

GROUND FISH ADVISORY SUBPANEL REPORT ON
COMMENTS ON NON-AGENDA ITEMS

During the “air clearing” session, the Groundfish Advisory Subpanel (GAP) identified one particular issue that we recommend the Council formally reconsider. Specifically, the final preferred method for calculating the initial allocation of quota shares for overfished species uses target landings from 1994 to 2003, but uses log book information from 2003 to 2006 to determine fishing locations. This method could result in initial allocations that do not provide sufficient amounts of overfished species quota share to prosecute target fisheries. This potential problem was identified and described by the Trawl Individual Quota Committee (TIQC) in November 2007 (see excerpt from November 2007 TIQC report, attached). It appears that consideration should be given to this issue; especially to address ports and permits that would receive no quota shares for any given groundfish species. Receiving zero quota shares in the initial allocation denies access to target species and could severely impact a community, which is something the Council should aim to avoid.

As described by the TIQC, the Council could look at other ways to initially allocate overfished species quota shares, such as overfished species landings between 1994 to 2003 plus an equal sharing of the buyback landings, or using the log book fishing location information from 1994 to 2003 so that it matches the target species years (and therefore more closely matches fishing strategies during all of those years).

The GAP also recommends that the initial allocation estimates should be recalculated to include the Adaptive Management Program quota shares so that quota share holders can see what the first two years of the pass-through will look like.

Asking for additional analyses creates the possibility of delaying implementation of the trawl rationalization program. The GAP does not wish to delay trawl rationalization implementation, but does wish to correct any problems with initial allocations. Those corrections could either be folded into the final preferred alternative that is about to undergo NEPA public review or placed in a trailing amendment that would be implemented concurrently with the trawl program.

After an additional industry meeting, many people expressed their desire to leave the Final Preferred Alternative “as is” because taking quota shares from one to give to another might solve one problem and create another. And they felt the market place would solve the problem of deficiencies in the initial allocation of bycatch species. Others at the meeting continued to express concern over those ports and permits that would get zero bycatch quota shares initially.

Individual Fishing Quotas (IFQs): Allocating Overfished Species Using Target Species Quota Sharing (QS) and Applying Bycatch Rates (A-2.1.3).

In June, the Council approved a method for allocating overfished stocks based on a bycatch rate. Since the bycatch rate of overfished stocks can vary widely from one area to another, this method attempts to establish an area that vessels will fish in after the fishery is rationalized. The method adopted by the Council in June would use aggregated logbook data on a species by species basis to predict where vessels would fish under rationalization. In other words, if 90% of the trawl caught Pacific cod occurred north of Cape Mendocino, and shoreward of the trawl Rockfish Conservation Area (RCA), each permit with Pacific cod catch history would be estimated to take 90% of its Pacific cod from that same area.

At its meeting, the Groundfish Allocation Committee (GAC) recommended that logbooks be used on an individual permit basis, and that where the permit caught target species between 2003 and 2006 would be the estimate for where the permit would catch its target species after the fishery was rationalized. The TIQC disagreed with this recommendation.

During discussion, the TIQC initially noted that fleet average logbook data would be more appropriate than individual permit logbook history during 2003-2006 because in more recent years vessels were forced to choose between fishing shoreward or seaward of the trawl RCA in the north. Since the catch history formula is based on the years 1994-2003, permits will receive QS for species that are found both shoreward and seaward of the RCA. Therefore, the TIQC initially discussed using fleet average logbook data so that each permit would be assigned both shoreward and seaward catch history. For example, one permit may have caught 100% of its Dover sole from areas seaward of the RCA over the 2003-2006 period, while on average the fleet may have harvested 70% of its Dover sole from areas seaward of the RCA, and 30% of its Dover sole from areas shoreward of the RCA. Using fleet averages would mean that the permit would receive credit based on fleet fishing patterns in areas shoreward and seaward of the RCA, and overfished species would be allocated accordingly.

After further deliberation on the issue, the TIQC decided to recommend the use of permit specific logbooks from 1994-2003. It was felt that using 1994-2003 logbooks to estimate fishing location in a rationalized fishery would align the allocation of overfished stocks better with the allocation of target species. Furthermore, it was felt that using 1994-2003 permit specific logbooks would be a better estimator for fishing location in a rationalized fishery because permits would overfished species allocations in proportion to their allocations of target species based on fishing activity during that period.

Recommendation: TIQC Recommendation: The TIQC concurred with the GAC recommendation to use individual permit logbooks as part of the allocation formulas for both overfished species QS and halibut IBQ but recommends that 1994-2003 logbooks be used to determine the location of target species catch instead of 2003-2006 logbooks. (Consensus)



August 27, 2009

To: Mr. Dave Ortmann, Chair
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Re: Agenda Item I.1, CPS FMP amendment to implement NS1 Requirements

Dear Chairman Ortmann, Dr. McIsaac and Council members:

We offer the following comments concerning a plan amendment of the Coastal Pelagic Species (CPS) Fishery Management Plan (FMP) to implement National Standard 1 requirements in compliance with the Magnuson-Stevens Reauthorization Act (MSRA) of 2006. Although public scoping period was not formally noticed in the Federal Register, Oceana submitted initial public comment at the Council's March 2009 meeting. The National Coalition for Marine Conservation (NCMC) submitted written comments included in the June Council meeting briefing book, and at that meeting representatives from NCMC and the Point Reyes Bird Observatory presented the findings of PRBO's collaborative report¹ on the management of West Coast forage fish to the CPS management team and advisory subpanel.

In this letter, we elaborate on these prior comments about the importance of preserving the key role of forage fish in the California Current ecosystem in the context of NS1 compliance. There is broad agreement that forage species play a critical ecological role essential to the

¹ Available at: <http://www.prbo.org/cms/508>

health of marine ecosystems. The importance of forage species is also recognized in the revised NS1 guidelines, which emphasize the importance of maintaining adequate forage for all components of the ecosystem when determining the greatest benefit to the Nation.² The Council has taken previous actions that recognize the need for precautionary, ecosystem-based approaches including the prohibition on fishing for krill and the recent action to set conservative harvest limits for Pacific mackerel in light of a paucity of data and a high degree of uncertainty in the mackerel stock assessment. This CPS FMP amendment process affords the Council the opportunity to continue to advance precautionary and ecosystem-based approaches to the conservation and management of forage species. Clearly this process will require changes to the CPS FMP to comply with NS1 requirements for annual catch limits and accountability measures, thus improving the management of existing fisheries, but it also provides opportunities to advance ecosystem-based management approaches, including the evaluation of key parameters in harvest control rules and the designation of Ecosystem Component species.

In amending the FMP to implement a system of Annual Catch Limits (ACLs) for CPS fisheries, we hope the Council will take the direction given by NMFS to advance efforts to incorporate food web interactions explicitly into the catch specification process. The CPS FMP currently bases its target harvest guidelines for actively managed sardines and Pacific mackerel on maximum sustainable yield (MSY) control rules.³ At the same time, the definition of an MSY control rule (the formula for determining the harvest level) is said to be more conservative because the focus on management is oriented primarily towards stock biomass levels “at least as high as the MSY stock size.” The primary focus is said to be on maintaining biomass, rather than catch, in recognition of the fact that most CPS are very important in the ecosystem as forage.⁴

We support the stated intent of these rules to be more conservative in order to protect their role as forage in the ecosystem, but the statement that management is oriented towards maintaining stock biomass levels “at least as high as the MSY stock size” does not, on the face of it, suggest a more conservative management approach. In fact, it is a common objective of conventional single-species, MSY-based management – i.e., a strategy that seeks to maximize yield. It is not clear in the FMP how the MSY-based control rules and catch levels established through annual specifications are more conservative than a conventional MSY strategy nor how such rules consider the needs of predators either explicitly or implicitly. In this amendment to the CPS FMP, the Council must clarify and demonstrate how forage is accounted for in the harvest control rules and the Acceptable Biological Catch (ABC)/ ACL specifications.

The amended FMP must also incorporate a number of new provisions in the MSRA aimed at preventing overfishing and achieving optimum yield as required by National Standard 1 (NS1)

² 50 C.F.R. § 600.310 (e)(3)(iii)(C).

³ CPS FMP (Amendment 8 to the Northern Anchovy FMP), December 1998, p. 1-2.

⁴ CPS FMP (Amendment 8 to the Northern Anchovy FMP), December 1998, p. 4.1.

of the Magnuson-Stevens Fishery Conservation and Management Act.⁵ In the reauthorized Magnuson-Stevens Act of 2006, Congress required fishery managers to establish a system of ACLs and Accountability Measures (AMs) for all U.S. fisheries with a deadline for implementation of 2010 for all stocks currently subject to overfishing and 2011 for all others.⁶

In January 2009, the National Marine Fisheries Service published the final rule revising the 1998 National Standard Guidelines for National Standard 1 to assist fishery management councils in the implementation of the new ACL requirements. The new guidelines affirm that ACLs may not exceed the ABC limits recommended by scientific advisors, and managers must provide accountability to ensure that ACLs are not exceeded. Importantly, the new guidelines also recognize the benefits to marine ecosystems of maintaining adequate forage for all components of the ecosystem.⁷ Species interactions that have not been explicitly taken into account when calculating MSY should also be considered as relevant factors for setting OY below MSY, and consideration should be given to managing forage stocks for higher biomass than B_{MSY} to enhance and protect the marine ecosystem.⁸

None of the species covered by the CPS FMP are currently considered to be subject to overfishing, nor are any stocks considered overfished. Therefore, the statutory deadline for implementing the new requirements is the beginning of the 2011 fishing year. The PFMC does not currently employ the terminology used in MSRA, but a Council discussion paper from March 2009 indicates that the Council believes the existing harvest control rules for actively managed sardines and Pacific mackerel provide a basis for implementation of a new system of (Overfishing Levels (OFLs) ABCs and ACLs. We agree, but caution that making the transition will entail substantive changes in the FMP to ensure that all stocks in the FMP have the required status determination criteria (SDCs), an MSY and OY specification, an ABC control rule, mechanisms for specifying ACLs, as well as accountability measures.⁹

NMFS requires each Council to establish a mechanism for specifying ABCs and ACLs in the FMP,¹⁰ as well as a process for receiving scientific information and advice in the specification of ABC.¹¹ The procedures and mechanisms for specifying OFL, ABC, ACL and AMs should be described in each FMP. An adequate system of ABCs and ACLs should reflect the uncertainties and ecological importance of these stocks by providing an adequate buffer (margin of safety) between each of these terms to account for the scientific and management uncertainty, so that $OFL > ABC > ACL$.

We are pleased to see that the Council is initiating efforts to amend the CPS FMP to comply with the new requirements of the MSRA and the revised NS1 guidance from NMFS. We

⁵ 16 U.S.C. § 1851(a)(1).

⁶ 16 U.S.C. § 1853 (a)(15) and 1853 note.

⁷ 50 C.F.R. § 600.310 (e)(3)(iii)(C).

⁸ *Id.* at § 600.310 (e)(3)(iv)(C).

⁹ *Id.* at § 600.310 (c)(1-6).

¹⁰ *Id.* at § 600.310 (b)(iii).

¹¹ *Id.* at § 600.310 (f)(3).

highlight the following issues and concerns for particular attention in this FMP amendment process:

- **The FMP must be amended to provide a system of ABCs, ACLs and AMs for all stocks in the fishery**, including the stocks currently classified as “monitored” stocks and any non-target stocks that are caught incidentally as bycatch and determined to be “stocks in the fishery” as defined in the NS1 Guidelines.
- **The treatment of scientific uncertainty in the existing harvest control rule is inadequate to serve as a basis for determining ABC.** The NS1 guidelines specify that each Council must establish an ABC control rule based on scientific advice from its SSC, which must articulate how ABC will be set compared to the OFL based on scientific knowledge and uncertainty in the estimate of OFL and any other scientific uncertainty.¹² The SSC has expressed concern that the biomass CUTOFF in the harvest control rule does not provide an adequate buffer for scientific uncertainty because the CUTOFF is based on maximizing yield, not addressing uncertainty in OFL.¹³ The existing control rule does not provide an adequate accounting of scientific uncertainty for purposes of ABC-setting.
- **Confusion about the role of CUTOFF in the control rule must be addressed.** Aside from serving to leave a small biomass reserve in times of low stock biomass, there is nothing in the stock assessments or the FMP to suggest that CUTOFF was intended either to prevent overfishing or protect the prey base of predators. It is not at all clear in the control rule what relation CUTOFF has to the legally required Minimum Stock Size Threshold (MSST) or to the required biomass target value corresponding to B_{MSY} . There is no clear explanation of the CUTOFF’s intended purpose within a framework of target and limit reference levels to prevent overfishing and protect the prey base for predators. The ACL amendment must provide this analysis and incorporate it into the FMP.
- **The efficacy of the environment-indexed F_{MSY} exploitation FRACTION in the control rule must be addressed.** Based on running average sea surface temperatures at Scripps Pier in La Jolla, California, the F_{MSY} exploitation FRACTION in the harvest control rule has been 15% throughout the time series beginning in 1981. Since numerous changes in El Nino Southern Oscillation (ENSO) have occurred over this period, the 5-15% exploitation FRACTION rule does not seem responsive to actual interannual variations in recruitment due to climatic variability.
- **Procedures accounting explicitly for predator needs must be incorporated into the catch specification process.** The uncertainty associated with annual predation mortality is a large source of scientific uncertainty that is not explicitly accounted for in the control rule, but should be addressed explicitly in the ABC recommendation. In addition, specific procedures for setting ACLs to achieve OY for CPS stocks should be designed to maintain significantly higher biomass than

¹² *Id.* at § 600.310(f)(4).

¹³ Supplemental SSC report, 3.8.09.

the conventional single-species target biomass of B_{MSY} , as sanctioned in the new NS1 guidelines, in order to account explicitly for predator needs.

- **Spatial-temporal management of ACLs should be considered explicitly in the specification process to address the localized impacts of the fishery on the stock and on competing predators.** As part of an ecosystem-based approach to ACL-setting for CPS stocks, the Council should include explicit spatial-temporal management of ACLs in the specification process. Time and area-based fishery regulations are essential tools for addressing the shortcomings of relying solely or principally on *how much* fishing to permit without also considering carefully *when* and *where* and *how* the ACL is taken. Time-area management of ACLs is necessary to address the localized effects of fishing on the availability of prey to predators.
- **A more effective system of accountability measures must be developed for all stocks in the fishery.** The existing management controls for the sardine fishery do not apply to other CPS fisheries and do not seem likely to provide a reliable estimate of the catch and bycatch, or to ensure that ACLs will not be exceeded. Additional accountability measures are needed to address this management uncertainty in order to ensure that ACLs are not exceeded.
- **The Council should include other forage species that are not in the directed fishery as Ecosystem Component (EC) species as part of its efforts to advance ecosystem-based approaches to forage fish management.** NMFS provided the EC category in the NS1 guidelines with the expressed intent of working closely with Councils to incorporate ecosystem approaches to management. As part of the FMP amendment, we request that the Council consider and designate other forage fish that are not part of the directed fishery as EC species (e.g., Pacific saury, myctophids, Pacific sand lance, white bait smelt, and other smelts) with the expressed intent of not developing a fishery for EC species. It will be important to monitor status, trends, and ecology of EC species, using the best available information, and to integrate this information into the CPS SAFE reports as part of the Ecosystem Considerations.

An ecosystem-based approach to forage fish management must be based on preserving the integrity of the marine food web. The West Coast Governors' Agreement on Ocean Health (May 2008) recognizes the key role of forage fish in maintaining healthy and sustainable marine ecosystems and calls for the development of a PFMC Fishery Ecosystem Plan to address these concerns more fully in fisheries management. In January of 2009, the Point Reyes Bird Observatory released PRBO's report on the management of West Coast forage fish stocks, which underscores the need for an ecosystem-based approach to the conservation and management of forage fish in the California Current ecosystem to preserve their key role in the marine food web as prey. The PRBO report was a year-long collaborative effort involving scientists, fishing interests, and environmental NGOs, and its recommendations reflect a broad base of support among stakeholders of all backgrounds.

