donald McIsaac, Executive Director
Pacific Fishery Management Council
7700 NE Ambassador Place, Suite 101
Portland, OR 97220
Email: pfmc.comments@noaa.gov

RE: Trawl Rationalization (Trawl Individual Quotas (TIQ) Program)

Dear Dr. McIsaac and members of the Council:

Thank you for the opportunity to talk to you at the Sacramento Council meeting last week. Design of the Trawl Individual Program (TIQ) Environmental Impact Statement (EIS) is making good progress, which is exciting and clearly represents significant effort from many of you.

We are pleased to be taking part in the TIQ process on behalf of Natural Resources Defense Council (NRDC)'s more than one million members and activists. Our interest in participating is to ensure that there are adequate conservation measures in the TIQ program so that it yields not only economically but environmentally sustainable results.

For the sake of clarity we are providing here in writing the comments we made at the public comment section on item C.4 Trawl Rationalization (Trawl Individual Quotas (TIQ) Program) on March 8, 2007.

The following are our priority concerns for the TIQ program and EIS design. We are glad to note that some of these now appear to be going forward in the EIS, specifically:

- 100% observer coverage (or equivalent).

  We further urge inclusion of higher dockside accounting and monitoring provisions in the EIS.

- Hard sector bycatch caps with stringent overage limits.

- Gear switching flexibility.

  To ensure the conservation benefit of gear switching, we request that the gear switching be specified towards ecologically-friendly gear.

- Area-based management to be considered as an option in the EIS.
- Consideration of processor alternatives based on the Jim Wilen study which warns against providing permanent compensation for what may prove to be minor or temporary economic impacts on processors, without documentation of those losses.

In addition, we appreciate your decision not to put forward a use-it-or-lose-it provision. Not only would such a provision be cumbersome to implement and oversee, we believe it would violate portions of the Magnuson-Stevens Act. Specifically, it would be inconsistent with the rebuilding requirement as interpreted by the Ninth Circuit to rebuild as quickly as possible absent disastrous economic consequences, as well as violating the bycatch requirement to reduce bycatch to the extent practicable. Thank you for your decision on this.

The following NRDC priorities do not yet appear to be a part of the TIQ design and we urge their inclusion:

- An incentives TAC allocation, which could be used to further the following management objectives:
    - Community stability
    - Bycatch reduction
    - Experimental fishing techniques

  Much is unknown about how implementation of the TIQ program will affect various aspects of the groundfish fishery. It is important to preserve options at the design stage of the process to give the Council flexibility to address unanticipated effects since legally it could be quite difficult to do after the program is up and running.

- Auctions as an allocation method in the EIS, especially now that auctions are expressly permitted under the Magnuson-Stevens Act.

  Consistent with the fact that a TIQ system is a market-based approach to allocating fish, auctions as an initial allocation method should be considered in the EIS. We believe it could be effective to structure a tiered auction, including categories for different size vessels and a cap on consolidation. Auctions also have the benefit of returning more of the real value of the public resource to the public trust and providing start-up management funds. Tiered lotteries can provide many of the same benefits as auctions without forcing the Council to reward or punish individual fishers. We therefore ask that auctions and lotteries be analyzed in the EIS.

- Cost-sharing for research, management, and enforcement.
- Fishing impact research on unassessed species and ecosystem attributes as a required feature of a TIQ program.
- Protocol for data collection and reporting.
- Recognition of the public trust nature of the ocean resource through assessment and capture of transfer fees when quota is sold.

Thank you for all your work on the TIQ program. We understand that it is a complex, involved process and we look forward to a productive collaboration going forward.

Sincerely,

Karen Garrison

Laura Pagano

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ENVIRONMENTAL DEFENSE

finding the ways that work

May 9, 2007

Mr. Donald K. Hansen, Chairman
Pacific Fishery Management Council
7700 NE Ambassador Place
Suite 101
Portland, OR 97220-1384

Shaping Alternatives for the West Coast Groundfish Trawl Rationalization Program

Dear Chairman Hansen and members of the Council:

We write to applaud your continuing efforts to develop an IFQ program for the West Coast trawl groundfish fisheries. Environmental Defense strongly supports a well-designed IFQ program and we are optimistic that your efforts will result in substantial conservation benefits to ocean ecosystems and the fishery itself, as well as economic benefits to the harvesting and processing sectors and their communities. We pledge to continue working with you, fishery managers, and other stakeholders to design and implement a well-crafted program.

