

**TRAWL RATIONALIZATION (AMENDMENT 20) HEARING SUMMARY – SANTA CRUZ**

Date: 10/29/2008	Hearing Officer: Kathy Fosmark
Location: Santa Cruz, California	Other Council Members: None
Attendance: 13	State Agency Rep: Joanna Grebel (CDFG)
Testifying: 7	NMFS: Amber Morris
	Coast Guard: LTJG Brittany Steward
	Council Staff: Jim Seger
Organizations Represented: Environmental Defense Fund Food and Water Watch Natural Resources Defense Council Pacific Coast Federation of Fishermen’s Associations	

**Synopsis of Testimony**

- Supports trawl rationalization with no allocation to processors (one person and Environmental Defense).
- Supports the preliminary preferred alternative with 20 percent allocation to processors (one person).
- Supports Council trawl rationalization contingent on exact content of Council’s November action (Natural Resources Defense Council).
- Supports status quo but might support some other form of trawl rationalization (quota management) (one individual and Pacific Coast Federation of Fishermen’s Association).
- Support status quo and a strategic planning approach (Food and Water Watch).

**Harvester Sector Comments**

The Council has failed to consider all the alternatives, in particular regional fishing associations (RFA) and community associations. Provisions here will neither protect stranded capital nor communities. Half of the catch history associated with buyback permits should go to regional fishery and community associations and half held back for additional resource protection. If this is done, there should be no adaptive management provision. Some of the rockfish and sablefish held back for regional fishery and community associations should be used to benefit the open access and fixed gear permit holders. The half held back for conservation could be allocated back at a later time after certainty about stock status is improved. Area management and regional landing zones are good ideas that should be developed further.

Despite what is stated in the document, once issued the quota shares (QS) will become property rights. QS should go to the fishermen and QS owners should be required to be on board the vessel. Accumulation limits should be 1 percent for control and 1.5 percent for vessels usage. This would

maintain enough boats to support local ports. In the first two years of the program, transfers should be limited to those who are currently in it. If processors receive QS and they want to sell out it should go to captains or crewmen involved in the fishery. There should be a referendum among members of industry.

Supports Individual Transferrable Quotas to reduce discards and length of trips. Opposes 20 percent to processors. Opposes referendum.

Fishermen will not be able to pay for observers. Supports a four month cumulative limit with some trading to see if the system works.

### **Processing Sector Comments**

Supports 20 percent to processors, opposes adaptive management program. If QS are going to a community who are they going to give it to? Waiting to see if they will have assurance of stability from 20 percent allocation to processors before deciding whether or not to re-establish an Ice and Cold Storage facility in Eureka.

### **Environmental and Conservation Interest Comments**

Opposes moving forward. The program is not fully developed. Community needs have not been adequately considered and the impacts on communities not adequately analyzed. A more strategic approach is required. If the Council moves ahead, there should be a referendum. The buyback permit pool should be allocated entirely for adaptive management. There should be: no carry-over provision, a quota owner-on-board requirement, a 1 percent control cap, greater accumulation limits for RFAs, a process to assist new entrants, full cost recover, equitable sharing of costs, use of adaptive management to benefit processors only after the demonstration of harm, separate bycatch caps for each sector, fixed terms (10 years), collection of resource rents for public benefit, and an industry referendum.

Generally supportive of trawl rationalization. Because of the gear switching provision, species coverage should not be based on what is taken with trawl gear but what is taken with any gear that may be fished under the Individual Fishing Quota program. There should be a way to bring species into the program which are not covered by the program. Some key elements are 100 percent observer coverage, the adaptive management program, and gear conversion. The accumulation cap should be 3 percent with no grandfather clause but an exception for RFAs. The QS should be fixed term and rents collected through an auction.

Generally supportive of trawl rationalization. Concern about taking too much (20 percent) away from fishermen, making them less viable. Adaptive management set aside could be greater than 10 percent. Communities have been weighing in opposition to an allocation to processors (see attached listing).

### **Written Statements (Attached)**

PFMC  
11/02/2008

NRDC acknowledges the tremendous amount of work that has been done, but finds the analysis incomplete for some elements of the program. For example, there are proposals not to assign quota to some species on the grounds they are rarely caught by trawls, yet we found no analysis of whether those species might be caught by fixed gear (a relevant question given gear switching), and no mention of triggers for assigning quota should conditions change. We recommend additional targeted analysis and a transparent process to address design issues that will not be resolved at the November Council meeting.

1. Adaptive Management Provision (AMP). Support an AMP of at least 10% to be used for environmental and socio-economic purposes, such as addressing unforeseen impacts; promoting economic development, stable employment and processing capability in vulnerable communities; and promoting bycatch reduction/sustainable practices. The AMP should begin at the start of the program.

*Rationale:* A multi-purpose AMP could promote lower-impact fishing practices, helping mitigate the ITQ program's inherent lack of incentive to reduce bycatch and habitat impacts related to non-quota species. Setting aside quota for unintended consequences makes sense given our inability to predict the future. The AMP could address adverse impacts on smaller volume fishermen and processors, balancing the economic efficiency focus of an ITQ program with social and conservation values. It has the potential to provide a more targeted means of stemming the loss of small processors and stabilizing vulnerable communities than processor quota, which would likely benefit larger operations disproportionately and could be transferred out of a community by a processor with multiple operations. We would support an increase in the AMP to 15% or more if a significant portion remains available for conservation purposes.

2. Gear Switching with Incentives for Permanent Conversion. We recommend combining the unrestricted gear switching provision (with full observer coverage) in the preferred alternative with a conceptual endorsement of incentives for permanent conversion to lower impact gears. We urge that fixed-gear limited-entry permit holders be qualified to buy trawl quota share, and that a committee with trawl, fixed gear, and conservation representation be formed to develop the details of this provision.