As the Council prepares to amend the FMP to comply with the MSRA's NS1 provisions, we hope you will use this opportunity to incorporate these recommendations into the FMP and

lay the groundwork for a West Coast fishery ecosystem plan that could serve as a model for other forage fish plans.

Attached to this letter are detailed comments addressing each of the issues highlighted above and related concerns. We look forward to continuing to work with the Council on this FMP amendment to ensure full implementation of the NS1 guidelines for coastal pelagic species.

Sincerely,

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Pacific Project Manager, Oceana

Pam Lyons Gromen
Executive Director, National Coalition for Marine Conservation

Phil Kline
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Attachments

Supplementary Comments

Recommendations for CPS plan amendment to implement NS1 Requirements

- 1. The FMP’s classification scheme for stocks in the fishery must be amended to address all stocks requiring a system of ABCs, ACLs and AMs, including the stocks currently classified as “monitored” stocks and any non-target stocks that are caught incidentally as bycatch and determined to be “stocks in the fishery” as defined in the NS1 Guidelines**

The recently revised NS1 guidelines for ACLs and AMs state that the requirement for ACLs and AMs applies to all stocks in a fishery, and all stocks in the FMP should be considered “in the fishery” unless otherwise specified through rulemaking.¹ This includes non-target stocks that are caught incidentally as bycatch during the pursuit of target stocks in a fishery, as well as “regulatory discards” as defined under the Magnuson-Stevens Act, 16 U.S.C. 1802 (38), which may or may not be retained for sale or personal use.² The ACL final rule clarifies that all stocks determined to be in a fishery must have status determination criteria, MSY and OY specification, an ABC control rule, mechanisms for specifying ACLs, and accountability measures.³ A number of substantive requirements must be met:

- Each FMP *must* include an estimate of maximum sustainable yield (MSY) for the stocks in the fishery.⁴ Importantly, ecological conditions should be taken into account when specifying MSY, and ecological conditions not directly accounted for in the specification of MSY can be considered as one of the factors for setting OY below MSY.⁵
- Status determination criteria (Maximum Fishing Mortality Threshold (MFMT), OFL, and MSST, or their proxies) are required to determine if overfishing has occurred, or if the stock is overfished.⁶ In specifying SDC, a Council *must* provide an analysis of how the SDC were chosen and how they related to reproductive potential.⁷
- The overfishing level (OFL) is defined as the annual amount of the catch that corresponds to the estimate of MFMT, above which overfishing is occurring, and must be expressed in terms of numbers or weight of fish.⁸
- The minimum stock size threshold (MSST, the stock size below which the stock is considered overfished) *must* be expressed in terms of spawning biomass or other measure of reproductive potential, and MSST should equal no less than one-half of the MSY stock size or minimum stock size at which rebuilding to the MSY level would be expected to occur within 10 years, whichever is greater.⁹
- Acceptable biological catch (ABC) is a level of catch that accounts for the scientific uncertainty in the estimate of OFL and any other scientific uncertainty.¹⁰ Each Council *must* establish an ABC control rule based on scientific advice from its SSC, which *must* articulate how ABC will be set compared to the OFL based on scientific knowledge and uncertainty in the estimate of OFL *and any other scientific uncertainty*.¹¹ The ABC control rule should also include a mechanism reducing fishing mortality as stock size

declines, as well as a stock abundance level below which fishing would not be allowed.¹²

- The annual catch limit (ACL) is the limit that triggers accountability measures, and ACL cannot exceed ABC.¹³
- Accountability measures (AMs) must accompany the specification of ACLs, and the guidelines identify two basic types of AMs: inseason AMs to prevent ACLs from being exceeded, and AMs for when the ACL is exceeded.¹⁴

The PFMC CPS FMP is currently comprised of five separate stocks – sardine, anchovy, Pacific and jack mackerel, and squid. Only Pacific sardines and Pacific mackerel are actively managed through formal catch specifications. Similar catch specifications are not provided for the “monitored” stocks in the FMP, even though these stocks are clearly “in the fishery” and in fact are known to be targeted, retained and sold. As such, the CPS FMP must be amended to provide the required elements of a system of ABCs, ACLs and AMs as described in the NS1 guidelines for all stocks in the FMP, including anchovies and jack mackerel. The Council indicates that existing knowledge and biological parameters can serve as the basis for developing a system of ABCs and ACLs consistent with NS1 requirements for monitored stocks. We agree, but we emphasize that ACLs must be specified with greater precaution because these stocks are assessed less frequently than the actively managed species and the uncertainty is greater. The current threshold harvest levels that serve as basis for moving the monitored species into the actively managed category are based on outdated assessments and they should be modified if necessary as a basis for establishing OFLs, ABCs, and ACLs.

One exception to the ACL requirement is market squid, which would qualify for the MSRA’s limited exemption from the ACL requirement provided for short-lived “life cycle species” with only one breeding season.¹⁵ While exempt from the ACL and AM requirements unless they are determined to be experiencing overfishing, the FMP must still specify SDC, MSY, OY, ABC, and an ABC control rule for short-lived species, in order to make determinations of overfishing and overfished status.¹⁶

In addition, the Council has classified krill as a prohibited species. The Council clearly has authority to designate prohibited harvest species, and krill should retain its current prohibited species classification as specified and implemented in Amendment 12 to the CPS FMP and the final rule implementing Amendment 12.¹⁷

1.1 A vulnerability assessment should be conducted for all stocks in the fishery and used to inform decisions about stocks in the fishery as well as catch specifications

The revised NS1 guidelines include a new provision calling on Councils to assess the vulnerability of stocks, defined as a combination of a stock’s productivity (which depends upon its life history characteristics) and its susceptibility to the fishery.¹⁸ Fishery managers should assess the vulnerability of all stocks when classifying stocks in the fishery, when determining ABCs and ACLs, and when aggregating data-poor stocks into stock complexes

for purposes of setting a group ACL to ensure that stocks are sufficiently similar in geographic distribution, life history, and vulnerabilities to the fishery.

We believe that a vulnerability analysis should be conducted for *all* stocks in the fishery, including non-target stocks caught incidentally as bycatch in the fishery to determine if they should be included in the fishery. NMFS has developed additional information and guidance on the uses of a vulnerability analysis at:

<http://www.nmfs.noaa.gov/msa2007/vulnerability.htm>. MRAG Americas provides additional resources to assist the Council in the application of these techniques, including detailed analyses of regional U.S. fisheries using Productivity and Susceptibility Analysis (PSA), the results of which are available at: http://www.mragamericas.com/PSA_WG.php.

2. An adequate ABC control rule must include explicit mechanisms to account for scientific uncertainties as well as uncertainty buffers to provide an adequate margin of safety against the risk of overfishing

For stocks required to have an ABC, the revised NS1 guidelines specify that each Council must establish an ABC control rule based on scientific advice from its SSC.¹⁹ ABC is a level of annual catch that is intended to account for the scientific uncertainty in the estimate of OFL and any other scientific uncertainty, and therefore NMFS expects that ABC will virtually always be reduced from OFL to reduce the risk that overfishing might occur in a given year.²⁰ Because there is always uncertainty in the estimate of MSY and OFL, the ABC control rule should be configured so that ABC is *always* less than the OFL. If the control rule is structured in tiers reflecting levels of information available for setting ABC for each stock, the buffer (or margin of safety) between ABC and OFL should increase as the level of uncertainty increases.

The CPS FMP currently has a formal catch specification process for actively managed Pacific sardines and Pacific mackerel stocks and mechanisms for setting harvest guidelines for these stocks, as well as a working SSC that reviews and recommends the harvest guidelines to the Council. Only the two actively managed species have been regularly assessed. The others stocks are infrequently assessed and do not have updated assessments. In all cases, non-MSY proxies for overfishing thresholds have been developed because MSY or reasonable proxies corresponding to MSY based on conventional biological reference points have not been developed. Thus there is considerable scientific uncertainty associated with the status of CPS stocks with respect to sustainable fishing levels, and this uncertainty must be addressed in the ABC control rules and ABC recommendations.

2.1 The CPS harvest control rule must be modified to account fully for scientific uncertainty and the uncertainties should be reflected in ABC recommendations that include an adequate buffer, or a margin of safety, so that $ABC < OFL$

The CPS FMP currently employs the control rule for establishing a harvest guideline level of catch for actively managed stocks of sardine and Pacific mackerel, but the control rule is not based on a conventional spawning potential ratio (SPR) proxy for MSY. Since MSY or a proxy for MSY is considered unknown for CPS stocks, the PFMC has developed a simple decision rule as the basis for establishing a catch limit. For sardines,

$$\text{HARVEST} = (\text{BIOMASS-CUTOFF}) \times \text{FRACTION} \times \text{DISTRIBUTION}$$

where CUTOFF is an arbitrarily defined biomass level below which directed fishing must stop altogether, and FRACTION is an environmentally-driven factor based on prevailing sea surface temperature. Proponents of the control rule assert that it has inherent conservatism built into it, but there is no direct way to compare the resulting catch level to an SPR-derived catch level and the FMP does not clearly explain the derivation of the rule, its assumptions, or its relation to more conventional control rules based on the relation of spawning stock biomass to recruitment. The FMP amendment must correct this omission.

The PFMC has expressed confidence that the control rule employed for setting harvest guidelines for actively managed stocks can be modified to provide reasonable proxies for OFL, ABC and ACL with uncertainty buffers. However, we note that the CPS SAFE has concluded that the harvest control rules in the CPS FMP are dated and in need of review and potential revision.²¹ This amendment process affords the Council an opportunity to address shortcomings, clarify the purpose of key terms, and make needed modifications in the control rule:

- **Confusion about the role of CUTOFF in the control rule must be addressed.** The CPS SAFE for 2008 implies that CUTOFF is an all-purpose mechanism to protect against overfishing and conserve the forage base, but aside from serving to leave a small biomass reserve for rebuilding, there is nothing in the stock assessments or the FMP to suggest that CUTOFF was intended to protect the prey base of predators. It is not even clear in the control rule what relation CUTOFF has to the legally required Minimum Stock Size Threshold (MSST) or to the required biomass target value corresponding to B_{MSY} . The SSC has expressed concern that the biomass CUTOFF in the harvest control rule does not provide an adequate buffer for scientific uncertainty because the CUTOFF is based on maximizing yield, not addressing uncertainty in OFL.²² (Similarly, the value for FRACTION in the MSY control rule for sardine is described as a proxy for F_{MSY} , which does not suggest any consideration of the uncertainty associated with OFL.)²³ There is no clear explanation of the CUTOFF's intended purpose within a framework of target and limit reference levels to prevent overfishing and protect the prey base for predators. The ACL amendment must provide this analysis and incorporate it into the FMP.
- **The efficacy of the environment-indexed F_{MSY} exploitation FRACTION in the control rule must be addressed.** To the extent that the environment-indexed control rule accounts for changes in stock productivity during warm and cool oceanographic conditions, environmental variability is said to be factored into the catch

specification. Based on running average sea surface temperatures at Scripps Pier in La Jolla, California, however, the F_{MSY} exploitation FRACTION in the harvest control rule has been 15% throughout the time series beginning in 1981. Since numerous changes in El Nino Southern Oscillation (ENSO) have occurred over this period, it is important to consider modifying the 5-15% exploitation fraction rule to ensure that it is sufficiently sensitive to the interannual variations in recruitment due to the effects ENSO events. It may be necessary to provide more gradations from high to low to capture the interannual variability in environmental conditions that affect recruitment, for instance.

- **Predation mortality is not explicitly accounted for in the existing control rule.** The uncertainty associated with annual predation mortality is a large source of scientific uncertainty that is not explicitly accounted for in the control rule or the single-species assessments, which assume that natural mortality (M) is fixed and constant over time. Moustahfid *et al.* (2009) modeled predator removals explicitly as a type of fishery and found that adding predators explicitly in the stock assessment model produced significantly different results than the conventional single-species approach.²⁴ Spawning stock biomass was estimated to be 2-3 times higher than estimates from the conventional single-species model, and the yield at MSY was lower. Uncertainty in stock biomass also was underestimated in models that did not account for predators explicitly. The assumption of constant natural mortality (M) in the single-species model is inconsistent with evidence that predation varies as a function of abundance and availability. These factors must be addressed explicitly in the ABC recommendation.

3. The FMP should establish an ACL control rule that specifies how management uncertainty and ecological factors have been considered and factored into the system of ACLs and AMs to achieve OY

An FMP must contain conservation and management measures, including ACLs and AMs, to achieve Optimum Yield (OY) *on a continuing basis*.²⁵ To the extent possible, the relevant social, economic and ecological factors used to establish OY (see 16 U.S.C. § 1802(33)) must be quantified and reviewed. Even where quantification of these factors is not possible, the FMP still must address them in OY specification.²⁶

As noted by Oceana and National Coalition for Marine Conservation in earlier comments to the Council, the revised NS1 Guidelines provide new guidance on considering ecological factors to achieve OY that is highly relevant to the CPS stocks, given their crucial importance as forage fish for higher trophic level species in the California Current marine ecosystem. The CPS FMP recognizes the importance of these species as prey and the FMP's objectives include providing adequate forage for dependent species. While we commend the Council for acknowledging the importance of providing adequate forage, the current harvest control rules do not take into account the forage needs of predators in the specification of MSY (OFL), ABC or OY. Even in the absence of a quantifiable determination of predator

needs, the NS1 Guidelines clearly require the Council to demonstrate how it has addressed these ecological factors in its specification.

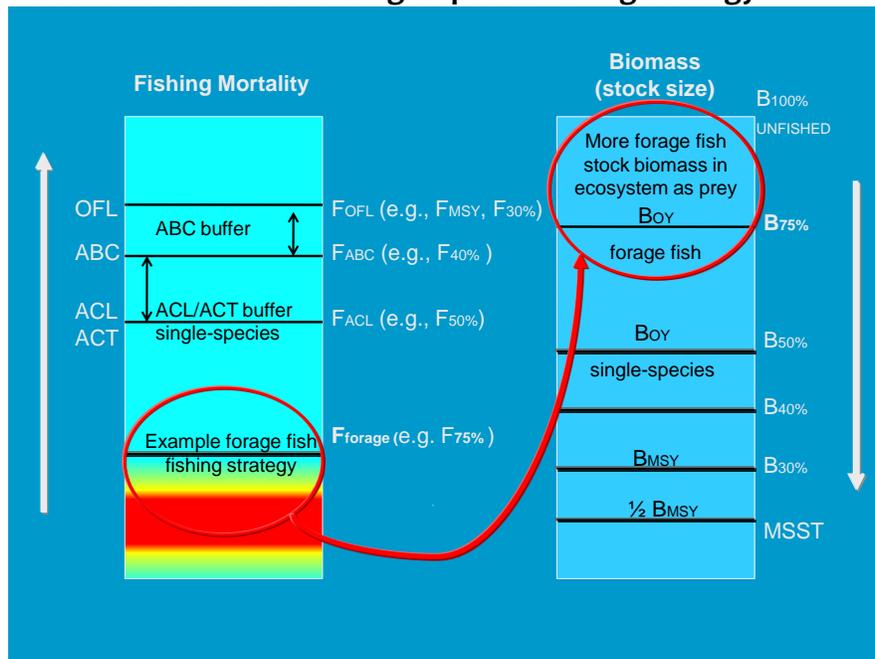
Specifically, the new guidelines acknowledge the benefits to marine ecosystems of maintaining adequate forage for all components of the ecosystem and explicitly identify consideration of forage fish stocks, predator-prey interactions, and interactions with marine mammals and birds and protected species as ecological factors to consider when determining OY for a fishery.²⁷ Species interactions that have not been explicitly taken into account when calculating MSY should also be considered as relevant factors for setting OY below MSY. In addition, the guidelines also mandate that consideration should be given to managing forage stocks for higher biomass than B_{MSY} to enhance and protect the marine ecosystem.²⁸

3.1 Specific mechanisms for setting ACLs to achieve OY should be developed with the goal of maintaining significantly higher biomass than the conventional single-species target biomass of B_{MSY}

The basis for preserving the ecological role of forage fish as prey is well established in the scientific literature. The National Research Council's Committee on Ecosystem Effects of Fishing, Phase II (NRC 2006) concluded that if the United States is to manage fisheries within an ecosystem context, food web interactions, life-history strategies, and trophic effects will need to be explicitly accounted for when developing fishery harvest strategies.²⁹ Moreover, if overfished stocks are to be rebuilt, adequate forage fish abundance must be provided to support rebuilding. The central importance of conserving forage fish is also recognized in the existing regulations implementing the MSA's essential fish habitat provisions, which establish that loss of prey species constitutes an adverse effect on EFH.³⁰

For all of the above reasons, we urge the Council to adopt specific mechanisms for setting ACLs to achieve OY for CPS stocks with the goal of maintaining significantly higher biomass than the conventional single-species target biomass of B_{MSY} , as sanctioned in the new NS1 guidelines. See **Fig. 1** below for an example:

Fig. 1 – Illustration of a more conservative forage fish “ F_{Forage} ” relative to conventional single-species fishing strategy



Source: MFCN (2009), *Implementing Annual Catch Limits: A Blueprint for Ending Overfishing in U.S. Fisheries*.³¹

4. The FMP must include a system of accountability measures for all stocks in the fishery to ensure compliance with ACLs and avoidance of overfishing

The revisions to the NS1 guidelines specify that ACL is the limit that triggers AMs.³² The system of ACLs must be accompanied by a system of management accountability measures designed to ensure that the ACL is not exceeded during the fishing season or, if overages are found to occur after the fishing season, to account for overages of the ACL equivalent in subsequent fishing seasons or years. NMFS recommends that an annual catch target (ACT) be employed as part of the system of accountability measures for management uncertainty to ensure that the catch does not exceed the ACL. In most cases, NMFS envisions that some reduction in the ACT below the ACL will result.³³ In data-poor fisheries without inseason monitoring capability, setting the ACT less than ACL increases the chances of staying within the limit and avoiding frequent overage deductions in subsequent years.