We also write to offer constructive suggestions that may help avoid potential obstacles as you continue with your efforts, specifically with regard to potential processing sector impacts. We cannot underscore enough the importance of taking a balanced approach on this issue, which could make or break the success of this extremely important fishery reform effort.

A single approach that allocates in perpetuity harvester quota to processors as a means to address unsubstantiated claims that the IFQ program will "strand capital" has become a stumbling block to a well-designed IFQ program. In addition, there are fundamental problems with an approach that presupposes that an adverse impact (stranded capital) will occur in the absence of any evidence, and that embraces a structural and permanent response to a problem that is by nature transient and should (if it exists) be solved through a one-time compensation. Finally, Environmental Defense remains concerned that any presumption by the Council or NOAA that the processors must get an allocation of quota could undermine the economic and ecological objectives of the IFQ program, and set damaging precedent for efforts to rationalize troubled fisheries in other regions of the country.

We wish to recommend some important refinements to the range of alternative approaches to the issue of stranded capital in the processing sector. We strongly believe that: (1) the processing industry needs to demonstrate, through rigorous analysis, that stranded capital is a problem before any attempt is made to address stranded capital; (2) the range of alternatives would be greatly strengthened if it were to encompass some of other available tools and methods for addressing the issue of stranded capital; and (3) the general approach should emphasize flexibility and adaptation to real problems rather than structural, hard-to-change solutions to undemonstrated problems. Currently, the alternatives propose to examine the use of one tool –

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initial processor allocations – and then shape the alternatives around the variations in the percentage size of that initial allocation.

This approach is far too narrow. It will simply not enable the Council, the National Marine Fisheries Service (NMFS) or the public to examine a robust range of options to the problem of potential adverse economic impacts and then make a well informed choice on the ultimate solution. Nor will it allow the Council, NMFS, or the public to evaluate possible trade-offs between alternative regulatory responses to stranded capital concerns on the capacity of the IFQ program to generate the desired changes in the fishery. We therefore recommend the following:

First, include within the EIS one alternative which reflects the possibility that stranded capital will be either non-existent or minimal and therefore provides no compensation mechanism. Second, develop a separate alternative which assumes that capital may be stranded but addresses this impact as an issue of compensation rather than quota allocation, since compensation is the crux of the matter at hand. Finally, when designing the compensation alternative and determining how to approach the analysis, we encourage the Council to take the following features into consideration:

> **Base compensation on fact, not speculation.** After implementation of the program, require claimants to demonstrate that the rationalization of the groundfish trawl fisheries has resulted in identifiable economic harm, and require that they make their case based upon empirical documentation of the losses, including demonstration that there are no other uses or resale value associated with the assets in question. The alternative should spell out simple, objective criteria which, if met, would require compensation to be paid. This showing of actual damage would ground the issue on a transparent, defensible, factual foundation and ensure that the remedy is properly tailored to the harm.
>
> **Make compensation a one-time solution to a one-time problem**. Set a time-definite transition period for the filing of compensable claims, and then sunset the program.
>
> **Use alternative funding mechanisms to finance the compensation.** We recognize the challenge of funding any stranded asset claims that may arise, and wish to offer some suggested mechanisms. One such mechanism might be to "tax" a percentage of permanent transfers of quota shares, and use the proceeds to fund the stranded-asset compensation pool. A second approach might be to seek Federal appropriations for a temporary fund, the remainder of which could be rolled over into program implementation once the sun had set on the program. A third approach might be to capitalize the compensation program through the lease of a certain small percentage of quota "hold-back" – that is, a small percentage of quota that is not allocated out to the industry in the initial allocation but held in reserve. Once the period for stranded capital claims had expired, this reserve quota could then be reallocated out to the quota holders in proportion to the initial allocation, or alternatively, held back and used to enhance the Council's ability to meet other objectives of the rationalization program.

At this juncture, the most important objective for the Council and NMFS is to shape a responsible range of alternatives that can then be further analyzed and vetted through the NEPA process. Environmental Defense strongly believes that the recommendations provided herein will help achieve that objective, and we are willing and eager to work with you and your staffs in further shaping these concepts. We can then proceed with confidence that the alternatives will

reflect a well-considered range of options which will preserve the opportunity for you and NMFS to make good decisions at the end of the day. We stand ready to work with you toward that objective.