*Rationale:* Flexible switching will facilitate increased catch of target species without creating conservation benefits. In contrast, allowing fixed gear permit holders to purchase trawl quota share clearly shifts effort from trawl to lower impact gears. Likewise, permanent conversion from trawl to pots, for example, could reduce the intensity and possibly the extent of trawling, benefiting bottom habitat and reducing the catch of limiting species like yelloweye rockfish. Incentives for permanent conversion may appeal to trawlers in areas of high bycatch risk (Washington) and places with high consumer demand for non-trawl-caught fish (central and south central California).<sup>1</sup> A recent study found that pots consistently have the least overfished species bycatch and are the preferred choice of trawlers interested in conversion.<sup>2</sup> An incentive program could make gear conversion a viable alternative to selling out; it thus diversifies the fleet and may help stem the loss of fishing activity from vulnerable communities. Incentives could include supplemental quota from the AMP for the first couple of years after permanent conversion or funds to buy new gear, among other options. Without such incentives, the groundfish fleet may miss opportunities for a more optimal voluntary partition of quota between trawl and other sectors that could benefit fishermen and fish.

3. Accumulation Limits and No Grandfather Clause. We recommend an accumulation cap of 3% and the preferred alternative for no grandfather clause.

*Rationale:* The combination of these two measures should help prevent monopolistic control by big players. A provision requiring that the owner of quota share operate the permitted vessel would be even more effective and more difficult to circumvent.

4. Acknowledge Oceans as a Public Trust. There are a number of longer-term design options that recognize public ownership of the oceans. One is a fixed term for quota share (e.g. the 15- to 16-year period considered in the PEIS), which could be followed by auction of a portion of the QS on a rolling basis, or by reallocation to the former holder if performance standards are met. Another option is retention of a quota set aside of 3 to 5% after the transition to quota shares is complete (e.g. 5 years in), to be used for public purposes such as research and conservation improvements. These features should be designed to best meet the objectives of the trawl ITQ program.

*Rationale:* The Council is contemplating an enormous permanent gift of groundfish to the trawl fleet. This grant is likely to create a great deal of wealth, yet there is no mechanism to transfer that “rent” over time to the owner of the resource—the public. The preferred alternative lacks measures to ensure that bycatch of non-quota species will be reduced or habitat better conserved. These objectives will not be met automatically, and if quota holders lease out their quota, the lessors will lack a long-term stewardship incentive. We urge the Council and NMFS to endorse design features that recognize the public trust, per the recommendations of the U.S. Commission on Ocean Policy.

A fixed term can provide greater management flexibility and an opportunity to apply performance standards. Continuation of the AMP after the initial transition period, at a reduced rate, would provide a source of revenue or quota that could be used to achieve ongoing conservation needs and other public purposes not addressed by an ITQ program.

5. Broadest List of Species to Be Covered with Quota. Based on the incomplete analysis now available, we suggest assigning quota for all sectors for a broader range of species than recommended by the GAC at its most recent meetings (possibly to include such species as black rock, spiny dogfish and nearshore rockfish). Additional analysis is needed, as well as a mechanism and appropriate triggers to bring initially excluded species into the quota system. We concur that overfished species should be allocated as quota pounds, not quota share, until they are rebuilt.

*Rationale:* Unless all overfished species are assigned quota, the most valuable commodity will not be subject to the market incentives for more selective fishing, and much of the potential benefit of the trawl rationalization program will be lost. Quota for other groundfish species creates incentives to reduce bycatch of those species and individual accountability for unwanted impacts. The analysis in Appendix A examines historic catch by *trawlers* of species under consideration for exclusion from quota, but not past catch by *fixed gear*, which is relevant given gear switching. Species excluded from quota should have triggers for assigning quota, based on factors like change in status or catch rates by quota holders.

6. 100% Observer Coverage. We recommend 100% observer coverage as a top priority.

*Rationale:* 100% coverage is critical to understanding the impacts of the ITQ system and achieving (1) ITQ program objectives to reduce bycatch, discard mortality and ecological impacts; (2) FMP objectives to reduce non-groundfish mortality; and (3) MSA objectives to promote conservation and rebuilding.

7. Community Fishing Associations. We support the concept offered by The Nature Conservancy as a way to provide communities with options for collectively benefitting from an ITQ program, proactively mitigating potential adverse impacts, and helping anchor fishing and quota in a community.

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<sup>1</sup> Appendix A, Analysis of Components, Elements and Options for IFQ Alternative, Oct 2008, PFMC, NMFS A-25

<sup>2</sup> Jenkins, Lekelia, 2008. Gear Conversion as a Means of Reducing Bycatch and Habitat Damage in the U.S. Westcoast Sablefish Fishery, p. ii.



ENVIRONMENTAL DEFENSE FUND

finding the ways that work

October 25, 2008

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

Re: Comments on Amendment 20: Trawl Rationalization

Dear Chairman Hansen and Members of the Pacific Fishery Management Council:

First, we want to thank the Council for its dedication over the past five years in developing alternative program design options for reforming the west coast trawl fishery. It has been a long and arduous process, involving countless hours of work by staff, advisory groups, and Council members themselves. Now at the November Council meeting, the Council is scheduled to make the basic design decisions for the program that are necessary to assure that trawl LAPP management will not only achieve its critical biological, economic and social goals but will be a model for other US fisheries around the country.

Environmental Defense Fund (EDF) has been actively involved in the design process since the beginning. We strongly believe that a well designed IFQ program will provide both the incentive and accountability to reduce bycatch, improve gear selectivity and decrease habitat impacts as well as result in significantly improved data on which to base management decisions. Evidence from fisheries around the world also shows that IFQ programs can greatly improve the economic performance of the fisheries. We believe that the west coast IFQ program will be no exception. The one area where IFQ programs have gotten mixed reviews is in the social impacts resulting from the distribution of these benefits. Once again, the decisions that the Council makes in November will greatly impact how well the program meets its social objectives. EDF offer the following recommendations in support of a program which will best meet the needs of the resource, the industry and the coastal communities that depend on the west coast trawl fishery.

Adaptive Management Provision

We urge the Council to include an Adaptive Management Provision as part of their preferred alternative in November. In June, the preliminary preferred alternative included three mechanisms to address community stability concerns: a landing zone requirement, processor allocation and the AMP. *We support the Groundfish Allocation Committee's recommendation that neither processor allocation or the landings zone requirement move forward and that community issues be addressed through the AMP.*

We also agree with the GAC that the AMP should provide an equitable regional distribution of a modest amount of quota pounds that will provide coastal communities in each state having the opportunity to benefit from the AMP. An upfront percentage distribution of the AMP among the three states would allow different state priorities to be taken into account when awarding AMP quota pounds.