The PFMC has a system of in-season management controls for the actively managed sardine stock which includes three seasonal allocations of the harvest guideline level and closure of the directed fishery if the seasonal allocation is projected to be taken. If a seasonal allocation is either not attained or exceeded, the following seasonal allocation is adjusted to account for the underage/overage. However, the in-season harvest restrictions are not applied to the operation of the live bait portion of the sardine fishery. There are no other reporting, recordkeeping, or other compliance requirements.

These measures provide a starting point for development of AMs in the fishery, but additional measures are needed to prevent the ACL from being exceeded and provide reliable estimates of the total catch, including bycatch and discards. Comparable measures must also be developed for Pacific mackerel and the other stocks in the fishery requiring ACLs. The PFMCC SSC has indicated that there is no need to include an annual catch target (ACT) in the system of AMs to account for management uncertainty because existing management controls are adequate to ensure compliance with catch limits in the sardine fishery. But the lack of fishery observers or reporting requirements raises concerns about the true level of management control of the catch in any of the CPS fisheries.

If the Council ultimately elects not to employ ACTs as part of the system of AMs, this management uncertainty should be incorporated directly into the ACL specification (along with any relevant OY considerations) so that $ACL < ABC$. Incorporating the management uncertainty directly into the ACL calculation provides a clear basis for setting $ACL < ABC$ while still maintaining ACL as a limit not to be exceeded that triggers management measures to cease fishing upon attaining ACL. The determination of ACL should be based, where possible, on having a higher probability than ABC of not overfishing. Thus, for example, if ABC is based on a 75% probability of not overfishing, then ACL could be set based on a 90% probability of not overfishing. In data-limited situations, the determination of ACL will require other methods, such as a simple percentage buffer: e.g., $ACL = 75\% \text{ of } ABC$. The degree of management control in preventing the actual catch from exceeding ABC could also be used to set $ACL < ABC$.

4.1 The system of AMs should include an ACL performance standard to ensure that the system of ACLs and AMs is working as intended

In the revised NS1 guidelines, NMFS calls on the councils to adopt an ACL performance standard to ensure that the system of ACLs and AMs is working as intended. NMFS provides for some flexibility in the standard: the example given would only trigger a re-evaluation of the system of ACLs and AMs if the catch of a stock exceeds its ACL more often than once in the last four years (i.e., more often than 25 percent of the time), although a more conservative standard could be adopted as deemed appropriate.³⁴

Regardless of the performance standard employed, councils must still determine as soon as possible after the fishing year if an ACL was exceeded.³⁵ If management information is not available to prevent ACLs from being exceeded within the current fishing season, AMs must be triggered and implemented as soon as possible to correct the operational issue that caused the ACL overage.³⁶ In other words, re-evaluation of the system of ACLs and AMs may not be required if ACLs are exceeded infrequently, but evaluation of performance and prompt management actions to address overages are still required on an annual basis.³⁷

5. Spatial-temporal management of ACLs should be considered explicitly in the specification process to address the localized impacts of the fishery on the stock and on competing predators

As part of an ecosystem-based approach to ACL-setting for CPS stocks, we urge the Council to include explicit spatial-temporal management of ACLs in the specification process. Time and area-based fishery regulations are essential tools in the management toolkit for addressing the shortcomings of relying solely or principally on *how much* fishing to permit without also considering carefully *when* and *where* and *how* the ACL is taken. Maintaining the natural spatial structure of fish stocks should be a key consideration when implementing ACLs, and this is especially important in order to maintain the resilience of exploited stocks in the face of rapid climate change. In addition, time-area management of ACL is necessary to address the localized effects of fishing on the availability of prey to predators. Seasonal and spatial allocation of catch limits is part of a robust conservation strategy aimed at addressing concerns about localized depletions of target species, competition among fishing sectors, and interactions with competing predators.

6. The Council should include other forage species that are not in the directed fishery as Ecosystem Component (EC) species as part of its efforts to advance ecosystem-based approaches to forage fish management

The preamble to NS1 final rule encourages Councils to consider designating EC species, “in an effort to incorporate ecosystem approaches to management.” As described in the NS1 guidelines, EC species are non-target species that are not subject to overfishing, approaching overfished, or overfished, not likely to be subject to overfishing or overfished, according to the best available information, and not generally retained for sale or personal use. Recognizing the importance of krill as critical forage species, the Pacific Fishery Management Council approved Amendment 12 to the CPS FMP to prohibit the development of a fishery for krill. The North Pacific Fishery Management Council took similar action in 1998 to prevent the development of commercial fisheries for krill, Pacific sand lance, smelts, and other forage species. Under the NS1 guidelines, the Councils continue to have a great deal of discretion in defining what is in the fishery and what is not in the fishery. With that discretion comes a great deal of responsibility, and the opportunity for the Council to continue to advance ecosystem-based approaches to management.

We request that the Council designate key forage species - including Pacific saury, Pacific sand lance, myctophids, white-bait smelt, and other smelts - for which there is no directed fishery, as EC species in the CPS FMP. In doing so, we request that the Council make it the expressed intent to not develop a fishery for EC species *unless and until there is a plan in place that shows any such fishing can be conducted without harming the health of the marine ecosystem*, including a fishery ecosystem plan, stock assessment, and an FMP amendment defining appropriate ACLs and AMs. It will be important to monitor status, trends, and ecology of EC species, using the best available information, and to integrate this information into the CPS SAFE reports as part of the Ecosystem Considerations.

Endnotes

- ¹ 50 CFR § 600.310(d)(1).
- ² 50 CFR § 600.310(d)(3-4).
- ³ 50 CFR § 600.310(c)(1-5).
- ⁴ 50 CFR § 600.310(e)(1).
- ⁵ 50 CFR § 600.310(e)(1)(iv).
- ⁶ 50 CFR § 600.310(e)(2)(i).
- ⁷ 50 CFR § 600.310(e)(2)(ii).
- ⁸ 50 CFR § 600.310(e)(2)(i)(D).
- ⁹ 50 CFR § 600.310(e)(2)(ii)(B).
- ¹⁰ 50 CFR § 600.310(f)(2)(ii), 50 CFR § 600.310(f)(3).
- ¹¹ 50 CFR § 600.310(f)(4).
- ¹² 50 CFR § 600.310(f)(4).
- ¹³ 50 CFR § 600.310(f)(2)(iv).
- ¹⁴ 50 CFR § 600.310(g)(1).
- ¹⁵ 16 U.S.C. § 1853(a)(15); 50 CFR § 600.310(h)(2)(i).
- ¹⁶ 50 CFR § 600.310(h)(2)(i).
- ¹⁷ 74 Fed. Reg. 33,372 (July 13, 2009).
- ¹⁸ 50 CFR § 600.310(d)(10).
- ¹⁹ 50 CFR § 600.310(f)(4).
- ²⁰ 50 CFR § 600.310(f)(3).
- ²¹ CPS SAFE 2008, p. 46.
- ²² Supplemental SSC report, 3.8.09.
- ²³ PFMC 2008 CPS SAFE, Appendix 1.
- ²⁴ H. Moustahfid, J.S. Link, W.J. Overholtz, and M.C. Tyrrell. The advantage of explicitly incorporating predation mortality into age-structured stock assessment models: an application for Atlantic mackerel. *ICES J. Mar. Sci.*, **66**.
- ²⁵ 50 CFR § 600.310(e)(3)(ii).
- ²⁶ 50 CFR § 600.310(e)(3)(iv).
- ²⁷ 50 CFR § 600.310(e)(3)(iii)(C)
- ²⁸ 50 CFR § 600.310(e)(3)(iv)(C).
- ²⁹ National Research Council, Committee on Ecosystem Effects of Fishing, Phase II. Dynamic Changes in Marine Ecosystems: Fishing, Food Webs, and Future Options. National Academies Press, Washington, D.C. (2006). 160 pp.
- ³⁰ 50 CFR § 600.815(a)(7).
- ³¹ MFCN report available at: <http://www.conservefish.org/storage/marinefish3/documents/mfcnaclog.pdf>.
- ³² 50 CFR § 600.310(f)(2)(iv) and (f)(6).
- ³³ 74 Fed. Reg. 3,178, 3,193.
- ³⁴ at 50 CFR § 600.310(g)(3&4), 73 Fed. Reg. at 32544.
- ³⁵ 50 CFR § 600.310(g)(3).
- ³⁶ 50 CFR § 600.310(g)(3).
- ³⁷ 50 CFR § 600.310(g)(3).

August 26, 2009

Mr. Dave Ortmann, Chair
Pacific Fishery Management Council
7700 NE Ambassador Place, Suite 101
Portland, OR 97220-1384

RE: Groundfish Essential Fish Habitat Modifications, Open Public Comment

Dear Mr. Ortmann and Council members:

On June 13, 2009, the Pacific Fishery Management Council (Council) reviewed two proposals to modify Groundfish Essential Fish Habitat (EFH) conservation areas. Oceana submitted the Grays Canyon and Juan de Fuca Canyon proposal following the Council's request for proposals and the EFH Review Committee's guidelines. The EFH Review Committee, Habitat Committee and Scientific and Statistical Committee concluded that the proposal had merit and met necessary proposal requirements.¹ Following reports by Council advisory bodies, Tribes and the public, the Council voted to table all proposals until no earlier than September 2010. The Council also encouraged Oceana to continue conversations with the Quinault, Quileute, Makah and Hoh.

Oceana is committed to continuing conversations regarding habitat conservation and science with the Tribes. At the same time, we believe the importance of coral and sponge habitat conservation requires continued dialogue with the Council, National Marine Fisheries Service, the Olympic Coast National Marine Sanctuary, the State of Washington, and the public.

It is our understanding that reasons for deferring further evaluation of these proposals included an unclear process and a question of urgency, given some members' perception that the Groundfish Trawl Rockfish Conservation Area (RCA) presently encompasses the Grays Canyon and Juan de Fuca Canyon sites identified in Oceana's proposal.² For purposes of clarification, we would like to note that in the Juan de Fuca Canyon area, one dive site containing Pennatulacea (a type of soft coral or octocoral) remains outside the RCA as well as coral and sponge areas identified in trawl surveys. In the Grays Canyon area, there remain sites with sponges, octocorals and rare black corals outside of the RCA. What is more, areas in the Juan de Fuca Canyon that were documented by dive surveys having long-lived gorgonian red tree corals and bubble gum corals remain vulnerable to damage by bottom contact gear. This is evidenced

¹ For example the SSC stated, "The SSC concurs that both proposals have merit, contain rational reasons for modifying EFH, and should go forward for consideration." Agenda Item E.1.c, Supplemental SSC Report.

² Council Decisions Document, June 13-18, 2009 PFMC meeting. "The Council noted the Rockfish Conservation Area closures being in effect in the areas of the proposed Olympic 2 and Grays Canyon areas until this [no earlier than September 2010] action is considered." Accessed at <http://www.pcouncil.org/decisions/0609decisions.pdf> on June 30 2009.

Mr. Dave Ortmann, Chair
Essential Fish Habitat
Page 2 of 2

by the Olympic Coast National Marine Sanctuary research. It is known that these corals and sponges are rare and sensitive habitats and if they are lost due to fishing impacts, recovery is on the scale of hundreds of years, if at all.

While the RCA is an important tool for rebuilding overfished rockfish species, and we agree it does have the secondary benefit of protecting seafloor habitats, these closures are not designed for lasting protection of sensitive, vulnerable and rare coral and sponge habitats.

We look forward to continuing to work with the Council as it moves forward with habitat protections in 2010 and 2011, including review of proposals to protect unique and sensitive coral and sponge habitats.

Sincerely,

A handwritten signature in black ink, appearing to read "Ben Enticknap", is written over a light blue rectangular background.

Ben Enticknap
Pacific Project Manager

Subject: Public comment from Don Heichel
From: Don Heichel <kiheidon@sbcglobal.net>
Date: Tue, 25 Aug 2009 10:49:50 -0700 (PDT)
To: pfmc.comments@noaa.gov

B.1 Current Habitat Issues

Dear PFMC,

I hope no trawling is allowed over rock structure, my reading indicates this is damaging to the habitat.

I also read that plumes from trawl over sand/mud bottoms are visible from space.

Is there any research that indicates that this damages the habitat too?

If no research exists, my comment is to study the effect of this plume fallout on the areas it impacts.

Don Heichel
831 239 0419

Subject: Public comment from Don Heichel
From: Don Heichel <kiheidon@sbcglobal.net>
Date: Tue, 25 Aug 2009 10:56:47 -0700 (PDT)
To: pfmc.comments@noaa.gov

B.2 Ocean Acidification and Sea Level Rise

Dear PFMC,

Since fish populations are down almost everywhere (EXCEPT ALABAMA), fishing trips have increased in length to find decent recreational fishing.

Boat miles per gallon is very low relative to cars.

Strong consideration should be given to shortening boating trips by installing underwater structure close to ports to create marine ecosystems that are more easily accessed.

This will lower the carbon footprint of fishing from boats.

**Don Heichel
831 239 0419**

Subject: [Fwd: Newport Shrimp Producers council letter] BB Comment
From: "pfmc.comments" <pfmc.comments@noaa.gov>
Date: Wed, 26 Aug 2009 08:27:35 -0700
To: Jim Seger <Jim.Seger@noaa.gov>
CC: John Coon <John.Coon@noaa.gov>

Subject: Newport Shrimp Producers council letter
From: Nick Edwards <fisherman97420@hotmail.com>
Date: Tue, 25 Aug 2009 14:27:21 -0600
To: pfmc.comments@noaa.gov

Newport Shrimp Producers

Mr. Chairman;

My name is Nick Edwards I am representing the Newport Shrimp Producers. I have participated in the Oregon Pink Shrimp industry for thirty years. I have been actively involved in seven different West Coast fisheries during my career. Fifteen years has been in the West Coast ground fish trawl fishery. The commercial fishing industry is the career path I have chosen. I have testified before the California Fish and Wildlife Commission and Oregon Dept. of Fish and Wildlife. This is the first opportunity to voice my concerns before the Pacific Fisheries Management Council. I have represented my industry, both shrimp and crab at supervised negotiations, with processors and the Oregon Department of Agriculture.