Sincerely,

Johanna Thomas
Oceans Program Director, Pacific Region

Enclosure: Jim Wilen presentation on stranded assets

cc: PFMC Council Members
Dr. William Hogarth
Mr. Bob Lohn
Mr. James Connaughton
Senator Daniel Inouye
Senator Ted Stevens
Rep. Don Young
Rep. Nick Rahall
Senator Gordon Smith
Senator Ron Wyden
Senator Maria Cantwell
Senator Patty Murray

Stranded Capital in Fisheries

Jim Wilen
Department of Agric. & Resource Economics
University of California, Davis
March 2007

Questions

- What is stranded capital?
- How has stranded capital been treated in other policy settings?
- What are the potential effects on processors of IFQs?
- When are stranded costs likely to be significant?
- What are the arguments for considering these effects?
- How should we measure stranded capital?
- What mechanisms can be used to address impacts?

Stranded Capital: the Policy Context

- Notion arose during electricity deregulation of 1990s
- Utilities argued: investments/contracts induced by old regulations and unprofitable under new policy of deregulation were "stranded"

Responses to Stranded Capital Compensation Arguments In Other Industries

- Regulatory response
  - Compensation was not an issue in trucking, airlines, banking, and natural gas deregulation
  - Large size of stranded capital claims in electricity; ongoing debate over compensation is holding up some deregulation
- Legal responses
  - Courts have not supported notion of breach of "regulatory compact"
  - Courts have not upheld idea that failure to compensate is a "takings"
- Economists' responses
  - Risk of deregulation and its impact already taken into account in capital investment decision, so stranded capital has already been compensated
  - Compensation a distributional decision; unlikely to promote efficiency
- Wilen's stance
  - We should at least attempt to measure all benefits/costs of regulatory changes including, if important, stranded capital losses

Stranded Capital in Fisheries

- Notion first appeared in Alaska crab rationalization debates
- Backdrop: halibut experience in BC and Alaska
  - Pre ITQ: derby, compressed season, frozen product, concentrated processing, isolated processor locations
  - Post ITQs: fresh product, longer season, slower pace, new markets and new buyers,niche handlers
- Argument: crab processors needed protection
  - Stranded capital will become worthless
  - Owners of such capital will suffer losses during transition
- Alaska crab rationalization
  - Intricate scheme of processor IPQs, locked-in delivery options
  - No attempt to actually measure potential stranded capital

Likely Impacts of IFQs on West Coast Groundfish Processors

- Non-whiting Groundfish
  - Model: BC groundfish IFQ program vs. BC halibut
  - Value added opportunities for incumbents
    - More uniform harvesting--elimination of surges
    - More allocation to higher valued fresh markets
    - Market deepening--uniform supply, reliability, product specs
    - Continued use of hand fillet processing
    - Landings coordination with harvesters
  - Moderate entry of new handlers--niche development, market broadening, diffused community handling
- Inshore Whiting
  - Model: Alaska pollock fishery
  - Slower paced and longer fishery
    - Optimized raw fish condition
    - More product recovery
    - Increased product form flexibility

Preconditions for Stranded Capital to be a Significant Problem

- Major change in product form that can be ascribed specifically to change in regulations
- Contributing economic factors
  - Highly compressed derby fishery
  - Highly competitive processing sector
- Technological factors
  - Processing is capital intensive
  - Capital is specialized to one species
  - Capital is specialized to one product

Stranded Capital in the Pacific Coast Groundfish Fishery?

- **Groundfish: conditions differ from Alaskan halibut and crab fisheries**
  - Trip limits have been implemented to prevent derby conditions
  - Product flow spread over season with only small surges
  - Delivery agreements and coordination in place
  - Processing plants not isolated from markets and transportation network
  - Not likely to be a regulation-induced shift in the center of fishing activities
  - Fishing, processing and marketing in close proximity
  - Markets developed for diversity of products already
  - Highly concentrated processing sector
- **Therefore: preconditions for significant stranded capital do not seem to exist.**

Stranded Capital in the Pacific Coast Whiting Fishery?

- Some conditions similar to pre-AFA Alaskan inshore pollock:
  - Race to fish
- Conditions differ in other ways:
  - Shoreside processing more highly concentrated
  - Mixed product forms already developed
  - Strong markets for fillets, weakening surimi markets
  - Surimi product quality differences
  - Processing plants not isolated from markets and transportation network
  - Fishing, processing and marketing in close proximity
- Conclusion: may be more likely than in bottomtrawl groundfish; but stranded capital value not likely to be high