We appreciate that many industry members have been concerned about the AMP because the details have not been fully developed. Since the June Council meeting, both the State of California and the State of Washington have put considerable thought into AMP program design. We applaud these efforts and also suggest that further progress on the details of the AMP will be greatly enhanced when the initial allocation decisions are finalized. Therefore we make the following recommendations to complete AMP program development:

1. In November, the Council should make the following decisions as part of the Council's final preferred alternative:
  - a. Initial allocation of QS: 100% to permit holders;
  - b. Include the AMP as part of the program and decide on:
    - i. Overall percent of annual TAC that can be used for AMP; and
    - ii. Percentage division of AMP among states and the method for adjusting relative state percentages.
2. Post November, complete the design of the AMP:
  - a. Charge each State, working with their stakeholders and with support from Council and NMFS staff, with developing state processes for deciding how state-associated AMP quota pounds are awarded, including relevant formulas and ranking criteria
  - b. Determine how state processes will be incorporated into Council/NMFS rulemaking process
  - c. Formalize resulting AMP program design through appropriate rulemaking process (trailing amendment or regulatory rule) so that AMP could be implemented at the outset of the overall program itself.

### Initial Allocation Issues

#### *Who should be initially allocated QS?*

As discussed above, EDF believes initial allocation should be based on LE permit ownership. EDF believes that processors are a critical part of the groundfish industry and coastal communities, and our recommendation on this point is not intended to be nor should it be construed as “anti processor”. However, IFQ programs rely on changes in fishing behavior to reap the conservation benefits from the program. One of these anticipated benefits is improved bycatch avoidance, which in turn will allow increased landings of healthy stocks. Allocating quota to those who fish (or control the operation of the vessel) is most likely to result in the changes in fishing activities that will produce the very conservation benefits which the program is intended to promote because they will stand to benefit most directly from those improvements. These increased landings will, however, benefit both harvesters and processors. The Council's decision document states that “overall, the IFQ program will likely reduce operation costs and make west coast products more competitive on the global market, thus increasing the volume of

what processors are able to see at a normal profit level even if processors do not receive an initial allocation".<sup>1</sup>

Our arguments against initial processor allocation based on processing history are further summarized below:

**Processor allocation sets a precedent that will have a chilling effect on other rationalization efforts.**

Initial allocation of harvesting quota based on processing history has not occurred in any program worldwide. Increased use of LAPPs for management has been a national priority strongly supported by EDF. We believe that a significant initial allocation of harvesting shares to processors based on processing history would negatively impact the ability to initiate programs elsewhere, resulting in the inability to reap the conservation and economic benefits associated with LAPP programs.

**Processor allocation is an inappropriate tool to address undocumented and largely unfounded stranded capital claims.**

We have provided an analysis in earlier testimony arguing against the need for initial allocation to "compensate" for stranded capital.<sup>2</sup> The Council document also finds stranded capital in the non-whiting fishery unlikely to occur because landed volume should rise and the fishery has not operated as a derby fishery for years.<sup>3</sup>

**Processor Allocation does not guarantee community stability.**

A more recent argument that has been used in support of processor shares is that initial allocation is needed in order to assure access to raw product. This has sometimes been couched in a community stability framework.

First, this argument overlooks the most basic fact that fishers need access to processors to realize the value of their catch, and that an economically viable processing sector is an essential element of an economically viable industry. Harvesters need processing capabilities under the current system, and they will need processing capabilities under LAPPs. The notion that fishermen will systematically deny processors access to raw product ignores this most basic fact: each need the other.

Secondly, we believe that the AMP is a far better way to address community stability issues. We fully anticipate and hope that AMP criteria will encourage enhanced partnerships with processors and harvesters that demonstrate a commitment to work together to assure that quota pounds provide the greatest direct and indirect returns to coastal communities possible. Many fishermen today have a long-term relationship with a processor that they hope to maintain after rationalization. The Decision Document shows that processor allocation would actually shift quota away from associations like these which were in place in 2004-2006. In fact, the

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<sup>1</sup> Rationalization of the Pacific Coast Limited Entry Trawl Fishery, Decision Document for November 2008 PFMC Council meeting, October 2008. Appendix A, pg 69

<sup>2</sup> Wilen, James E. University of California at Davis, White Paper on Stranded Capital in Fisheries, prepared for Environmental Defense Fund, May 2008

<sup>3</sup> Rationalization of the Pacific Coast Limited Entry Trawl Fishery, Decision Document for November 2008 PFMC Council meeting, October 2008. pg 414

document states that most of these fishermen/processor associations would be better funded initially with 100% allocation to permit holders than with a 75/25% split.<sup>4</sup>

Even where processor allocation does reflect current community landing patterns, initial allocation of harvesting quota to processors carries with it no guarantees that that quota will be utilized in the community where it was “earned”. While processors have testified that they will use their initially allocated pounds to “attract” fishermen (and their respective QS) to sell to them, they may also decide to stack that quota on vessels that they own, making it more difficult for fishermen to buy or lease enough quota to stay in business.

#### **Post initial allocation, QS is likely to flow to processors.**

In general, processors may be in a better position to purchase quota in the market place once permanent transfers are allowed as they likely have better access to capital and a longer time horizon to realize the returns on the purchase.<sup>5</sup> A processor may also be willing to pay more for a unit of quota since he intends to use that unit as leverage to access more raw product for processing while its value to the fishermen is only its own stream of earnings.<sup>6</sup> Therefore, if a processing company wants to be acquire quota for additional supply security or as a hedge against competition, it should be in a good position to do so in the marketplace. In Canada, the experience has shown that the processing sector has a mix of successful companies, some of whom had partial ownership in boats and quota prior when the program was implemented, some who purchased quota later, and others that operate successfully without any quota ownership.

#### *Opportunity for Divestiture if Over Accumulation Limits*

While EDF in general supports the intent of the “no grandfather clause”, we do believe that it may make sense to allow some opportunity for those over the accumulation cap to recoup some return on investment that may have put them over the accumulation cap. Therefore, we could also support a 3 year divestiture period for QS holders to sell any initially allocated QS above accumulation limits.