Newport Shrimp Producers are the largest shrimp association on the West Coast. We have been representing the West Coast shrimp industry for over fifteen years. Our membership has participated in many trade shows both Domestic and International.

The West Coast Fisheries are in a new risk adverse era. The impacts from the spillover from trawl rationalization will have negative effects on all West Coast Fisheries. How does the council prioritize which fisheries to be economically viable? The EIS (economic Impact Study) is very controversial depending on which state and federal fishery you participate in. In the EIS document Chapter 4 pages 396-404 talk about impacts to non ground fish trawl commercial harvesters (crabbers, shrimpers, Fix Gear). The EIS is in serious question regarding the economic impacts of these different state and federal fisheries.

The ground fish buyback program was implemented in 2003, in Sept 8 2005 the repayment for the buyback started in the shrimp industry. Since that date, my vessel F/V Carter Jon has paid \$70,338.44. My business has personally paid for fleet capacity reduction in regards to Pink Shrimp Fishery. Oregon has averaged forty four vessels in the shrimp fishery since the buyback was imposed. MSC (Marine Stewardship Council) was achieved with a low capacity level of forty five vessels. MSC has awarded pink shrimp a sustainable fishery. The spillover from Trawl rationalization will jeopardize our MSC certification.

The EIS document Chapter 4 page 305 under vessel monitoring cost; it states that "if

at sea monitoring cost for vessel at \$350 per day, this will tend to reduce the ground fish fleet from 40-60 vessels". Because of attrition from the ground fish trawl fishery, ground fish trawl vessels will be forced to enter the shrimp fishery. The infrastructure for the shrimp industry has changed dramatically since buyback inception. The Processing sector has lost half of its processing capacity. There is no longer the economic infrastructure for the fleet to double. We, the Newport Shrimp Producers want to voice our concerns that are real and readily apparent.

Therefore we formally ask the council to go on public record and acknowledge the severe economic impacts that trawl rationalization will have on the West Coast Shrimp Industry. This recognition from the council is needed to start a movement to find solutions to provide economic stability in the Oregon Pink Shrimp Fishery.

Respectfully submitted

Nick Edwards

F/V Carter Jon

Secretary Newport Shrimp Producers

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Newport Shrimp Producers council letter.eml

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AUG 25 2009

PFMC

August 17th 2009

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

Re: Amendment 20, Trawl Rationalization, Individual Fishing Quotas

Dear Mr. Chairman:

We are a coalition of Ground fish Trawler's, Shrimp Trawlers, Crabbers, and Business owners. We rely on the economic stability for our west coast fleet, we are the residents and permit holders from the port of COOS BAY, ORE; our home fishing port. It is with grave concern that we are writing to inform you about the severe economic impacts of Trawl Rationalization on our individual businesses. Unfortunately, the permit related information that gives rise to our issues with Trawl Rationalization was not available to us during the public debate and decision making process of the Council. Had it been available when it was developed by Council staff, or when it was repeatedly requested by many in the industry, permit owner interest in moving forward with the plan would have differed substantially.

We share the Council's desire to improve resource management and are willing to continue to work towards that end. However, we do not support moving forward with the scheduled, January 1, 2011, Non-Whiting Groundfish Trawl Rationalization. Economically, it is a significant step backward from status quo. Quite different than we were led to believe. We have been repeatedly advised by those representing us at the Council, that, with the equal allocation and permit history allocation formula, we would have increased economic opportunity. In fact, the opposite is true.

That is why we are asking this Council to offer a referendum vote on this action. And, in the interim, take action to immediately suspend further Council staff and NMFS resources and effort until that vote is taken. If taking this extra step to hear new concerns, created with this new information, results in some interim steps or even if after all is discussed, Council moves forward as previously decided, then delay and further debate is not only reasonable, it is necessary.

So, we include for your review a few of our specific business concerns:

- The public process was completed without information that would have materially influenced the debate while it was occurring.

Nearly every active permit is being forced to lease or purchase quota to maintain their current business opportunity; this includes those permits with the best available history. This was not the prevailing understanding during the process. It was widely understood that there would likely be winners and losers, it was never expected or represented that all would be losers with the change.

- The Council has moved forward without a full review of a economic impact statement on the adverse affects of all Fisheries both state and federal directly effected by the proposed IFQ program.
- The Trawl rationalization program is going to have a direct impact on Oregon's pink Shrimp fishery. Increased effort shift, will occur potentially doubling the fleet. This will jeopardize Oregon's MSC certification. The MSC label was achieved with a low capacity of forty five vessels. The MSC label is a marketing tool to market Oregon pink Shrimp in the E.U.
- The spillover to various State and Federal fisheries is very concerning to fisherman who have already paid for capacity reduction thru the 2003 Buy-back plan. To maintain current opportunity, vessels will all have to buy or lease substantial amounts of additional quota.
- Now that we have had opportunity to review the economic impact to all of our individual businesses, it is clear that the program is not viable for any of us.
- We clearly understood the program is designed to rationalize the fleet; what we didn't know was that we were the ones that would have to pay for it, just to remain viable. Not that we would have diminished opportunity with an opportunity to "buy back" to our current levels of opportunity.

The West Coast Fishing Industry is at stake. It is imperative that the Council consider our requests.

Sincerely *Nick Edwards F/V CARTER JON*

Permit Owner Signatures by Port

September 4, 2009

Mr. David Ortmann, Chairman
Pacific Fishery Management Council
7700 NE Ambassador Place, Suite 101
Portland, OR 97220-1384

RE: Amendment 20 Trailing Action on Community Fishing Associations

Dear Chairman Ortmann:

Attached please find the report on a series of discussions held between June and August 2009 to gather stakeholder views on the concept of Community Fishing Associations (CFAs). The Nature Conservancy (TNC) hosted this dialogue in hopes of eliciting ideas that may be useful to the Pacific Fishery Management Council in its deliberations on whether to authorize CFAs through a trailing amendment to the trawl individual quota (TIQ) program.

A reoccurring question during the course of the discussions was: **Why must the Council act on CFAs?** Although a number of different ideas were discussed, the element all had in common was that of multiple fishery participants working together in ways that would violate control rules or limits. It was difficult to sift out specifically which scenarios would or which would not trigger the control limit. In most cases where this has happened, the facts and circumstances of each case would be reviewed individually to determine if it complies with the control rule. This creates uncertainty and may have a chilling effect on small scale efforts that lack capacity and resources to defend their initiative, and may create room for undesirable initiatives that may simply proceed until their efforts are detected thereby undermining the goals of the control rule.

Council action is needed to create a “safe harbor” for the types of collaborative efforts it feels will support the goals of the Pacific Coast Groundfish Fishery Management Plan and Amendment 20. This safe harbor could describe in advance the facts and circumstances that the Council feels are appropriate within the goals of these measures. Such action would encourage groups to organize by providing them certainty and clarity of what is and is not permitted – and would also clarify which arrangements are illegal.

This understanding of why action is necessary seemed to make sense to participants; however, the details of the safe harbor were more contentious. For the purpose of these discussions and this report, the term “Community Fishing Association” was used broadly to refer to any type of collaborative effort organized at the local level to improve harvest operations under the TIQ program; as there are likely a variety of things that could contribute to community stability. The goal for these sessions was to understand the different models stakeholders envision, what elements might be needed to make these models work, and what negative consequences should

we seek to avoid. No attempt was made to achieve consensus on any particular model or policy recommendation. All views raised are presented in the report without prejudice and in including them here, TNC endorses no particular idea beyond what we have already presented to the Council, nor should any individual's participation in these sessions be construed as endorsement of the CFA concept.

However, I will take this opportunity to offer one observation on a potential area of agreement in the three sessions. Throughout a common understanding was repeated that the transition to the TIQ in 2011 will necessitate "guys working together," a shared desire for a flexible approach that may be tailored to local circumstances "from the ground up", a general rejection of CFAs that are imposed or mandated "from the top down", and a sincere desire for a strict interpretation of the control limits that balances the fleet's need for rationalization and consolidation with the desire to maintain fleet diversity.

I hope that this report is useful to the Council in its deliberations. Please do not hesitate to contact me if you have any questions.

Sincerely,

/s/

Erika Feller,
Marine Project Director
The Nature Conservancy

Attachment

Community Fishing Associations: Workshop Summary Report

Prepared by:

Stuart Nelson, Nelson Bros Fisheries Ltd

September, 2009

A report chronicling the outcomes of a series of three workshops hosted by TNC & EDF to flesh out the CFA concept, held June-August 2009. A summary of issues/themes, options, and design mechanisms brainstormed by participants in the working sessions.

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Introduction

In April, 2009 the Pacific Fisheries Management Council (the Council) approved a motion identifying community-led ownership or management of Quota Share (QS) or Quota Pounds (QP) through a Community Fishing Association (CFAs) as a mechanism to address community stability issues arising under the trawl individual quota (TIQ) plan. While the motion provided some direction for how CFAs might be structured, and the ends they would strive to achieve, significant latitude was left to define how the concept would be put into practice. From Council discussion it was evident that neither Council Members nor stakeholders shared a clear and common understanding of CFA goals, how CFAs would be organized and implemented to achieve those goals and avoid abuse, as well as a clear rationale for Council action.

To this end, The Nature Conservancy, with the support of Environmental Defense Fund, hosted a series of stakeholder workshops to explore the ideas behind the CFA concept in order to provide insights for Council to assist in its deliberations on CFAs, by seeking answers to the following questions:

- Do stakeholders share common interests or goals in organizing cooperative or community-based efforts?
- What sorts of activities or outcomes would stakeholders want to avoid through a CFA model?
- Could these efforts happen under the TIQ program as approved? Or is further Council action necessary? If so, what sort of action?
- What are the specific facts and circumstances of desirable or undesirable CFA approaches?

The workshops were designed to elicit maximal feedback from participants. CFA-related discussion topics were introduced, ranging from general (first meeting) to specific (last meeting), with a range of opinion recorded on each. This was not a consensus or decision-making process but rather a brainstorming process. A brief synopsis of the subject matter and attendance at each session is appended to this report.

The workshops were facilitated by an independent 3rd party, Stuart Nelson of Nelson Bros Fisheries Ltd. This report, prepared by Nelson, provides a summary record of the CFA workshops; the report objectively chronicles the work performed and key findings, and intentionally excludes recommendations or opinions from the author or the sponsors of this series of discussions. In addition to providing assistance to Council, it is intended that this report can serve as a resource for stakeholders wishing to develop their own CFA iterations.

Workshop Highlights

The key findings of the three CFA workshops are presented under three sub-headings:

1. Potential CFA elements – what are the “nuts and bolts” that could comprise a CFA?
2. CFA Options – what are some possible configurations?
3. CFA Issues/Themes – what are the important points that participants raised? What is the range of opinion on these themes?

1. Potential CFA Elements

Description of a Successful CFA (Vision)

Assisted by the implementation of CFAs at the outset of the TIQ process, the West Coast trawl fishery is characterized by:

- Productive, harmonious relationships amongst harvesters, and between harvesters and processors.
- Fully meeting the conservation goals and regulations of the Pacific Coast Groundfish Fishery Management Plan, including fishing within TACs, staying within bycatch limits (proven through a comprehensive monitoring program), and improving stock assessments (through information collection and greater involvement of industry).
- Maintenance of strong fishing communities up and down the coast, with QS “anchored” in communities assisting small family operations, local processing, and new entrants.
- A diverse fleet including small and large-scale operations, and a mix of trawling and other gear types.

The above vision would be undermined if CFAs are allowed to:

- Serve merely as a backdoor way of avoiding control limits.
- Occupying a disproportionate amount of Council and management time (i.e. Special monitoring, tracking, workload dealing with applications).
- Be “captured” by dominating individuals/organizations who co-opt the CFA for own-purposes.
- Lead to inter-community rivalries.
- Exclude legitimate interests. A CFA should be required to provide fair opportunity for access to eligible entities.

Size/Scope of CFA

Though the size/scope of a CFA, as measured by number of participants or the amount of fishing activity it may influence, amount of QS/QP involved, and goals & objectives can vary substantially, it was deemed that one distinction is most relevant:

1. CFAs that involve utilizing an amount of QS that is within the aggregate and species control limits. The term “cfa” (small caps) was used to denote a configuration that does not require any special consideration by the Council or NMFS.
2. CFAs where the QS exceeds the control limit. Discussion of the nature of circumstances that warrant (or require) an exemption from the control limit was the single biggest issue throughout the process.

Goals/Purposes

The following list of goals/purposes for CFAs was developed:

- Promote vibrant communities up and down the coast - An effective use of a CFA would be to maintain landings and access to the resource in a community. A CFA could be a limited check on the effects of quota consolidation that could result in loss of QS in some ports and consolidation in a few ports. A CFA could allow a community-oriented entity to hold and manage QS to assure local access; support for vulnerable communities.
- Maintain fleet diversity – A CFA could promote fleet diversity (number, type of operations, profile of owners, port locations) and could provide a mechanism for new entrants to come

into the fishery by having QS or QP reserved for that purpose. The Magnuson Stevens Act (MSA) directs that the needs and interests of communities, skippers, crew, and small boats be explicitly considered in development of a Limited Access Privilege Program. Survival of small family boats with limited capital in the business could be helped by allowing them to coordinate efforts, pool monitoring costs, and maintain needed infrastructure and shoreside services – all of which may require assurances of a certain amount of fishing activity to stay viable.

- Center for organizing a community's fishing operations - A CFA could promote cooperative, mutually beneficial relationships among fishery participants in a community; e.g., pooling depleted species QS to better manage risk, forum for balancing harvester and processor interests, supporting marketing or branding initiatives (fresh, local seafood), maintaining or guiding investments in port infrastructure.
- Contribute to fishery conservation and management – A CFA could contribute to the conservation and management goals of the groundfish FMP by promoting greater local participation in science and management, including cooperative research activities or other efforts to improve stock assessment. A CFA could also provide capacity to address problems at finer scale of management, and be able to respond more quickly to locally identified issues.

Mechanisms

The following is a list of tangible activities that a CFA could engage in:

- CFAs could control QS in several ways, including:
 - QS could be owned by the CFA and distributed to members under agreements, including leasing it at sub-market rates to stimulate desired activities (e.g., opportunity for new entrants).
 - QS could be owned by the members of the CFA who are united by a legal agreement that commits them to use their QS in particular ways for the benefit of the community (e.g., agreement to land in a particular port).
 - QS could be leased by the CFA from QS holders and used to promote community benefits.
- A CFA could be a vehicle for sourcing and distributing Adaptive Management Program QP.
- A CFA could provide a variety of services for a fishing community, such as:
 - pooling QS or QP, with particular emphasis on bycatch (risk pooling), although this could also be done with target species.
 - sharing knowledge and information to help fishermen cope with the new management plan; education.
 - sharing administrative costs (observers, reporting, accounting, regulatory information, attending meetings, community outreach, writing leases and contracts).
 - Offering insurance pooling (business, group health) or other financial services such as low interest loans or other financial programs.

Participants in a CFA (list of candidates)

As indicated by the comprehensive list below, the inclination of the participants was that the CFA is not an area where limiting participation to a certain group of fishery participants is appropriate. To that end, all of the following groups could have a role in a CFA:

- Harvesters: Skippers, Crew, Vessels & vessel owners (want a range of vessel-types).

- Processors: including fish receivers and processors.
- Communities (local governments) – could include municipal government, city council, tax assessing/bond issuing entities, Port Authorities, Tribes.
- Fishing related businesses (fuel, gear, stores).
- Conservation organizations
- A diversity of fishery participants in the community (trawl, non-trawl... any fleet).

2. CFA Options

To foster a greater understanding of how, specifically, a CFA might be structured and how it could fulfill its mandate, a series of options were discussed. The methodology was to consider different CFA scenarios, and ask a consistent set of questions for each scenario. The intention was less to identify a single desirable approach than it was to stimulate thought by exploring a spectrum of scenarios.