Compensating Stranded Processor Capital: for and against

- Arguments for: failing to compensate is unfair
  - Causes capital value losses to owners
- Arguments against: compensating causes future inefficiencies
  - Sunk capital already compensated in original investment
  - IFQ compensation gives processors market power; increases bargaining strength vis a vis harvesters
  - Compensation gives incumbents advantage over prospective entrants
  - freezes existing patterns of harvesting, marketing, products
  - Compensation encourages future holdup of other IFQ programs

Measuring Stranded Capital Costs

- Distinction between costs of capital and value of capital
- Value of capital depends upon its next best alternative use
- Examples of capital in groundfish/whiting processing:
  - Land and warehouse space---not stranded capital
  - Storage space---generally contracted out; not stranded
  - Offloading, pumps, chilling tanks--excess capacity possibly stranded
  - Flash freezing---excess capacity possibly stranded
  - Filleting/surimi machine---not stranded if caused by market shift
- Attributing stranded costs
  - Policy relevant stranded capital (example: unused surimi machines caused by market shift to fillets is not policy-induced stranded capital)
  - Apportioning shared capital (e.g., if freezing capacity used for multiple fisheries must apportion value between fisheries to isolate whiting portion in excess)
- Key question: exactly what capital becomes "worthless" as result of regulatory change?

Mechanisms for Compensating Stranded Capital Costs in IFQ Fisheries

- Granting permanent IFQ allocations to processors
- Lump sum compensation
  - Grants
  - Loan and landings tax
  - Loan and transfer tax on IFQ transactions
- Processing/harvester lock-in
  - landings requirements (sliding, sunset)
- Fractional set-aside of IFQ
  - Auctioned to generate compensation fund (sliding, sunset)

Important Administrative Process Issues

- Importance of measurement
- Burden of proof: tying to stranded capital value
- Codification of definitions/accounting procedures
- Setting a threshold; transactions costs
- Assessing spillovers
  - Altering power balance between harvesters and processors
  - Creating incumbent advantages
  - Precedent
- One time resolution vs. permanent distortion

Summary

- Little precedent for compensating stranded costs
- However, good policy making requires informed decisions, including understanding potential losses
- The preconditions to generate significant stranded costs in Pacific Coast non-whiting groundfish fishery do not seem present
- Possibly an argument for whiting but value of stranded capital not likely to be high
- Burden of proof should rest with industry to make explicit estimate of verifiable stranded capital losses
- Bad policy to make a "guess" about numbers, and then lock in a permanent distortion of IFQ system
- Currently suggested fixes seem implausibly high--eg 50% whiting IFQ allocation implies 45 million dollar capital losses*, an amount greater than likely value of **total** whiting processing capital

*based on total IFQ asset value of whiting of approx $90 million

What Is the Real Problem Here?

- Is the issue really stranded capital? Or is it:
  - Capturing the rents--groundfish
    - 30,000 MT x 2200=66,000,000 lbs
    - BC mixed prices: 0.25 lease; 3.00 sale
    - $16,500,000 lease market
    - $198,000,000 asset value
  - Rent Estimates--whiting
    - 85,000 MTx2200=187,000,000 lbs
    - Alaska prices (adj): 0.04 lease; 0.48 sale
    - $7,500,000 lease market
    - $90,000,000 asset value
- Bargaining Power: processors vs. harvesters
- Reducing competition for incumbents

May 21, 2007

Mr. Donald Hansen, Chairman
Pacific Fishery Management Council
770 NE Ambassador Place
Suite 101
Portland, OR 97220-1384

Trawl Rationalization Program: Include OSHUA for Analysis

Dear Chairman Hansen and members of the Council:

This is a request that the Optimum Species-Harvesting Unified Allocation (OSHUA) plan is included in the list that will be analyzed for the trawl rationalization program. A copy of the OSHUA plan, dated May 14, 2007, has been submitted.

This Council was short-sighted when it created the Trawl Individual Quota (TIQ) committee. The TIQ committee was given a purpose and goal of developing options that are primarily focused on economic improvement for the trawl component of the groundfish fishery. All of the options produced by the TIQ committee reflect this charge.

Instead of creating a TIQ committee this Council would have been acting responsibly by creating a Sustainable Groundfish Management committee. The goal for this committee would have been to produce options for implementing a truly sustainable management plan for all groundfish sectors including: landing all marketable bycatch and thus prevent overfishing, minimizing discard of non-marketable bycatch, minimizing habitat destruction, and creating a healthy economic environment for all parts of the commercial fleet: trawl, non-trawl, and open-access.

There seems to be an impression that the OSHUA plan does not offer any significant or improved features when compared to the TIQ committee options. Nothing could be farther from the truth.