#### Other Program Elements

##### *Tracking and Monitoring*

EDF supports the preliminary preferred alternative requirement for 100% at-sea and shoreside monitoring. We believe that 100% monitoring is vital to the success of the program as it is difficult to have full individual accountability without it. The monitoring system grounds the incentive based behavior that results in both conservation and economic returns under an IFQ program.

##### *Gear Switching*

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<sup>4</sup> “most” is defined as fishermen/processor associations where at least \$40,000 of annual ex-vessel revenue is associated – see Rationalization of the Pacific Coast Limited Entry Trawl Fishery, Decision Document for November 2008 PFMC Council meeting, October 2008. Appendix A, pg 97

<sup>5</sup> See Rationalization of the Pacific Coast Limited Entry Trawl Fishery, Decision Document for November 2008 PFMC Council meeting, October 2008. Appendix A, pages 61-62.

<sup>6</sup> Ibid, Appendix E, pages 16-17.

EDF supports the gear switching provision in the preliminary preferred alternative. While we do not believe that electronic monitoring techniques are advanced enough today to satisfy the 100% monitoring requirement in the mixed species non-whiting trawl fishery, it may be possible to achieve 100% with at-sea electronic monitoring in lieu of observers for other gears. If studies show this to be true, then we would support allowing electronic monitoring as a cost effective alternative that could also provide additional incentives for gear switching.

#### *10% carry over*

The Council's final preferred alternative should retain the 10% carry over provision to provide flexibility for fishermen and to eliminate the incentive to fish to the limit each year in order to avoid a "forfeit" of the uncaught quota. Although this may increase the complexity of the tracking and monitoring somewhat, that has not proven much of an issue in British Columbia. Their experience is that any increase in complexity is off set by the conservation benefits as fishermen tend to "underfish" rather than overfish as a result of the ability to carry over a percentage of unused quota.

#### *Area management*

We remain concerned that shifts in landings patterns could result in an increased potential for localized overfishing. The discussion at the GAC indicated a similar concern when they specified that areas where management lines are used for conservation purposes should be closely monitored and further subdivided if localized depletion concerns arose.

We agree that the 40° 10' split is somewhat arbitrary. However, in the absence of more definitive information of the range of distinct substocks, even this one split may help to prevent isolated geographical depletion due to shifting fishing patterns.

A better approach, however would be to proactively review all of the available information and then make some more selective precautionary area-specific quotas where possible. We suggest that the Council convene a working group of scientists to determine if there are any species of particular concern where additional subdivisions would be advisable even if substock identification is not definitive. This could occur in the first six months of 2009 and then the results could be incorporated in the final package that moves forward for Secretarial review and approval. While a process is included for implementing after-the-fact area splits should new biological information identify a need, there may be more resistance to further subdivision once quota has been traded based on an expectation of coastwide use. This argues for being precautionary from the outset.

#### Conclusion

Environmental Defense Fund thanks the Pacific Fishery Management Council and NOAA Fisheries for its perseverance on this important matter. We would like to encourage the Council to move forward with a final vote in November on the highest priority and most critical design and allocation issues in order to complete the Draft EIS. EDF remains committed to working constructively with the Council, NOAA, States and all stakeholders to bring the IFQ to completion and implementation.

Local Community Elected Commissions that have voted to oppose Processor Allocation:

Del Norte County Commission CA

Crescent City Harbor District CA

Crescent City Council CA

San Mateo County Harbor District CA

Morro Bay Harbor District CA

Moss Landing CA

Newport Port Commission OR\*

Warrenton City Council OR\*

Clatsop County Commission OR\*

Brookings Harbor Commission OR

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\* Those commissions with an asterisk had to vote a second time on their resolutions due to pressure from large seafood processors (Pacific Seafoods and Bornstein Seafoods). However in all three cases, the commissions held firm in their opposition to granting processor quota.

Santa Cruz Port District  
**RESOLUTION #08-08**

October 28, 2008

ON THE MOTION OF COMMISSIONER GODDARD

DULY SECONDED BY VICE-CHAIRMAN GEISREITER

A resolution of the Santa Cruz Port District Commission stating its position on the concept of Individual Transferable Quotas proposed by the Pacific Fisheries Management Council "PFMC" for the ground fish industry.

WHEREAS, the Santa Cruz Port District Commission manages the Santa Cruz Small Craft Harbor; and,

WHEREAS, commercial fishing has been the centerpiece of a unique socio-economic community in the Santa Cruz area since the mid-1850's; and,

WHEREAS, the Santa Cruz community, including the Santa Cruz Commercial Fishermen's Marketing Association, harbor management, and conservation groups, has been working to transition the local fishery to a healthy, sustainable industry in the spirit and law of the Magnuson-Stevens Fisheries Conservation and Management Act; and,

WHEREAS, the PFMC will consider the implementation of Individual Transferable Quotas "ITQ's" in the harvest of ground fish including trawl, seine, hook and trap; and,

WHEREAS, this is an extremely complex matter which could cause the dislocation of fishing communities, fishermen and landside infrastructure such as buying stations, off-loading wharves, local fish processors, cutting services, cold storage, and ice production plants.