Although time constraints and the leanings of the working group precluded answering the full slate of questions, the following queries were posed for each option to elicit the facts and circumstances that would describe different approaches to a CFA:

- Description of Option
- Who is involved?
- Does the CFA own QS? How much QS will it hold or control?
- How is the CFA governed?
- How does CFA attract QS?
- How does CFA fulfill its mandate? What are specific activities?
- What must Council do to enable the CFA (what exceptions are sought)?
- What does Council get in return? How does CFA contribute to FMP goals?
- What are reporting, review, and performance measures?

The discrete options considered, along with summary findings, are shown in the following table:

Option Description	About the CFA Structure	Key Discussion
<p>1. Fishermen (QS holders) form a “loose knit” or informal organization to engage in risk pooling, cost reduction (monitoring program cost sharing), trading bycatch, and sharing information. The organization is formed recognizing that heightened cooperation is required to adapt to the new Plan.</p>	<p>Fishermen retain ownership of their own QS.</p> <p>An association is formed, with each fishermen serving as a Board Member. A written agreement governs the relationship.</p> <p>The aggregate QS holdings of the participating fishermen exceed the control limit, but no individual exceeds the limit.</p>	<p>These are the types of relationships that Council explicitly encourages.</p> <p>There should be no need for any action by Council to enable such as association; however it may require regulatory guidance.</p> <p>Must ensure that this type of behavior is not hindered...</p>

Option Description	About the CFA Structure	Key Discussion
<p>Similar to above but:</p> <p>2. A more formal arrangement where the organization (CFA) formally holds the fishermen’s quota. The QS holders become “shareholders” in a CFA that holds the quota.</p>	<p>This scenario may apply if the above scenario is too informal to be effective; a more formal structure with broader ability to direct harvest activities is required to achieve community goals.</p> <p>What happens when someone retires? Can he pull out his quota or be compensated for his share? Etc.</p> <p>The CFA may</p> <ul style="list-style-type: none"> • acquire additional quota • encourage additional participation (new members) • generate additional benefits vs. prior option 	<p>In this scenario, a single entity, the CFA, could control > 2.7% of QS, though no individual will exceed the limit.</p> <p>As the “formality” of the arrangement increases, the range of activities of the CFA may increase.</p> <p>The risk of “inappropriate” behaviors or control may also rise.</p>
<p>3. Processor Perspective:</p> <p>A processor working with a handful of boats.</p> <p>Processor may provide coordination function for vessels: perform transfer paperwork, handle bycatch quota, distribute quota to vessels based on individual fishing plans.</p> <p>Activities to ensure a supply of fish for local workforce and provide fishermen access to the best markets (timing).</p>	<p>QS pooled for operational purposes – could remain in individual hands, or be placed in an entity. Total will likely exceed control limit.</p> <p>Processor and fishermen involved under a formal agreement.</p> <p>Purposes: to use quota to maximum potential; processor stability (explicit goal of Council).</p>	<p>Concerns about consolidation... when processors are involved, the concern level rises!</p> <p>If control limit exceeded, processor would have to make some pledges, for example: transparency, to stay open for a period of time, to accept fish from CFA members... the sorts of things that secure employment and benefit communities.</p> <p>ITQ will only work if people work together. Timing of the market is a key component.</p> <p>This type of CFA would contribute to community stability – the concerns of processors and communities are aligned.</p>

Option Description	About the CFA Structure	Key Discussion
<p>4. Community-driven CFA:</p> <p>An independent, newly created 3rd party entity forms to acquire and hold QS, and tie it to a particular place for the benefit of community members.</p> <p>This is the version of a CFA envisioned for the central coast of California.</p>	<p>CFA forms for many of same purposes as previous scenarios.</p> <p>Entity does not hold any quota initially... must acquire quota by same means as any other fishery participant attracting QS holders, purchases, AMP, or leasing.</p> <p>CFA inclusive of appropriate interests in the port may include: fishermen (QS owners and non-QS owners), processors, distributors, local government, and community members (individuals or businesses), conservation organizations.</p> <p>May include other fisheries (e.g., salmon, crab).</p> <p>Can use quota to encourage local activity, facilitate new entry.</p> <p>Total QS would likely exceed the control limit.</p> <p>Particulars will differ by port.</p>	<p>CFA could be a real asset for those looking to stay in business and make a living.</p> <p>Many practicalities and complexities to work out (acquiring quota, membership, rights/obligations of members, budgeting/funding, governance, etc).</p> <p>Clear articulation of how Council’s goals are met required for this model.</p> <p>Details would be worked out on a case-by-case basis.</p> <p>Entity would make clear statement of how it would achieve MSA standards, with periodic review required.</p> <p>Council wants to preserve community stability... this type of CFA is a way to try to smooth transitional impacts of the ITQ plan.</p> <p>Could create a burden for NMFS/Council.</p>

The discussion on discrete CFA options revealed a divergence on how to implement CFAs:

- The need to explore options in fine detail in order to best understand and articulate the CFA concept. Through detailed option analysis, “best” approaches may emerge, likely hybrids of discrete options; versus
- The desire to set general guidelines for CFA – that is, Council to determine some parameters and performance measures to be met – and let the process commence. These discussions cannot contemplate all the details, so establish standards, start-up, and review. Thus, the system would evolve over time.

Workshop participants found merit in both approaches.

3. CFA Issues/Themes

In the course of discussing CFA design elements and options, a series of key issues or themes, often recurring from session-to-session, emerged. These issues are identified below, with a range of opinion provided.

Issue/Theme	Point(s)	Other consideration(s)
<p>Why are CFAs needed? Why does Council need to be involved?</p>	<p>Community stability is an explicit consideration of the trawl IQ plan. During the IQ transition period, significant changes are likely. CFAs are a promising vehicle for curbing unwelcome impacts on communities.</p> <p>With fishermen having now received their initial allocations, the need to pool efforts has hit home. Yet, fishermen working cooperatively may violate control limits.</p>	<p>Control and vessel limits were set to prevent undue consolidation of QS.</p> <p>2.7% QS is a significant quantity... equal to Washington state's expected share of the 10% AMP quota.</p> <p>Participants are free to form CFAs that conform to the FMP.</p> <p>Council does not have the resources to make a series of decisions on CFAs (who qualifies? Measuring performance).</p>
<p>Definition of "vulnerable community"</p>	<p>Refine & define standards, such as: role the fishery plays in the community, and how vulnerable the community is to change.</p> <p>Focus on communities of concern - those deemed to be at greatest risk.</p> <p>Vulnerability as the determining factor in whether a CFA is appropriate in a community.</p>	<p>Goal of the CFA is to provide stability, regardless of vulnerability.</p> <p>Let communities identify what they want to do. If a community comes forward with a CFA idea, that should be the criteria.</p> <p>At issue: if there is only so much "special privilege" to give out... who is going to get it?</p> <p>Is being at risk the key criteria, or should any community taking the initiative to come forward qualify for CFA status?</p>

Issue/Theme	Point(s)	Other consideration(s)
<p>Safe Harbor concept (for cooperative fishing arrangements where individuals' QS may collectively exceed the control limit)</p>	<p>Fishermen (and processors) working cooperatively in groups will be key to adaptation under the new plan.</p> <p>There is no intention that fishermen engaging in "risk pooling" (cooperating on bycatch and observers) should have control limit issues.</p> <p>Council should set standards on what activities and outcomes are acceptable. What kind of undesirable behaviors & outcomes are of concern?</p> <p>Need a "safe harbor" where, if you operate under the rules, you needn't be concerned about control limits. What characteristics would make Council comfortable having higher limits?</p> <p>In this setting, it is less risky to allow further consolidation of quota.</p>	<p>The facts of individual cases will determine the suitability of a CFA.</p> <p>Don't want creation of a system where an entity accumulates as impermissibly high amount of control – either direct or indirect.</p> <p>If Council is to grant safe harbor privileges, the CFAs must be held to a very high standard.</p> <p>CFAs should be based on proposals that Council considers individually based on their facts and circumstances.</p>
<p>Adaptive Management Program and CFAs</p>	<p>CFA is a good mechanism to put AMP to use... it's important that the AMP is used and doesn't sit on the shelf.</p> <p>Community stability is a key goal of both CFA and AMP so it makes sense to use them in conjunction.</p> <p>Ability to access AMP could be a catalyst for CFA formation.</p>	<p>There is lots of overlap in CFA and AMP objectives, but it's premature to say that CFA is the only means of distributing AMP.</p> <p>CFAs may get preference for AMP, but not exclusive.</p> <p>AMP is an allocation issue... if AMP becomes tied to CFA, then the CFA decision will be further complicated.</p>
<p>CFA means quota "sticking" to a community</p>	<p>QS sticking to a community as a means of fostering stability.</p> <p>Keep the full multiplier of economic benefits in the community.</p>	<p>QS/QP can never be sticky, because fishing patterns and market dynamics are always changing.</p>
<p>100% Observer Coverage – burden on small vessels</p>	<p>CFAs are an important way for fishermen to work together to pool information and quota, and try to reduce costs.</p> <p>Without CFAs, the burden would be too great on individuals.</p>	<p>Even with CFAs, 100% observers won't work for small boats.</p> <p>Is there a workable electronic monitoring alternative?</p>

Issue/Theme	Point(s)	Other consideration(s)
CFAs – for trawl fishery only? Or other fisheries as well?	<p>Communities are reliant on a host of fisheries...</p> <p>CFAs should be inclusive of all interests. The health of communities depends on all fisheries.</p>	<p>CFA focus must be on the trawl fishery at the outset; with a complex plan to adapt to, trawl interests have enough on their plates...</p> <p>CFAs will not be easy to form. The process of formally bringing different interests together is difficult and extremely time consuming.</p> <p>IF CFAs allow too many exemptions to the trawl IQ plan, trawlers will protest. IQ program is not a give-away of trawl quota.</p>
One CFA per port? Or more than one?	<p>If there are multiple processors in a port, each firm should be free to partner with its vessels. This could mean more than one CFA in a port.</p> <p>CFAs must be adaptable to differing port structures.</p>	<p>When Council thinks about CFAs, it's to support infrastructure in a community. More than one CFA in a port doesn't fit this vision.</p> <p>Competing CFAs in a port defeats the purpose (but you could have multiple RFAs...).</p>
Performance measures for CFAs	<p>Table 4-61 from Chapter 6 of the dEIS (attached) provides a good list and starting point for considering how to measure effectiveness of CFAs on addressing community impacts. Could add to the list:</p> <ul style="list-style-type: none"> • correlation between tourism and commercial fishing activity. • Economic impact of fishing activity (multiplier effect) • Incorporate questionnaire akin to Council Operating Procedure for Exempted Fishing Permit process – how will CFA meet the criteria? 	<p>We must remember that many of the problems facing the fishery and fishing communities can't be resolved...</p>

Issue/Theme	Point(s)	Other consideration(s)
Are CFAs just for fishermen? Or for any QS holder?	<p>Active fishermen who are QS holders are the “target” for accruing benefit from CFAs, since they will be the ones taking risks and delivering fish in communities.</p> <p>Opening up CFAs to “armchair” QS holders substantially increases the potential for abuse.</p>	Any qualifying entity should be permitted to participate in a CFA... after all; a community is not only an active fisherman.
CFAs: voluntary, not mandatory associations.	While Council may develop a set of rules to enable CFAs, they must be voluntary. This was one area of fairly clear consensus among participants in the discussion – no one should be compelled to join or form a CFA.	

Summary

This report provides a summation of the activities and findings of three workshops on CFAs held in the summer of 2009. The goal of the workshops was to further-develop the notion of CFAs in order to enhance stakeholder’s common understanding of the concepts, and provide Council with the benefit of workshop participant’s views.

Because the subject matter of CFAs is relatively new to most of the participants, and highly complex, it was difficult to arrive at definitive conclusions. The following summary observations are deemed representative of the wide-ranging discussions held during three sessions:

- Control limits are the crux of the CFA issue. Justifying why (and if) exemptions from control limits are warranted was the dominant theme of the sessions. It was clear that some activities, such as participants working together to adapt to the new management Plan, are clearly desirable. A “safe harbor” is essential to foster these activities. It was also widely accepted that as the scope of a CFA is expanded, any exemptions sought must be well-justified and supported by performance review.
- For potential CFAs models that are not endowed with QS by QS holders, access to AMP is critically important. Goals for CFAs and AMP are similar, and careful consideration must be given to how the two mechanisms are linked.
- To understand exactly what CFAs mean, it is necessary to delve into the detail. At the same time, broader goals and guidelines must be set by Council to allow individuals the opportunity to customize approaches that meet both individual and Council objectives.

It is hoped that this report provides utility to West Coast trawl stakeholders as they proceed toward ITQ implementation.

Appendix 1

About the Workshops

Three workshops were held as follows:

3. June 24, 2009 - Seattle, WA
4. July 23, 2009 – Portland, OR
5. August 19, 2009 – San Francisco, CA

Invitations were sent to a wide variety of representatives, including fishermen, processors, community representatives, Council members, environmental organizations, and other industry participants. Those participating in the sessions attended either in person or utilized a telephone/web conferencing facility (except for the Seattle session, where the technology precluded linking-in remotely). There were attendees from each key sector at each workshop.

Attendance at the workshops varied, with some individuals participating in multiple meetings, others in a single meeting. Participation swelled through the process, with Seattle attendance the slightest and San Francisco the largest (25 persons).

The workshops were designed to elicit maximal feedback from participants. CFA-related discussion topics were introduced, ranging from general (first meeting) to specific (last meeting), with a range of opinion recorded on each. This was not a consensus or decision-making process but rather a brainstorming process. The subject matter covered at each workshop is summarized below:

First Session – Seattle

The initial session focused on the big picture of CFAs. The group:

- Reviewed and discussed the Council motion on CFAs for guidance (What is the context? What are the parameters?).
- Described, theoretically, a successful CFA (What does it look like? How is it working? What is it achieving? Effectively, a vision statement).
- Identified concerns about CFAs (What are the pitfalls?).
- Discussed “vulnerable communities” (How are these defined currently? How defined in the future? Need a community be deemed vulnerable to qualify for a CFA?).
- Examined already-expressed goals for CFAs (from the Council motion) and developed its own list of goals.

In Attendance:

- Corey Niles, Washington Dept. of Fish and Wildlife
- Dale Myer, Council member
- Dorothy Lowman, Consultant
- Frank Lockhart, NMFS
- Elizabeth Clarke, NMFS
- Heather Brandon, PFMC Staff
- Jim Seger, PFMC Staff
- Shems Jud, Environmental Defense Fund
- Joe Sullivan, Mundt MacGregor

- Steve Fitz, Scottish seine fisherman
- Erika Feller, The Nature Conservancy (CA)
- Stuart Nelson (Facilitator)

By phone:

- Kelly Ames, Oregon Dept. of Fish and Wildlife
 - Lynn Walton, Consultant
 - Andrew Bornstein, Bornstein Seafoods
 - Rod Moore, West Coast Seafood Processors Association
 - Tommy Ancona, Fishermen’s Marketing Association
 - Susan Chambers, West Coast Seafood Processors Association
- (note: due to technology problems only Ms. Ames and Ms. Walton were able to participate fully)

Second Session – Portland

With some over-arching work completed, the next step was drill-down into the subject matter, considering some of the potential design elements of CFAs, for example:

- Different sizes and scopes for CFAs - from small organizations, possibly not requiring any special accommodations from the Council, to larger entities needing enabling actions by Council.
- Varying goals and purposes – there may be different types of CFA for different purposes.
- Design mechanisms – what specifically, will a CFA do? How will it fulfill its mandate?
- Who will be the participants in a CFA (again, this may vary according to the purpose of the organization)?
- What are some of the key challenges or considerations accompanying CFAs (for example, unintended consequences)?

Through these discussions, the varying “pieces of the puzzle” were identified. It remained to organize the pieces into distinct options; this process was begun towards the close of this session.