The OSHUA plan focuses primarily on developing a sustainable plan with no overfishing. Economic benefits to the fleet, to communities, and to processors will proceed from implementation of sustainable management. More fish will benefit fishermen and processors alike. In contrast to the OSHUA plan, all of the TIQ committee options focus on how to privatize projected future allowable catches. The OSHUA plan demonstrates that a plan incorporating individual responsibility need not privatize the resource.

The TIQ committee options focus first and foremost on privatization of the fishery. The focus is on creating wealth for some fishermen. Developing a management regime that will produce a sustainable fishery are secondary concerns. Upon implementation of the TIQ preferred option, instantaneous wealth will occur for some fishermen regardless of their sustainable fishing practices.

The OSHUA plan focuses first and foremost on developing a sustainable management regime. Privatization is not part of the OSHUA plan. Increases in wealth will proceed over time to individual fishermen in direct proportion to their sustainable fishing practices.

Other key features of the OSHUA plan are:

* Distributes allocations for overfished species equitably, while TIQ committee options disadvantage one group or the other
*Allows annual allocations for overfished species to be purchased by any permit within the composite commercial groundfish fleet, while TIQ committee options prevent this by confining trading of allocations to within a sector
* Eliminates 5 annual commercial sector allocations
* Allows gear switching from trawl to non-trawl, but not the opposite
* Annual allocations can be fished anywhere in the Pacific Council's EEZ
* The pacific whiting fishery will operate under the same rules as the rest of the fleet
* Absolute catch limits for the recreational fishery are part of this plan
* Promotes shorter tows, minimizing bycatch, discards, and habitat degradation
* It is consistent with the limited access provisions of the law
* It is consistent with the sustainability requirement of the law
* Maximizes benefits to the nation
* Has minimal ownership requirements and has no need to track transactions
* Can be implemented more quickly than any other option
* The OSHUA plan is less expensive than any of the TIQ committee options, for development, implementation, and ongoing operations.

Since the OSHUA plan includes features that will produce a sustainable groundfish fishery, since it does include individual responsibility, since it does allow for an annual catch allocation marketplace, and since its features are distinctly different than those included in the TIQ committee options, I request that you include the OSHUA plan in the list of trawl rationalization options that will be analyzed.

Sincerely,

William Daspit

Comments of Environmental Defense

PFMC June Meeting
Agenda Item E.9b
May 23, 2007

At its May meeting, the Groundfish Allocation Committee recommended adopting several additional alternatives to address potential impacts on processors due to the transition to IFQ management. One of these alternatives would compensate processors for proven impacts instead of granting quota shares to processors in perpetuity. We wholeheartedly support this alternative and urge the Council to include it in the analysis.

Environmental Defense's interest is in securing an IQ program that is fair and equitable, and that can be a model – with positive precedent for future IQ programs in other regions. Our ultimate goal is that the program succeed from environmental, economic and social perspectives.

The adoption of a compensation alternative, coupled with the other new options designed to mitigate impacts on processors, signals a positive shift toward a more comprehensive range of alternatives. The new options, which include granting quota shares that sunset, granting quota shares limited to accumulation caps, using a quota holdback to ensure benefits for affected processors and communities, or creating a fund for compensation are all methods that can be used to fairly deal with processor claims. Including these alternatives in the analysis is a substantial move in the right direction regarding how processor claims should be evaluated and will avoid the problematic presumption that permanent allocation of quota is the appropriate method to address stranded asset or other claims.

We believe the compensation alternative should include the following important features:

1. Compensation should be based on fact, not speculation. Require claimants to empirically demonstrate losses that can be tied specifically to the transition to the TIQ program and can be verified by an independent auditor.
2. Make compensation a one-time solution to a one-time problem. After a certain time period in which claims could be filed, the program should sunset.
3. Use alternative funding mechanisms to finance the compensation. Some possible approaches would be to auction a small portion of quota and use proceeds to fund compensation or, alternatively, modify the adaptive management incentive system to allow temporary quota leases to cover stranded capital claims. The adaptive management incentive system could also be used to address processors' concerns about losing access to fish.

To summarize, Environmental Defense supports the additional alternatives recommended by the GAC and believes that they will result in a more robust analysis of potential processor impacts from transitioning to IQ management and ways to document and mitigate negative effects. We strongly support treating processors' valid concerns fairly,

but we oppose having the Council come to a presumptive conclusion that the only remedy is an initial allocation of quota without a robust analysis of a full range of reasonable alternatives to address these concerns.