NOW, THEREFORE, BE IT RESOLVED that the Santa Cruz Port District Commission requests that the PFMC:

1. not grant an initial ITQ allocation to fish processors;
2. not create policy which would eliminate any historic fishing community such as Santa Cruz from the ground fish industry;

- 3. in all future ITQ processes, utilize Adaptive Management Principles as provided for in the Magnuson-Stevens Act, to ensure that historic fishing communities, like ours in Santa Cruz, are given the opportunity to fully participate in quota allocations

PASSED AND ADOPTED this 28<sup>th</sup> day of October, 2008, by the following vote:

AYES: MERRALL, GEISREITER, GODDARD, THOITS, LEE

NOES: NONE

ABSENT: NONE

APPROVED BY:

  
 Ronald J. Merrall, Chairman

**Giuseppe Pennisi  
321 Laine Street  
Monterey, California  
(831) 521-4112**

**June 6, 2008**

**To Whom It May Concern,**

**I am Giuseppe Pennisi who since 1956 have owned and operated three trawlers out of Monterey Bay. I cannot understand or deal with rules that knowingly cause such enormous waste of fish. As the owner and operator of Royal Seafood, a fish processing plant, I feel that it is not right for processors to attempt to take any part of the quota allowed from those who have honorably earned and deserved it.**

**There's many trawl owners who have put their boots on for many years and have gone fishing in bad and good weather. They risk their lives and boats in order to earn a decent living for their families and themselves.**

**They paid for their boats, tackle, berthing, maintenance, engine repairs, and supplies in order to make a relatively small profit if they happen to be fortunate enough to be able to catch the relatively limited species and numbers which may be both legal and available from time to time.**

**They have taken the responsibility to pay their crews, including maintenance and cure when required by the provisions of virtual absolute liability provided by the Jones Act.**

**The question is: How is it that fish processors and others who have assumed none of the above burdens, losses and risks can qualify for a portion of the quotas merely through political lobbying, pressures and favoritism?**

**What species of fish should be caught? It is given that many species of fish dwell in the same locations and depths. How does it help anyone, including the fish to throw away and waste incidental catches of prime, valuable, delicious fish?**

**As an alternative to this inexcusable and lamentable mandatory discarding of edible fish which have already died in the harvesting process, there are areas which limit the time at sea for fishing boats, but permit them to catch and keep, not destroy, the fish which they are lucky enough to catch.**

**Trawl fishermen have already transitioned from "high rise" nets up to 35 feet to "low rise" nets of only 3-4 feet to prevent, or at least substantially minimize rock fish from being caught with bottom fish. Underwater movies prove that rock fish seek altitude when confronted by the "halo of the net" and resultant "dust cloud". The limitations on the height of the net therefore tends to minimize the catch of the rock fish as opposed to the**

bottom fish. Restrictions on gear and mesh have proven successful in conservation goals of certain species, including juveniles. (Minimum mesh size has increased from unlimited to 4 1/2 inches, thereby already permitting escapement of innumerable juveniles.) For example, a "pineapple net" (upside down net) has proven effective in Europe and the U.S. to target bottom species, making it further inefficient to catch rock fish.

The present sad status of misplaced priorities on the identities of persons entitled to share in quotas and "rules of engagement" during the actual fishing process urgently require serious revision and rethinking. Every intentionally destroyed edible fish, of the tens of thousands discarded, is a serious responsibility for those who have created the grossly inefficient rules which presently govern the trawl fish industry.

Here is an example of a statement made by a biologist who has spent his lifetime dealing directly with the above problems and concepts: Dr. Richard Parish, esteemed biologist who worked for the National Marine Fisheries for decades says "I'm happy that I'm retiring because the rules just don't make sense any more."

On the subject of IFQ based on personal history, I believe that we, the industry, have been divided and conquered. I am opposed to any further division such as IFQs which in turn would turn a West Coast fisherman in the business of trawling from the freedom of fishing anywhere in the latitude of the West Coast to limiting and not being able to have the freedom to be able to choose where in the West Coast he may have a better chance to make a living due to the restriction on what type of fish are found in the southern waters verses the northern waters. Meaning, we don't have cod fish in the south in any quantity for example, if a boat from California were to fish out of Washington, they would have no history of cod fishing or other species pertinent to the Washington Coast and vice versa, which results in further putting what little freedom there is left in another box and eliminating the chance of choice.

On the subject of improvement reduction of walls of the current box where the quota allowed needs to be able to be mobile where a boat could choose to divert his quota to another boat regardless of the legal fishing gear used which would be of benefit to a boat that would transfer the specific fish quota to the receiving boat and would improve or benefit either boat.

In light of fuel price increases, cost of living increases, and hammered by cheap imported foreign product we certainly need to draw attention to the reality of trying to survive in this critical state that our industry is in. Our existence depends on solutions.

Thank you,

Giuseppe Pennisi

PS. I am open to discuss possible solutions.

we do not recognize the taxonomic validity of the bearded and ringed seal subspecies or the spotted seal species as described in this petition, the petitioner requests that we evaluate whether the spotted, ringed and bearded seals of the Bering, Chukchi, and Beaufort seas that are the subject of this petition constitute a DPS of the full species and/or represent a significant portion of the range of the full species and are therefore eligible for listing on such basis.

It is the petitioner's contention that ice seals face global extinction in the wild, and therefore, constitute a threatened or endangered species as defined under 16 U.S.C. 1532(6) and (20). The petition presents information on (1) "global warming which is resulting in the rapid melt of the seals' sea-ice habitat;" (2) "high harvest levels allowed by the Russian Federation;" (3) "oil and gas exploration and development;" (4) "rising contaminant levels in the Arctic;" and (5) "bycatch mortality and competition for prey resources from commercial fisheries." The petition also presents information on the species' taxonomy, distribution, habitat requirements, reproduction, diet, natural mortality, and demographics, as well as a discussion of the applicability of the five factors listed under ESA section 4(a)(1). We have reviewed the petition, the literature cited in the petition, and other literature and information available in our files. Based on our review of the petition and other available information, we find that the petition meets the aforementioned requirements of the regulations under 50 CFR 424.14(b)(2) and therefore determine that the petition presents substantial information indicating that the requested listing action may be warranted.

#### Status Review

As a result of this finding, we will continue our ongoing status review to determine whether listing ringed, bearded, and spotted seals under the ESA is warranted. We intend that any final action resulting from this status review will be as accurate and as effective as possible. Therefore, we are opening a 60-day public comment period to solicit comments, suggestions, and information from the public, government agencies, the scientific community, industry, and any other interested parties on the status of the ice seals throughout their range, including:

(1) Information on taxonomy, abundance, reproductive success, age structure, distribution, habitat selection, food habits, population density and

trends, habitat trends, and effects of management on ice seals;

(2) Information on the effects of climate change and sea ice change on the distribution and abundance of ice seals, and their principal prey over the short- and long-term;

(3) Information on the effects of other potential threat factors, including oil and gas development, contaminants, hunting, poaching, and changes in the distribution and abundance of ice seals and their principal prey over the short-term and long-term;

(4) Information on management programs for ice seal conservation, including mitigation measures related to oil and gas exploration and development, hunting conservation programs, anti-poaching programs, and any other private, tribal, or governmental conservation programs which benefit ice seals; and

(5) Information relevant to whether any populations of the ice seal species may qualify as distinct population segments.