In Attendance:

- Ed Backus, Ecotrust
- Steve Bodnar, Coos Bay Trawlers Association
- Rick Algert, City of Morro Bay
- Andrew Bornstein, Bornstein Seafoods
- Lynn Walton, Consultant
- Susan Chambers, West Coast Seafood Processors Association
- Corey Niles, Washington Dept. of Fish and Wildlife
- Dale Myer, Council Member
- Heather Brandon, PFMC Staff
- Astrid Scholz, Ecotrust
- Sarah Bahan, Ecotrust
- Tanaya Kilara, The Nature Conservancy (CA)
- Erika Feller, The Nature Conservancy (CA)
- Dick Vanderschaaf, The Nature Conservancy (OR)

- Stuart Nelson (facilitator)

By phone:

- Joanna Grebel, California Dept. of Fish and Game
- Kelly Ames, Oregon Dept. of Fish and Wildlife
- Joe Sullivan, Mundt MacGregor

Third Session – San Francisco

The emphasis for the final meeting was on option development. Specific CFA purposes and configurations were identified and fleshed-out. The intention was to make options as real as possible, since dealing with purely hypothetical examples can be challenging. Having exhausted this avenue of discussion, the group:

- Discussed how the Adaptive Management Program (AMP) might fit with CFAs.
- Considered specific performance measures for CFAS, using Table 4-61 from the draft Environmental Impact Statement as a template.
- Concluded the meeting by providing each participant the opportunity to render “final” advice or thought on CFAs.

In Attendance:

- Rick Algert, City of Morro Bay
- Lynn Walton, Consultant
- Heather Brandon, PFMC Staff
- Rod Moore, West Coast Seafood Processors Association
- Chris Kubiak,
- Jena Carter, The Nature Conservancy
- Kathy Fosmark, Alliance of Communities for Sustainable Fisheries
- Steve Scheiblaue, City of Monterey
- Larry Collins, San Francisco Crab Boat Owners Association
- Barbara Emley, San Francisco Crab Boat Owners Association
- Zeke Grader, Pacific Coast Federation of Fishermen’s Associations
- Henry Pontarelli, Lisa Wise Consulting, Inc.
- Dorothy Lowman, Consultant
- Kate Wing, Gordon and Betty Moore Foundation
- Cina Loarie, California State Coastal Conservancy/Ocean Protection Council
- Michael Bell, The Nature Conservancy
- Johanna Thomas, Environmental Defense Fund
- Erika Feller, The Nature Conservancy
- Stuart Nelson (facilitator)

By phone:

- Corey Niles, Washington Dept. of Fish and Wildlife
- Joanna Grebel, California Dept. of Fish and Game
- Kelly Ames, Oregon Dept. of Fish and Wildlife
- Joe Sullivan, Mundt MacGregor

Appendix 2

Summary of Indicators of Affiliation and Control - Handout from the 3rd Discussion

Table 1 - How might control be tracked? Examples of ways the federal government tracks affiliation and other control relationships that do not necessarily involve ownership. These are drawn from fishery regulations at 50CFR679.2 and 50CFR680.2 for other rationalized fisheries, and MARAD regulations at 46CFR356.	
<p style="text-align: center;"><u>Indicators of Affiliation</u></p> <p>Besides ownership interests, it may also be useful to understand how entities are affiliated with one another and how those relationships might lead to control. Business concerns, organizations, or individuals may be considered to be affiliates of one another if, directly or indirectly, either one controls or has the power to control the other – or a third party controls or has the power to control both, such as.</p> <ul style="list-style-type: none"> • Interlocking management or ownership; • Identity of interests among family members; • Shared facilities and equipment; • Common use of employees; • A QS holder or employee takes the leading role in establishing an entity that will hold QS. • If one QS holder has the right to preclude another holder of QS from engaging in other business activities; • If QS holders use the same law firm, accounting firm, share office space, phones, administrative support, etc. • If a QS holder provides start up capital for another QS holder on a less than arms length basis; • If a QS holder has the right to inspect the books and records of another QS holder; • If one QS holder uses the same insurance agent, law firm, accounting firm, or broker of any other QS holder with whom the former has entered into a mortgage, long-term or exclusive sales or marketing agreement, unsecured loan agreement, or management agreement; • A business entity organized after the decertification, suspension, or proposed decertification of another business entity that has the same management, ownership, or principal employees. 	<p style="text-align: center;"><u>Indicators of Control Relationships</u></p> <p>Control may be deemed to exist if an individual, corporation, or other business concern has any of the following relationships or forms of control over another individual, corporation, or other business concern:</p> <ul style="list-style-type: none"> • Control over a large portion of the voting stock; • Has the authority to direct the business of the entity which owns a fishing vessel or processor; • Has the authority to limit the actions of or to replace the chief executive officer, a majority of the board of directors, or any person serving in a management capacity of an entity that holds a large interest in a fishing vessel or processor; • Provisions that require consent of a minority shareholder to sell all or a substantial part of the assets, to enter into a different business, to contract with the major investors or to guarantee the obligations of majority investors; • Has the authority to direct the transfer, operation, or manning of a fishing vessel or processor; • Has the authority to control the management of and entity that owns a large interest in a fishing vessel or processor; • Absorbs all the costs and normal business risks associated with ownership and operation of a fishing vessel or processor; • Has the responsibility to procure insurance on a fishing vessel or processor, or assumes any liability in excess of insurance coverage; • Has the ability through any other means whatsoever to control the entity that controls a large interest in a fishing vessel or a processor.

Appendix 3

Summary of Indicators of Community Impacts – handout from 3rd meeting

Source: Chapter 4 of the TIQ Decision Document, pp. 480-481.

Table 4-60. Principal groundfish ports.

Port name	Whiting	Nonwhiting
Bellingham, Washington		X
Anacortes, Washington	X	
Neah Bay, Washington		X
Seattle, Washington	X	
Westport, Washington	X	X
Ilwaco, Washington	X	
Astoria, Oregon	X	X
Newport, Oregon	X	X
Charleston/Coos Bay, Oregon	X	X
Brookings, Oregon		X
Crescent City, California	X	X
Eureka, California	X	X
Fort Bragg, California		X
San Francisco, California		X
Moss Landing, California		X
Princeton/Half Moon Bay, California		X
Morro Bay, California		X

4.14.1.2 Impacts, Mechanisms and Metrics

Table 4-61 summarizes potential impacts, mechanisms for such impacts, and metrics and methods for assessing impacts. Impacts fall under six general topics: changes induced from changes to trawl harvesters, changes induced from changes in the processing sector, impacts to non-trawl communities and fisheries, cultural and social changes, changes in municipal revenues and community stability, and infrastructure impacts.

Table 4-61. Overview of impacts, mechanisms, and metrics used to assess community impacts.

Potential community impacts	Mechanisms for impacts	Metrics or indicators	Data, models, and methods for assessing impacts
Changes in amount of trawl vessel activity	Fleet consolidation Geographic shifts in delivery activity	Vessel and permit count, type, and location	Consolidation Model; Geographic shifts in fishery patterns; Initial allocation of IFQs
Changes in crew wages and number of crew jobs	Fleet consolidation Changes in crew compensation structure	Estimated income in harvesting sector, fleet consolidation data; number and location of crew employed; hours of crew employment	Consolidation Model; Input from key informants
Changes in the relationships between crew and captains	Changes in compensation structure	Wages paid to crewmembers	Literature review of Ethnographic information; Qualitative assessment
Changes in the level of processing activity	Consolidation of processing sector; changes in bargaining power over exvessel prices, changes in the timing of deliveries	Number and type of active processors; municipal income data	Geographic shifts in fishery patterns; Consolidation model
Changes in the number of processing jobs and the seasonality of processing jobs	Changes in volume of landed catch; changes in the location of delivered catch; changes in the timing of harvest	Number and type of employment in processing sector; amount of seasonal/temporary employment vs. permanent employment	Geographic shifts in fishery patterns; Catch estimate model; qualitative assessment
Cultural and social changes	Families may experience increased stress due to economic and cultural change	Relationship between economic change and family stress	Qualitative assessment from relevant ethnographic studies
	Community identity may change if certain fishery sectors are lost	Relationship between potential loss of an industry and community identity	Qualitative assessment from relevant ethnographic studies
Changes in municipal revenues and community stability	Public revenues may be lost if trawl or processing sector shrinks	Estimated municipal revenues; raw and processed product cost/value	Income impacts derived from other EIS sections
	Depending on the importance of a "working port" to tourism to a community	Information on how important the local fishery is to the tourist industry	Qualitative discussion; community profiles; consolidation and geographic shift models.
Infrastructure impacts	Infrastructure may be lost if trawl or processing sector is reduced	Quality of infrastructure; vessel numbers, pounds of harvested species, change in landing patterns	Qualitative discussion; consolidation and geographic shift models.
Impacts to non-trawl communities and fisheries	Non-trawl communities may be affected by increased competition, impacts on infrastructure in trawl communities (resulting from gear switching and other fishery shifts)	Estimates of gear switching and shifts to other fisheries	NWFSC Consolidation Model; Geographic shifts in fishery patterns; Initial allocation of IFQs; NWFSC community profiles



September 4, 2009

Pacific Fisheries Management Council
7700 NE Ambassador Place, Suite 101
Portland, OR 97220-1384

Re: West Coast Groundfish Trawl Rationalization

Dear Mr. Chairman:

The Oregon Dungeness Crab Commission (ODCC) is an industry-funded commodity commission under the umbrella of the Oregon Department of Agriculture, representing 429 Oregon Dungeness crab 'limited entry' permit holders. In that capacity, we feel obligated to express our serious concerns about the potential negative impacts to the Dungeness crab fishery should the groundfish rationalization program move forward on its present course.

Specifically, the analysis that suggests that IQ's will "relax the need for trawl harvesters to diversify into other fisheries...because they have more certainty about the future of trawling." (*8.2.1 Spillover of Vessel Participation*) is hardly plausible, given the history of 'effort shifts' and the competitive nature of modern-day fisheries.

That "certainty", in most cases, will simply provide trawl vessels the opportunity enter lucrative fisheries such as the Dungeness crab fishery with the comfort of knowing that their trawl quota is safe and can be harvested *after* their expectations have been met in the crab fishery. 'Leasing' and 'trading' options associated with IQ's only add to the inevitability that the program will create more pressure on 'fully-capitalized' fisheries such as Dungeness crab and pink shrimp.

The "specialization" argument in the same analysis also doesn't hold water. Given the derby-like aspect of the Dungeness fishery, it is relatively easy to maximize one's potential in a short period of time and move back into the trawl fishery where specialization may or may not create cost efficiencies.

Due to the relatively high number of 'dormant' L/E Dungeness crab permits (upwards of 100 on any given year), the fishery will be extremely vulnerable to effort shift created by trawlers in possession of IQ's and the capitol, time and motivation to maximize their involvement in the industry with the simple purchase of one of these unused permits. The increased pressure to the crab fishery by introducing the kind of 'capabilities' many of these individuals and their vessels possess, will almost certainly have a negative impact.

Dungeness crab is the most valuable 'single specie' fishery in Oregon, accounting for on average, 38.5% of the 'landed value' of *all* the state's seafood resources annually. Much has been done in recent years (i.e. pot limits, summer-time trip limits, log-book requirements) to insure its sustainability in the face of declining opportunities in other fisheries. It would be negligent of the Council to upset the delicate

ODCC letter to the PFMC re: Groundfish Rationalization – pg 2

balance of a healthy, well-managed fishery in its attempts to 'fix' problems facing the groundfish trawl or any another West Coast fishery.

We join in the chorus of industry voices and sectors asking the PFMC to re-think the proposed rationalization program in light of the significant concerns that have been articulated since the details have been made public over the past few months.

Sincerely,

Nick Furman, Executive Director
Oregon Dungeness Crab Commission

RECEIVED

SEP 3 2009

PFMC

From: fisherman97420@hotmail.com
To: pfmc.comments@noaa.gov
Subject: Newport Shrimp Producers council letter
Date: Tue, 25 Aug 2009 14:27:21 -0600

Newport Shrimp Producers

Mr. Chairman;

My name is Nick Edwards I am representing the Newport Shrimp Producers. I have participated in the Oregon Pink Shrimp industry for thirty years. I have been actively involved in seven different West Coast fisheries during my career. Fifteen years has been in the West Coast ground fish trawl fishery. The commercial fishing industry is the career path I have chosen. I have testified before the California Fish and Wildlife Commission and Oregon Dept. of Fish and Wildlife. This is the first opportunity to voice my concerns before the Pacific Fisheries Management Council. I have represented my industry, both shrimp and crab at supervised negotiations, with processors and the Oregon Department of Agriculture.

Newport Shrimp Producers are the largest shrimp association on the West Coast. We have been representing the West Coast shrimp industry for over fifteen years. Our membership has participated in many trade shows both Domestic and International.

The West Coast Fisheries are in a new risk adverse era. The impacts from the spillover from trawl rationalization will have negative effects on all West Coast Fisheries. How does the council prioritize which fisheries to be economically viable? The EIS (economic Impact Study) is very controversial depending on which state and federal fishery you participate in. In the EIS document Chapter 4 pages 396-404 talk about impacts to non ground fish trawl commercial harvesters (crabbers, shrimpers, Fix Gear). The EIS is in serious question regarding the economic impacts of these different state and federal fisheries.

The ground fish buyback program was implemented in 2003, in Sept 8 2005 the repayment for the buyback started in the shrimp industry. Since that date, my vessel F/V Carter Jon has paid \$70,338.44. My business has personally paid for fleet capacity reduction in regards to Pink Shrimp Fishery. Oregon has averaged forty four vessels in the shrimp fishery since the buyback was imposed. MSC (Marine Stewardship Council)

was achieved with a low capacity level of forty five vessels. MSC has awarded pink shrimp a sustainable fishery. The spillover from Trawl rationalization will jeopardize our MSC certification.

The EIS document Chapter 4 page 305 under vessel monitoring cost; it states that "if at sea monitoring cost for vessel at \$350 per day, this will tend to reduce the ground fish fleet from 40-60 vessels". Because of attrition from the ground fish trawl fishery, ground fish trawl vessels will be forced to enter the shrimp fishery. The infrastructure for the shrimp industry has changed dramatically since buyback inception. The Processing sector has lost half of its processing capacity. There is no longer the economic infrastructure for the fleet to double. We, the Newport Shrimp Producers want to voice our concerns that are real and readily apparent.

Therefore we formally ask the council to go on public record and acknowledge the severe economic impacts that trawl rationalization will have on the West Coast Shrimp Industry. This recognition from the council is needed to start a movement to find solutions to provide economic stability in the Oregon Pink Shrimp Fishery.

Respectfully submitted

Nick Edwards 

F/V Carter Jon

Secretary Newport Shrimp Producers

JUSTIN YEAGER	F/V	EDDIE ROD	Newport OR
Brent Winfield	F/V	LIBRA	Newport OR
CRAIG STOLTZ	F/V	ZORA BELL	Coos Bay OR
Brent Winfield	F/V	HAPPY SEA	Coos Bay OR
DON BOYD	F/V	LADY HELEN	Coos Bay OR
Vince Doyle	F/V	VERNA SEAN	Font Bragg CA
GEROLD GUNNARI	F/V	COAST PRIDE	Coos Bay, OR
FRED WARREN	F/V	GALLAWAY BAY	Coos Bay, OR
TED GIBSON	F/V	LADY KAY	Newport OR
TED GIBSON	F/V	CAP ELZA	Newport OR
REX LEACH	F/V	MS JULIE	Coos Bay, OR

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Respectfully submitted

Nick Edwards 

F/V Carter Jon

Secretary Newport Shrimp Producers

JOM ESTES	F/V TARA DAWN	FORT BRAGG CA
RICHARD KELLY	F/V MISS HAILE	FORT BRAGG CA
RICHARD KELLY	F/V MISS KELLY	FORT BRAGG CA
RICHARD KELLY	F/V MISS KELLY II	FORT BRAGG CA
GERRY HERMISTON	F/V POLLUX	CRECENT CITY CA
RANDY SMITH	F/V MISTA-SEA	CRECENT CITY CA
DALE ADAMS	F/V GRANODA	ASTORIA, OR
TERRY SWEENEY	F/V AMAK	COOS BAY, OR
MARROL JOHNSON	F/V STORM BREAKER	EUREKA CA.
IAN ROBERTS	F/V GOOD NEWS	EUREKA CA

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George A. Jain Bank Carson-Davis Oil Corp

Edward J. Blauer - ENCORE ENTERPRISES
Respectfully submitted

James B. ... FV Pacific Conquest
REX LEACH FV MS JULIE

Georges Marine Electronics, Inc. -
Phil Clark X Nick Edwards

Pat Houck
FV Carter Jon

Mark E. ...
Secretary Newport Shrimp Producers
ENGLUND MARINE

Frank Seufus Industrial Steel & Supply Co.
Curtis Russell
(Russell Fuel)

Gusie Worthen Usco Hydraulics

Forrest Files

Ray Jan
OREGON PACIFIC CO.

Ray Cot Giddings Boat works / Norsteel Aluminum

August 17th 2009

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

RECEIVED

SEP 3 2009

PFMC

Re: Amendment 20, Trawl Rationalization, Individual Fishing Quotas

Dear Mr. Chairman:

We are a coalition of Ground fish Trawler's, Shrimp Trawlers, Crabbers, and Business owners. We rely on the economic stability for our west coast fleet, we are the residents and permit holders from the port of COOS BAY, ORE.; our home fishing port. It is with grave concern that we are writing to inform you about the severe economic impacts of Trawl Rationalization on our individual businesses. Unfortunately, the permit related information that gives rise to our issues with Trawl Rationalization was not available to us during the public debate and decision making process of the Council. Had it been available when it was developed by Council staff, or when it was repeatedly requested by many in the industry, permit owner interest in moving forward with the plan would have differed substantially.

We share the Council's desire to improve resource management and are willing to continue to work towards that end. However, we do not support moving forward with the scheduled, January 1, 2011, Non-Whiting Groundfish Trawl Rationalization. Economically, it is a significant step backward from status quo. Quite different than we were led to believe. We have been repeatedly advised by those representing us at the Council, that, with the equal allocation and permit history allocation formula, we would have increased economic opportunity. In fact, the opposite is true.

That is why we are asking this Council to offer a referendum vote on this action. And, in the interim, take action to immediately suspend further Council staff and NMFS resources and effort until that vote is taken. If taking this extra step to hear new concerns, created with this new information, results in some interim steps or even if after all is discussed, Council moves forward as previously decided, then delay and further debate is not only reasonable, it is necessary.

So, we include for your review a few of our specific business concerns:

- The public process was completed without information that would have materially influenced the debate while it was occurring.

Nearly every active permit is being forced to lease or purchase quota to maintain their current business opportunity; this includes those permits with the best available history. This was not the prevailing understanding during the process. It was widely understood that there would likely be winners and losers, it was never expected or represented that all would be losers with the change.

- The Council has moved forward without a full review of a economic impact statement on the adverse affects of all Fisheries both state and federal directly effected by the proposed IFQ program.
- The Trawl rationalization program is going to have a direct impact on Oregon's pink Shrimp fishery. Increased effort shift, will occur potentially doubling the fleet. This will jeopardize Oregon's MSC certification. The MSC label was achieved with a low capacity of forty five vessels. The MSC label is a marketing tool to market Oregon pink Shrimp in the E.U.
- The spillover to various State and Federal fisheries is very concerning to fisherman who have already paid for capacity reduction thru the 2003 Buy-back plan. To maintain current opportunity, vessels will all have to buy or lease substantial amounts of additional quota.
- Now that we have had opportunity to review the economic impact to all of our individual businesses, it is clear that the program is not viable for any of us.
- We clearly understood the program is designed to rationalize the fleet; what we didn't know was that we were the ones that would have to pay for it, just to remain viable. Not that we would have diminished opportunity with an opportunity to "buy back" to our current levels of opportunity.

The West Coast Fishing Industry is at stake. It is imperative that the Council consider our requests.

Sincerely

Mark Blair ENCLUND MARINE
George Marine Electronics - Brenda Keppman

Permit Owner Signatures by Port

Nick Edwards F/V CARTER JON *Pat Houde*
"Carterston
ICE"

Paavo Carroll F/V TITAN

George A FairBank CARSON-DAVIS oil company

Chris S. DAVIS CARSON-DAVIS Oil Company

Paul R. Seufus Industrial Steel + Supply Co.

Gene Worthy Issco Hydraulics

M FWF Forwest Elec
Curtis Russell (Russell End)
OREGON Pacific Co.

Ray Jim

Ray Cop Giddings Boatworks/Turteel Aluminum

Edward Blower ESCORE ENTERPRISES

James Bue F/V Pacific Conquest

Jack Emmons

From: Nick Edwards [fisherman97420@hotmail.com]
Sent: Thursday, August 20, 2009 11:12 AM
To: jack.emmons@hallmarkfisheries.com
Subject: Letter to Council

August 17, 2009

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

Re: Amendment 20, Trawl Rationalization, Individual Fishing Quotas

Dear Mr. Chairman:

We are a coalition of Ground Fish Trawlers, Shrimp Trawlers, Crabbers, and Business Owners. We rely on the economic stability of our West Coast Fleet. We are residents and permit holders of the Port of CHARLESTON, OR; our home fishing port. It is with grave concern that we are writing to inform you about the severe economic impacts of Trawl Rationalization on our individual businesses. Unfortunately, the permit related information that gives rise to our issues with Trawl Rationalization was not available to us during the public debate and decision making process of the Council. Had it been available when it was developed by Council staff, or when it was repeatedly requested by many in the industry, permit owner interest in moving forward with the plan would have differed substantially.

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So, we include for your review a few of our specific business concerns:

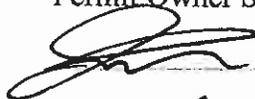
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- The Trawl Rationalization Program is going to have a direct impact on Oregon's Pink Shrimp Fishery. Increased effort shift will occur, potentially doubling the fleet. This will jeopardize Oregon's MSC Certification. The MSC Label was achieved with a low capacity of 45 vessels. The MSC Label is a marketing tool used to market Oregon Pink Shrimp in Europe.
- The spillover to various State and Federal Fisheries is very concerning to fishermen who have already paid for capacity reduction through the 2003 Buy-Back Plan. To maintain current opportunity, all vessels will have to buy or lease substantial amounts of additional quota.
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The West Coast Fishing Industry is at stake. It is imperative that the Council consider our requests.

Sincerely

Permit Owner Signatures by Port

 F/U WESTERN SEAS Gm California Shellfish

Thomas R Nowlin F/V Apache
 Jeff Soler F/V Searcher I
 Richard Lutenethal F/V NEL RON DIC
 Larry Hawkey F/V Masequet E
 Vincent Sweaney F/V Amak
 Kay Jean F/V MS. Julie
 Ethel Hague F/V Behmer

Dennis Cutting FV Bernadette
 Dennis Cutting FV Coalweather
 Dennis Cutting FV Stormie C

August 17th 2009

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

Re: Amendment 20, Trawl Rationalization, Individual Fishing Quotas

Dear Mr. Chairman:

We are a coalition of Ground fish Trawler's, Shrimp Trawlers, Crabbers, and Business owners. We rely on the economic stability for our west coast fleet, we are the residents and permit holders from the port of FOOT BRAGE; our home fishing port. It is with grave concern that we are writing to inform you about the severe economic impacts of Trawl Rationalization on our individual businesses. Unfortunately, the permit related information that gives rise to our issues with Trawl Rationalization was not available to us during the public debate and decision making process of the Council. Had it been available when it was developed by Council staff, or when it was repeatedly requested by many in the industry, permit owner interest in moving forward with the plan would have differed substantially.

We share the Council's desire to improve resource management and are willing to continue to work towards that end. However, we do not support moving forward with the scheduled, January 1, 2011, Non-Whiting Groundfish Trawl Rationalization. Economically, it is a significant step backward from status quo. Quite different than we were led to believe. We have been repeatedly advised by those representing us at the Council, that, with the equal allocation and permit history allocation formula, we would have increased economic opportunity. In fact, the opposite is true.

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So, we include for your review a few of our specific business concerns:

- The public process was completed without information that would have materially influenced the debate while it was occurring.

Nearly every active permit is being forced to lease or purchase quota to maintain their current business opportunity; this includes those permits with the best available history. This was not the prevailing understanding during the process. It was widely understood that there would likely be winners and losers, it was never expected or represented that all would be losers with the change.

- The Council has moved forward without a full review of a economic impact statement on the adverse affects of all Fisheries both state and federal directly effected by the proposed IFQ program.
- The Trawl rationalization program is going to have a direct impact on Oregon's pink Shrimp fishery. Increased effort shift, will occur potentially doubling the fleet. This will jeopardize Oregon's MSC certification. The MSC label was achieved with a low capacity of forty five vessels. The MSC label is a marketing tool to market Oregon pink Shrimp in the E.U.
- The spillover to various State and Federal fisheries is very concerning to fisherman who have already paid for capacity reduction thru the 2003 Buy-back plan. To maintain current opportunity, vessels will all have to buy or lease substantial amounts of additional quota.
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- We clearly understood the program is designed to rationalize the fleet; what we didn't know was that we were the ones that would have to pay for it, just to remain viable. Not that we would have diminished opportunity with an opportunity to "buy back" to our current levels of opportunity.

The West Coast Fishing Industry is at stake. It is imperative that the Council consider our requests.

Sincerely

Permit Owner Signatures by Port

Brent Winfield	F/V	LyBRA	Newport ORG
Brent Winfield	F/V	Happy SEA	Coos Bay, OR
CRAIG Stotz	F/V	ZORA BELL	Coos Bay, OR
DON Boyd	F/V	LADY HELEN	Coos Bay, OR
VINCE Doyle	F/V	VERNA JEAN	Fort BRAGG CA
GEROLD Gunnar	F/V	COAST PRIDE	Coos Bay OR.
FRED WARREN	F/V	GALLAWAY BAY.	Coos Bay OR
VICTOR POMICIA	F/V	Spirit of AMERICA	Crecent City CA.
RICHARD KELLY	F/V	MISS HAILE	Fort BRAGG CA
RICHARD KELLY	F/V	MISS KELLY	Fort BRAGG CA
RICHARD KELLY	F/V	MISS KELLY II	Fort BRAGG CA
TOM Estes	F/V	TARA DAWN	Fort BRAGG CA
GERRY HERMISTON	F/V	POLLUX	Crecent City CA
RANDY SMITH	F/V	Mista-SEA	Crecenty City CA
DALE ADAMS	F/V	GRANADA	ASTORIA, OR.

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Permit Owner Signatures by Port

Kenny	BURNS	F/V	AL W	EUREKA	CA
RONNIE	GHERA	F/V	GARY B	EUREKA	CA
GERRY	HEMISTON	F/V	POLLUX	CRECENT	CA
IAN	ROBERTS	F/V	GOOD NEWS	EUREKA	CA
CAROL	JOHNSON	F/V	STORM BREAKER	EUREKA	CA

August 17th 2009

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

RECEIVED

SEP 1 2009

PFMC

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The West Coast Fishing Industry is at stake. It is imperative that the Council consider our requests.

Sincerely

Permit Owner Signatures by Port

NAME	ADDRESS	VESSEL / BUSINESS
David Vandecoevering	P.O. Box Garibaldi Ore	F/V Chellisa Michelle
Jorgenhaver	PO BOX 783 Warrenton	F/V Endeavor
Robert [unclear]	PO BOX 588 GARIBOLDI, OR.	F/V KENNETH
Mark Bowers / [unclear]	526 N.W. Dair Ave Warrenton OR	F/V Pacific Hooker / Captain
Mark: [unclear]	625 E Harbor dr Warrenton OR	Deck Hand
Charlene Moore	340 8th Ave Seaside	Concerned citizen
Danell [unclear]	12476 Evergreen Acres Ln. Seaside	Dock Worker (Pac Coast)
Ernie Zuniga	1020 S. Columbia Seaside	Deck Hand
Robert Smith	1020 S. Columbia Seaside	Concerned Citizens
Darren Deet	38876 Nordlund McCoy LN Astoria OR	Captain F/V Pac Future

NAME

ADDRESS

VESSEL / BUSINESS

Kurt England

1336 Irving Ave - Astoria, OR 97103

England Marine

August 17th 2009

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

Re: Amendment 20, Trawl Rationalization, Individual Fishing Quotas

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The West Coast Fishing Industry is at stake. It is imperative that the Council consider our requests.

Sincerely

Permit Owner Signatures by Port

SIGN / PRINT

VESSEL

~~R. Adelman~~ Royce Adelson Captain Andy

~~K.C.~~ GEORGE LAPHAM MICHELE ANN

John McMillin JOHN McMillin EVOLUTION

Leary Evans LEARY EVANS CORSAIR

Mike Schorec MIKE SCHOREC COLLIER BROS

Phillip D Carley PHILLIP D CARLEY WOSKA-OCEANIA

Ted Gibson TED GIBSON LADY KAYE

Ted Gibson TED GIBSON CAP ELZA

AL DAVIS AL DAVIS MASTER CHRIS

Jeff W. Baidman JEFF W. BAIDMAN MISS YVONNE

Shirley A Chestnut SHIRLEY A CHESTNUT GOLDEN DOLPHIN

Gerald A Bates GERALD A BATES LISA MELINDA

SIGN/PRINT

BUSINESS

<i>Sara L. Skamser</i>	Sara L. Skamser	Foulweather Trawl
<i>John T. Curry</i>	John T. CURRY	MARINE SURVEYOR

Sign / Print
Patrick E. Witham

. PATRICK E. WITHAM

Vessel / Business
BARGE INN

Sign / Print

Vessel

~~Justin W. Yager~~
Stan Schwanz

Justin W. Yager
STAN SCHWANZ

F.V. Eddie + Rod
MISS BERTIE
EMERALD SEA

From: Nick Edwards [fisherman97420@hotmail.com]
Sent: Thursday, August 20, 2009 11:12 AM
To: jack.emmons@hallmarkfisheries.com
Subject: Letter to Council

August 17, 2009

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

Re: Amendment 20, Trawl Rationalization, Individual Fishing Quotas

Dear Mr. Chairman:

We are a coalition of Ground Fish Trawlers, Shrimp Trawlers, Crabbers, and Business Owners. We rely on the economic stability of our West Coast Fleet. We are residents and permit holders of the Port of ~~CHARLESTON~~ OR; our home fishing port. It is with grave concern that we are writing to inform you about the severe economic impacts of Trawl Rationalization on our individual businesses. Unfortunately, the permit related information that gives rise to our issues with Trawl Rationalization was not available to us during the public debate and decision making process of the Council. Had it been available when it was developed by Council staff, or when it was repeatedly requested by many in the industry, permit owner interest in moving forward with the plan would have differed substantially.

We share the Council's desire to improve resource management and are willing to continue to work towards that end. However, we do not support moving forward with the scheduled, January 1, 2011, Non-Whiting Groundfish Trawl Rationalization. Economically, it is a significant step backward from status quo. Quite different than we were led to believe. We have been repeatedly advised by those representing us at the Council, that, with the equal allocation and permit history allocation formula, we would have increased economic opportunity. In fact, the opposite is true.

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So, we include for your review a few of our specific business concerns:

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- Nearly every active permit is being forced to lease or purchase quota to maintain their current business opportunity; this includes those permits with the best available history. This was not the prevailing understanding during the process. It was widely understood that there would likely be winners and losers, it was never expected or represented that all would be losers with the change.