We will base our findings on a review of the best scientific and commercial information available, including all information received during the public comment period.

#### Authority

The authority for this action is the Endangered Species Act of 1973, as amended (16 U.S.C. 1531 *et seq.*).

Dated: August 29, 2008.

**James W. Balsiger,**

*Acting Assistant Administrator for Fisheries, National Marine Fisheries Service.*

[FR Doc. E8-20544 Filed 9-3-08; 8:45 am]

**BILLING CODE 3510-22-S**

## DEPARTMENT OF COMMERCE

### National Oceanic and Atmospheric Administration

#### 50 CFR Part 622

[Docket No. 0808051052-81144-01]

RIN 0648-AW85

#### Fisheries of the Caribbean, Gulf of Mexico, and South Atlantic; Reef Fish Fishery of the Gulf of Mexico; Referendum Procedures for a Potential Gulf of Mexico Grouper and Tilefish Individual Fishing Quota Program

**AGENCY:** National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

**ACTION:** Proposed rule; request for comments.

**SUMMARY:** NMFS issues this proposed rule to provide potential participants information concerning a referendum for an individual fishing quota (IFQ) program for the Gulf of Mexico (Gulf) commercial grouper and tilefish fisheries. This rule informs the potential participants of the procedures, schedule, and eligibility requirements that NMFS would use in conducting the referendum. If the IFQ program, as developed by the Gulf of Mexico Fishery Management Council (Council), is approved through the referendum process, the Council may choose to submit the IFQ program to the Secretary of Commerce (Secretary) for review, approval, and implementation. The intended effect of this proposed rule is to implement the referendum consistent with the requirements of the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act).

**DATES:** Written comments must be received on or before October 6, 2008.

**ADDRESSES:** You may submit comments on the proposed rule, identified by "0648-AW85", by any of the following methods:

- Electronic Submissions: Submit all electronic public comments via the Federal e-Rulemaking Portal: <http://www.regulations.gov>.
- Fax: 727-824-5308; Attention: Susan Gerhart.
- Mail: Susan Gerhart, Southeast Regional Office, NMFS, 263 13th Avenue South, St. Petersburg, FL 33701.

Instructions: All comments received are a part of the public record and will generally be posted to <http://www.regulations.gov> without change. All Personal Identifying Information (for example, name, address, etc.) voluntarily submitted by the commenter may be publicly accessible. Do not submit Confidential Business Information or otherwise sensitive or protected information.

NMFS will accept anonymous comments (enter N/A in the required fields, if you wish to remain anonymous). You may submit attachments to electronic comments. Attachments will be accepted in Microsoft Word, Excel, WordPerfect, or Adobe PDF file formats only.

Copies of supporting documentation for this proposed rule, which includes a regulatory impact review (RIR) and a Regulatory Flexibility Act Analysis (RFAA), are available from NMFS at the address above.

**FOR FURTHER INFORMATION CONTACT:** Susan Gerhart, 727-824-5305.

**SUPPLEMENTARY INFORMATION:** The reef fish fishery in the exclusive economic

zone (EEZ) of the Gulf is managed under the Fishery Management Plan for the Reef Fish Resources of the Gulf of Mexico (FMP). The FMP was prepared by the Council and is implemented under the authority of the Magnuson-Stevens Act by regulations at 50 CFR part 622.

### Background

The Council first considered an IFQ program for the Gulf grouper fishery in 2004. At that time, the Council anticipated future action was needed to further control effort in the Gulf grouper fishery. At its October 2004 meeting, the Council requested NMFS publish a control date to discourage speculative participation in the grouper fishery for the purpose of developing a catch history. The Council chose October 15, 2004, as the control date. NMFS published the control date in the **Federal Register** on November 16, 2004 (69 FR 67106) and requested public comment.

The Council is currently developing Amendment 29 to the FMP, which includes a multi-species IFQ program as the preferred management approach to address overcapacity issues and to rationalize effort in the Gulf commercial grouper and tilefish fisheries.

Section 303A of the Magnuson-Stevens Act specifies general requirements for limited access privilege (LAP) programs implemented in U.S. marine fisheries. A LAP is defined as a Federal limited access permit that provides a person the exclusive privilege to harvest a specific portion of a fishery's total allowable catch. This definition includes exclusive harvesting privileges allocated to participants under IFQ programs.

Section 303A(c)(6)(D) of the Magnuson-Stevens Act outlines specific requirements for IFQ program proposals developed by the Council. The Magnuson-Stevens Act requires such program proposals, as ultimately developed, be approved through referenda before they may be submitted for review and implementation by the Secretary. The Magnuson-Stevens Act also mandates the Secretary publish referendum guidelines to determine procedures for initiating, conducting, and deciding IFQ program referenda, as well as voting eligibility requirements. These procedures and guidelines are intended to ensure referenda conducted on IFQ program proposals are fair and equitable and will provide the Council the flexibility to define IFQ program referenda voting eligibility requirements on a fishery-specific basis, yet within the constraints of the Magnuson-Stevens Act and other applicable law. NMFS

published proposed guidelines in the **Federal Register** on April 23, 2008 (73 FR 21893) and requested public comment.

### Purpose of the Proposed Rule and the Referendum

NMFS, in accordance with the provisions of section 303A(c)(6)(D) of the Magnuson-Stevens Act, will conduct a referendum to determine whether the plan amendment for an IFQ program for the Gulf commercial grouper and tilefish fisheries, as developed by the Council, should be submitted to the Secretary for review, and possible approval and implementation. The determination will be based on a majority vote of eligible voters. The primary purpose of this proposed rule is to notify potential participants in the referendum, and members of the public, of the procedures, schedule, and eligibility requirements that NMFS would use in conducting the referendum. The procedures and eligibility criteria used for the purposes of conducting the referendum are independent of the procedures and eligibility requirements in the proposed IFQ program for the Gulf commercial grouper and tilefish fisheries contained in Amendment 29 to the FMP. The proposed IFQ program is being developed by the Council through the normal plan amendment and rulemaking processes and involves extensive opportunities for public review and comment during Council meetings, public hearings, and public comment on any proposed rule.

### Referendum Process

#### *How Would the Referendum Be Initiated?*

According to the guidelines, a Council must have held public hearings on an IFQ program proposal, considered public comment on the proposal, and selected preferred alternatives for the proposed IFQ program, before submitting an initiation request letter to NMFS. The initiation request letter would allow NMFS to initiate the referendum process. As the above requirements have been fulfilled, the Council submitted an initiation request letter to NMFS on August 18, 2008.

The referendum initiation request letter must include recommended eligibility criteria for voting in the referendum, rationale for the recommendation, any alternatives to the recommendation, and supporting analyses for the recommendation. For a fishery managed with multi-species permits, the initiation request letter must also include recommended criteria

for defining those permit holders who have substantially fished the species to be included in the referendum process.

If the referendum fails to approve the proposed IFQ program, any request from the Council for a new referendum in the same fishery must include an explanation of the substantive changes to the proposed IFQ program or the changes of circumstances in the fishery that would warrant initiation of an additional referendum.

#### *Who Would Be Eligible to Vote in the Referendum?*

Section 303A(c)(6)(D) of the Magnuson-Stevens Act establishes criteria regarding eligibility of persons who may vote in the referendum. For referenda conducted in New England fisheries, section 303A(c)(6)(D)(v) of the Magnuson-Stevens Act includes using income-dependent criteria when determining voter eligibility, i.e. crew members who derive a significant percentage of their total income from the fishery under the proposed IFQ program would be eligible to vote in the referendum. However, for Gulf fisheries managed with multi-species permits, such as the Gulf commercial grouper and tilefish fisheries, the Magnuson-Stevens Act states that those participants who have substantially fished the species considered for the IFQ program, would be eligible to vote in the referendum. The Council and NMFS interpret "substantially fished" to represent substantial contribution to the overall fishery production in total harvest. Therefore, the Council has established voter eligibility criteria in terms of annual grouper and tilefish landings thresholds. The decision to identify participants in terms of average annual harvest does not consider dependency on the fishery. A fishery participant may not meet the average annual grouper and tilefish landings threshold, but still be dependent on the fishery as a source of income.

In the Council's referendum initiation request letter, the definition of "substantially fished" states, "Only commercial reef fish permit holders, with active or renewable permits (within one year of the grace period immediately following expiration), who have combined average annual grouper and tilefish landings from logbooks during the qualifying years of at least 8,000 pounds (per permit) be considered as having substantially fished." The qualifying years selected by the Council are 1999 through 2004, with an allowance for dropping one year. Therefore, NMFS will use landings data from logbooks submitted to and received by the Science and Research

Director, Southeast Fisheries Science Center by December 31, 2006, for the years 1999 through 2004, with the allowance for dropping one year, as the sole basis to determine those permit holders that meet the Council's eligibility criterion and will be eligible to vote in the referendum.

#### *Would Votes Be Weighted?*

The Council has proposed assigning one vote for each permit associated with qualifying landings from the years 1999 through 2004, with no additional vote weighting based on catch history.

#### *How Would Votes Be Conducted?*

On or about December 1, 2008, NMFS would mail eligible voters a ballot for each permit associated with qualifying landings from the years 1999 through 2004. NMFS would mail the ballots and associated explanatory information, via certified mail return receipt requested, to the address of record indicated in NMFS' permit database for eligible permit holders. The completed ballot must be mailed to Susan Gerhart, Southeast Regional Office, NMFS, 263 13th Ave South, St. Petersburg, FL 33701. A referendum ballot must be received at that address by 4:30 p.m., eastern time, no later than 30 days after the postmark date on the envelope containing the ballots provided by NMFS; ballots received after that deadline would not be considered in determining the outcome of the referendum. Although it would not be required, voters may want to consider submitting their ballots by registered mail.

#### *How Would the Outcome of the Referendum Be Determined?*

Vote counting would be conducted by NMFS. Approval or disapproval of the referendum would be determined by a majority (i.e., a number greater than half of a total) of the votes cast. NMFS would prepare a media release announcing the results of the referendum and would distribute the release to all Gulf reef fish permittees, including dealers, and other interested parties within 60 days of the deadline for receiving the ballots from eligible voters. The results would also be posted on NMFS' Southeast Regional Office's website at <http://sero.nmfs.noaa.gov>.

#### *What Will Happen After the Referendum is Conducted?*

NMFS would present the results of the referendum at the April 13–17, 2009, Council meeting. If the referendum fails, the Council cannot proceed with submission of Amendment 29 and regulations to

implement an IFQ program for the Gulf commercial grouper and tilefish fisheries. If the referendum is approved, the Council would be authorized, if it so decides, to submit Amendment 29 and regulations to NMFS for review and possible approval and implementation of an IFQ program for the Gulf commercial grouper and tilefish fisheries. The proposed IFQ program was developed through the normal Council process that involved extensive opportunities for industry and public review and input at various Council meetings. The public will have additional opportunities to comment during public comment periods on the plan amendment and the proposed regulations.

#### *Will the Referendum Be Conducted in a Fair and Equitable Manner?*

The Magnuson-Stevens Act requires the Secretary to conduct referenda for potential IFQ programs in a fair and equitable manner. NMFS' referendum guidelines outline criteria that NMFS must consider when reviewing the Council's referendum initiation request letter and supporting analyses to ensure the referenda will be conducted in a fair and equitable manner and are consistent with the national standards and other provisions of the Magnuson-Stevens Act, and other applicable law. NMFS has reviewed these documents from the Council and has concluded that the proposed referendum criteria are consistent with the guidelines. NMFS has preliminarily concluded that:

1. The Council's referendum criteria are rationally connected to and further the objectives of the proposed IFQ program. The Council's definition of "substantially fished" includes those permit holders with both past and present participation in the grouper and tilefish fisheries and allows those who account for the majority of grouper and tilefish landings to vote in the referendum. The definition includes use of catch histories from a qualifying time period that would also be used for initial apportionment of IFQ shares in the proposed IFQ program.

2. Referendum voting eligibility requirements are designed to prevent any one person or single entity from obtaining an excessive share of the voting privileges. The Council has proposed assigning one vote for each permit associated with qualifying landings from the years 1999 through 2004, instead of weighting the votes.

3. The voter eligibility criteria enable validating a participant's eligibility. Landings data from logbooks submitted to NMFS and NMFS permit history records will be used to validate

participants' eligibility to vote in the referendum.

4. The time period and format proposed to conduct the referendum is consistent with the referendum guidelines and provides for a fair and equitable process. NMFS would mail referendum ballots to eligible voters as soon as practicable after the final referendum rule is published. Eligible voters would have to submit their ballots to be received by NMFS no later than 30 days from the postmark date on the envelope containing the ballots provided by NMFS. NMFS would tally the votes and post the results within 60 days of receiving the ballots.

#### **Summary Information About the Potential IFQ Program**

The current management of Gulf commercial grouper and tilefish fisheries is based on a traditional command and control approach. This management approach has resulted in overcapitalization of the commercial grouper and tilefish fisheries which has caused increased derby fishing conditions and in some years has led to closures of these fisheries prior to the end of the fishing year. The purpose of implementing an IFQ program for the commercial grouper and tilefish fisheries is to rationalize effort and reduce overcapacity in the fleet. Amendment 29 to the FMP includes several management programs that would be capable of achieving these management goals, an IFQ program being the Council's preferred approach. The actions included in Amendment 29 include: Initial eligibility in the IFQ program, initial apportionment of IFQ shares, IFQ share categories, multi-use allocation and trip allowances, transfer eligibility requirements, IFQ share ownership caps, IFQ allocation ownership caps, adjustment to the commercial quota, establishment and structure of an appeals process, a "use it or lose it" policy for IFQ shares, a cost recovery plan, and approval of landing sites. The Council has selected its preferred alternatives for each of these actions through the normal Council process. If the referendum is approved, the Council, if it so decides, may continue with the submission of Amendment 29 for review, approval, and implementation.

#### **Classification**

This proposed rule has been determined to be not significant for purposes of Executive Order 12866.

The Chief Counsel for Regulation of the Department of Commerce certified to the Chief Counsel for Advocacy of the Small Business Administration that this

rule would not have a significant economic impact on a substantial number of small entities. The basis for this certification follows:

The Magnuson-Stevens Act provides the statutory basis for the proposed rule. The proposed rule would implement a referendum on a potential IFQ program for the Gulf commercial grouper and tilefish fisheries, consistent with the requirements of the Magnuson-Stevens Act. The primary purpose of this proposed rule is to notify potential participants in the referendum, and members of the public, of the procedures, schedule, and eligibility requirements that NMFS would use in conducting the referendum.

Participation in the Gulf commercial grouper and tilefish fisheries requires a Federal reef fish permit. There are currently 1,080 Federal reef fish permits that are either active (non-expired) or expired but renewable. Within this fleet, over the 2005–2006 fishing years, 895 vessels recorded landings of reef fish species, valued at a total of approximately \$46.3 million (2007 dollars), or an average of approximately \$52,000 per vessel. Some fleet activity occurs in the reef fish fishery, such that some entities own multiple permits and vessels. The extent of such activity is unknown, however, and, for the purpose of this analysis, all permits or vessels are assumed to be independent entities.

One class of small business entities would be directly affected by the rule: Commercial fishing operations. The Small Business Administration defines a small business that engages in commercial fishing as a firm that is independently owned and operated, is not

dominant in its field of operation (including its affiliates), and has combined annual receipts not in excess of \$4.0 million (NAICS code 114111, finfish fishing) for all its affiliated operations worldwide. The proposed referendum qualifying criteria would allow 333 of the 1,080 entities with Federal reef fish permits to participate in the referendum. Economic profiles of these entities are not available. However, assuming all the reef fish revenues discussed above were attributable to just the 333 qualifiers, which is known with certainty to not be true, the average annual revenue from reef fish sales, based on 2005–2006 harvest data, would be less than \$140,000 per qualifier. Thus, the average annual revenue per qualifying entity is determined to be less than \$140,000 and all commercial entities that would qualify for participation in the referendum are determined, for the purpose of this proposed rule, to be small entities.

The proposed rule defines the procedures, schedule, and eligibility requirements that NMFS would use in conducting the referendum. There are no implementing regulations associated with the proposed rule. Because there are no implementing regulations, there would be no direct effects on current fishery participation, effort, harvests, or other use of the grouper and tilefish resources. All current entities can continue to participate in the fishery in the manner in which they currently operate. Therefore, all current harvests, costs, and profits would remain unchanged. Any effects, adverse or otherwise, on small entities that participate in the fishery would only occur if in the future an IFQ program is implemented as a result of subsequent rulemaking. The final expected impacts of

the IFQ program are unknown since final approval of the specific program has not occurred. Estimates of variable costs savings attributable to the implementation of an IFQ system in the Gulf commercial grouper and tilefish fisheries are between \$2.1 and \$2.9 million per year, as well as unquantified reductions in fixed costs and increased ex-vessel prices. Final estimates of expected impacts will be identified should an IFQ program be proposed. Since the proposed rule would not directly affect fishery participation or harvest in any way, the rule would not reduce business profit for any fishery participants or related businesses. Profits are, therefore, not expected to be significantly reduced by the proposed rule. On this basis, it is determined that the proposed rule would not have a significant economic impact on a substantial number of small entities.

Accordingly, an initial regulatory flexibility analysis was not required or prepared. Copies of the RIR and RFAA are available (see **ADDRESSES**).

IFQ program referenda conducted under section 303A(c)(6)(D)(iv) of the Magnuson-Stevens Act are exempt from the Paperwork Reduction Act.

**Authority:** 16 U.S.C. 1801 *et seq.*

Dated: August 29, 2008.

**James W. Balsiger,**

*Acting Assistant Administrator for Fisheries,  
National Marine Fisheries Service.*

[FR Doc. E8–20543 Filed 9–3–08; 8:45 am]

**BILLING CODE 3510–22–S**