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Sincerely

Permit Owner Signatures by Port

	F/V WESTERN SEAS	GM CALIFORNIA SHELLFISH
Thomas R. Nowlin	F/V Apache	
Jeff Soler	F/V Searcher I	
Richard Luten	F/V NEL RON DIC	
Lenny Hawkey	F/V MARGARET E	
Armenie Sweetney	F/V A mark	
	F/V MS-Julie	

August 17th 2009

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

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Sincerely



Permit Owner Signatures by Port

GARY RIPKA

F/V Western Breeze

August 17th 2009

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

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Permit Owner Signatures by Port

GARY RIPKA

F/V Two SAINTS

August 17th 2009

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7700 NE Ambassador Place, Suite 101
Portland, Oregon 97220-1384

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SIGN / PRINT

Joseph N. Rock JOSEPH N. ROCK
Corey Rock Corey Rock
Eugene Law Eugene Law
Janice

VESSEL

FIU KYLIE LYNN FIU LIBRA
FIU LAST DANCE

Kylie LYNN

Ms Law

Lady Jan

August 17, 2009

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

RECEIVED

AUG 29 2009

PFMC

Re: Amendment 20, Trawl Rationalization, Individual Fishing Quotas

Dear Mr. Chairman:

We are permit owners, crabbers, shrimpers and residents of the Port of Westport, Wa; our home fishing port. It is with grave concern that we are writing to inform you about the severe economic impacts of Trawl Rationalization on our individual businesses. Unfortunately, the permit related information that gives rise to our issues with Trawl Rationalization was not available to us during the public debate and decision making process of the Council. Had it been available when it was developed by Council staff, or when it was repeatedly requested by many in the industry, permit owner interest in moving forward with the plan would have differed substantially.

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- Now that we have had opportunity to review the economic impact to all of our individual businesses, it is clear that the program is not viable for any of us.
- Active permit owners are paying for the 2003 buy-back. These are the same permit owners that believed that they would be the industry in the future. It comes as a shock to us that just to maintain our current opportunity we will all have to buy or lease substantial amounts of additional quota.
- We clearly understood the program is designed to rationalize the fleet; what we didn't know was that we were the ones that would have to pay for it, just to remain viable. Not that we would have diminished opportunity with an opportunity to "buy back" to our current levels of opportunity.
- Cost estimates for implementation remain mostly unknown at this time.
- NMFS has stated that if they hit everything perfect, January 2011 will work; the process remains fragile.

The West Coast Fishing Industry is at stake. It is imperative that the Council consider our requests.

Sincerely *Ken P. Beauden*
President of Anchor Bay Inc.
Owner/Operator of F/V ORION

Permit Owner Signatures by Port

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

RECEIVED

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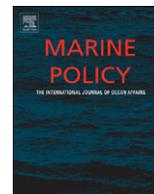
Sincerely


Mike Anderson
FV Triple Star



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Marine Policy

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The elephant in the room: The hidden costs of leasing individual transferable fishing quotas

Evelyn Pinkerton^{a,*}, Danielle N. Edwards^b

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ARTICLE INFO

Article history:

Received 1 January 2009

Accepted 3 February 2009

Keywords:

Individual transferable quotas

Fisheries management

Fisheries policy

ABSTRACT

Despite the increasingly positive reviews of individual transferable quotas (ITQs), few studies have considered how quota leasing activities can reduce the economic benefits to society and to fishermen operating under the ITQ fisheries system. This analysis reveals negative economic impacts of ITQs previously overlooked by examining the extent of quota leasing and the relationship between the catch value, the cost of fishing, and the quota lease price in the BC halibut fishery, long considered a poster child for ITQs. Findings challenge assumptions of economic theory used to promote the benefits of ITQs.

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1. Introduction

Individual transferable quotas (ITQs) are permits allowing the holder of the ITQ to catch or transfer a share of a total allowable catch (TAC). Typically, these permits do not expire, although if a fishery must be closed or diminished, the permit is similarly devalued. Most ITQ systems by definition allow these permits to be leased or sold to others. ITQs have received increasingly widespread positive evaluations from resource economists and fisheries managers, and have been widely adopted and accepted as a way of dealing with problems in fisheries management [1]. At the same time, problems with this approach have been raised by economists [2], political scientists [3], anthropologists [4], and geographers [5]. Yet, as some scholars have noted [6], there are few detailed empirical studies assessing changes in efficiency in the same fishery following the creation of individual quota programs. This discussion attempts to address this gap by examining how widely adopted quota leasing practices impact the delivery of economic benefits to society and to fishermen operating under an ITQ system.¹

ITQ advocates posit that ITQs should be transferable via the market to allow quota to gravitate to the vessels and operators with the lowest fishing costs [9]. ITQ advocates also hold that these “efficient” vessels yield the greatest public benefit by virtue of the fact that they have the lowest fishing costs and thus their operations result in the least dissipation of wealth for society in general [10]. The role of quota leasing has been largely ignored in ITQ analyses, which can be explained by a common assumption that leasing automatically means a transfer of wealth rather than dissipation of wealth. This discussion questions the role of quota leasing as it relates to the achievement of an economically efficient fishery and the service of the public good. The impact of leasing on the financial viability of fishing operations, the costs of leasing, the extent of leasing, and the functioning of the quota leasing market are examined in the halibut fishery ITQ system in British Columbia, Canada. The BC halibut fishery was chosen because of its position as a “poster child” success story [11].

The leasing of quota is “the elephant in the room” of the BC halibut fishery. Despite the fact that the amount of the TAC which is leased out (i.e. not fished by the quota owner) has steadily increased to 79% in 2006, leasing is unmentioned, little mentioned, or considered insignificant by most analysts of the BC system. The discussion will reveal how hidden assumptions embedded in the analysis of ITQs, especially assumptions about the negligible impact of the initial allocation of permits, adequate information, and the effective functioning of capital markets have contributed to a failure to identify important impacts of quota leasing. An analysis of the impacts of leasing invites a new consideration of the benefits which have been claimed for ITQ systems that lack a mechanism to regulate leasing and control the concentration of holdings.

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E-mail addresses: epinkert@sfu.ca (E. Pinkerton), dnedwards@telus.net (D.N. Edwards).

¹ One study [7] did measure efficiency gains in the BC halibut fishery through 1994, but did not consider leasing, as the authors believed that “most of the active vessels are owner operated”. By 1994, 34% of the quota was already being leased out, but the lease price at that time was only c. 50% of the catch value, enabling what lessee fishermen considered a reasonably fair distribution of benefits. The problems identified in this discussion did not become evident until 1998. An overview of ITQs [8] reviewed outcomes in less detail and noted leasing at 50–60 % of the catch value in Iceland.

2. Methods

Methods included 15 years of discussions with an array of BC fishermen and fish processors about the operation of ITQs, monitoring of the discussion among fishermen on the listserve BC FishNet, review of the literature on ITQs in several disciplines, and detailed analysis of business practices, transactions and fishing costs of the BC halibut fleet. The detailed analysis used data obtained from Department of Fisheries and Oceans, interviews with fishermen, and monitoring of service provider reports [12].

The analysis will focus on (a) the relationship of the catch value obtained by fishermen to the lease price paid by lessee fishermen, including the impact of the lease price on the financial viability of lessee's fishing enterprises, (b) the extent and nature of leasing in the fleet, and (c) the impacts of leasing on the achievement of management objectives for fleet stability, viability, safety, efficiency, and greatest net benefits to society.

3. ITQs in the BC halibut fishery

There are several reasons why ITQs in the BC halibut fishery should be among the most successful ITQ systems and why it, therefore, provides a best case scenario, a good test case of how an ITQ system can work. Since 1923, the Pacific halibut fishery has been managed by some iteration of the International Pacific Halibut Commission, which exercises considerable oversight and collects stock status information. There has been a history of reasonably effective conservation, keeping the TAC at a level that avoided stock swings and collapses, unlike many other fisheries [13]. Because of beneficial characteristics of halibut physiology (no swim bladder) and markets (same price per pound regardless of size), problems common in ITQ fisheries have been largely avoided in halibut. Thus there are fewer incentives to highgrade (retaining only the largest fish) because halibut has traditionally been sold at the same or similar price per pound whether the fish is larger or smaller. Although this has been changing in recent years, the change has not been significant enough to precipitate high-grading. Unlike many other groundfish, halibut has low discard mortality so that when juvenile or under-sized halibut are hooked and discarded, greater than 80% are expected to survive [14]. Highgrading and discard mortality of the target species are, therefore, two problems widely appearing in ITQ systems [15] which are absent or minimal in the halibut fishery.²

Because of the contentious nature of the halibut ITQ system, twice voted down by a majority of fishermen, a rule was created capping the holding of more than 1% of the TAC as quota on a single halibut license. This rule inhibits the concentration of vessel catches, although it does not inhibit quota ownership concentration, since nothing prevents a party from holding multiple vessels and multiple licenses.

ITQs were implemented in the BC halibut fishery as non-transferable individual quotas for the first two years, 1991–1992, and became temporarily transferable as leases in 1993. In 1999, restrictions were lifted on permanent transfers (sales), although a number of sources indicated that permanent transfers were easily made through private arrangements previous to the formal lifting of restrictions. Temporary transfers are an indicator of how much quota has been leased out annually since 1993.

² The discard mortality of species caught incidentally in the halibut fishery has been identified as a significant problem [16], but does not bear directly on this analysis.

4. Analysis: the relationship between catch value and quota lease price

The lease price of quota an increase from \$1.95/lb (in constant 2008\$) in 1993 to \$3.80/lb in 2008, an increase of nearly double, (Table 1). The purchase price of quota increased during the same period of time by 2.5 times, from 3.5 times the ex-vessel price (landed value of the fish paid to the fisherman) in 1993 to more than eight times the ex-vessel price in 2007. The ex-vessel price of halibut has remained relatively stable over this time period, increasing at first due to improved product quality and enhanced fresh product flow from a longer season, but then stabilizing, while quota sale and lease prices continued to rise.

The relationship between the value of the catch (the ex-vessel value) and the lease (and sale) price of quota demonstrates that a lessee faces a cost-price squeeze between what he must pay to lease the quota and what he is paid for his catch. Therefore, the assumption that “the market value of the ITQs reflects the market's perception of the net present value of the future stream of net economic returns from the fishery” [17] applies only to the value of the fishery to quota owners and not to vessel operators who lease quota.

The rise of the quota lease price as an increasing proportion of the ex-vessel value (i.e. catch value) of the fish (from 53% in 1993 to 78% in 2008) should be considered in evaluating the financial viability of fishing enterprises. In analyzing the financial costs of fishing, it is useful to distinguish fixed annual costs, variable fishing costs, or “trip costs”, and lease fees. Leasing is by far the largest fixed annual cost, and operations that lease the majority of the quota that they fish, are marginally profitable or unprofitable (Fig. 1).³

There are three factors which account for the high quota lease and purchase prices out of proportion to the value of the catch. The first two of these factors have generally not been identified by the fisheries economists prominent in the discussion of ITQs [1]. Nonetheless, it is clear that their claims about the efficiency benefits of ITQs rest on key unstated assumptions about the conditions under which trading of property rights will lead to efficient outcomes: (1) there are no wealth or income effects from the initial allocations of rights, (2) there is perfect information among all parties on all aspects of the negotiation, and trading of these rights, (3) there are low transaction costs for the negotiation, trading, and enforcement of the trade, and (4) there is a well-functioning capital market (access to capital by all actors). Many economists⁴ would claim that if these conditions are *not* met, trading of property rights will *not* lead to efficient outcomes (i.e. in the case at hand, the transferability of ITQs to the most efficient operators will not occur). It is argued below that these conditions are not met in the halibut fishery.

4.1. Factor 1. There are large wealth effects from the initial allocation of quota

Vessels that were not granted quota in the initial granting process must recover their fixed costs, trip costs and lease fees.

³ Two anomalies in the pattern of the rise of lease costs as a percent of catch value can be explained in the following way. The sudden higher lease price relative to catch value in 1998 occurred because of (a) expectations that the catch price would be remain as high as 1997 being reflected in the 1998 quota lease price and (b) an oversupply of frozen halibut from 1997 which lowered the catch price in 1998. The sudden lowering of this ratio in 2005 and 2006 resulted from fears that the new groundfish integration program would lower ability to catch halibut, and this was factored into the lease price. When this fear proved unfounded, the lease price rebounded in 2007.

⁴ This claim is often attributed to the “Coase theorem”, for example [18].

Table 1

The relationship between ex-vessel value and halibut quota lease price and sale price.

Year	Lease price (\$/lb)	Ex-vessel price (\$/lb)	Quota purchase price (\$/lb)	Ratio—lease/purchase (%)	Ratio—lease/ex-vessel (%)	Ratio—ex-vessel/purchase (%)
1993	1.96	3.73	11.73	17	53	32
1996	2.24	4.49	28.19	8	50	16
1997	2.08	4.16	29.01	7	50	14
1998	2.50	3.02	27.49	9	83	11
2002	2.68	4.49	29.65	9	60	15
2003	2.89	4.77	33.29	9	60	14
2004	3.05	4.55	39.21	8	67	12
2005	2.45	4.29	34.03	7	57	13
2006	2.25	4.54	28.13	8	49	16
2007	3.58	5.03	34.77	10	71	14
2008	3.80	4.90	38.00	10	78	13

All prices corrected for inflation to 2008 equivalent. Quota purchases technically are based on a percentage of the TAC, but in the market, the percentage is translated to poundage based on the current year's TAC, and prices based on \$/lb. *Source:* Department of Fisheries and Ocean; license broker advertisements published in trade magazines; fisherman and processor interviews.

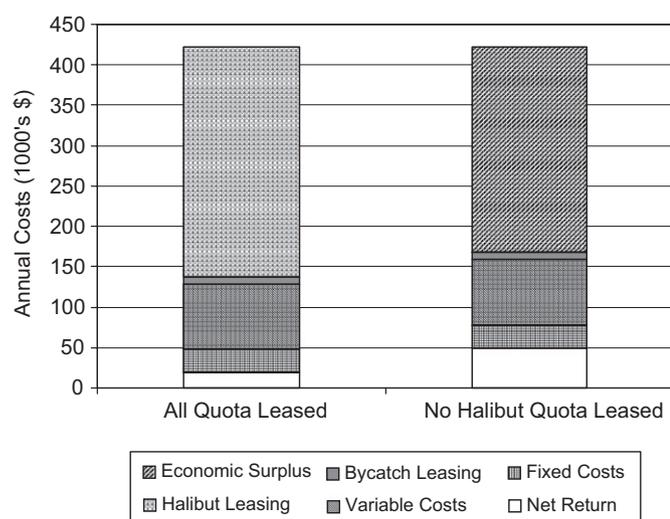


Fig. 1. The distribution of annual halibut revenue by cost category for an average halibut vessel catching a full block (1% of TAC) of halibut quota under two scenarios, one where all quota is leased at market price and the second where the halibut quota is owned and no lease fees paid.

Since quota owners retain c. 70% of the catch value, fishing costs must be recovered from the 30% of catch value that remains for the skipper, crew, and vessel share. Vessels granted quota can cover both their fixed and variable costs from the full 100% of landed value, and can then afford to pay higher lease prices for additional quota, needing only to cover trip costs. Those vessels operating with granted quota are therefore more financially viable than new entrants and can afford to pay higher quota lease fees by virtue of the wealth effects accrued through the initial granting process. This eventually had the effect of bidding up the lease price.

4.2. Factor 2. Asymmetric information held by buyers and sellers results in market power

Many quota owners prefer to lease their quota out through a processor as a broker because the processor is in a better position to get the highest price and because, as several fishermen stated, they do not want to be “guilted by other fishermen” about the high lease price they are asking. Similarly, many lessee fishermen do not wish to deal directly with the quota owner because of their hostility toward the high lease prices. High lease prices violate the previous norms of the share system in which license-owning

skippers and crew were considered co-venturers and both rental skippers and crew took a far higher percentage of the catch value. Because a “moral economy” [19] persists in the fleet, and because reputation matters in securing the best arrangements, quota owners prefer to keep their leasing arrangements secret. Processors compete to secure quota at the beginning of the season because of their desire to guarantee delivery of fish to themselves [20, interviews].⁵ Securing a large amount of quota pre-season also puts processors in the best bargaining position to re-lease the quota in turn under the most advantageous conditions and to maintain relationships with reliable fishermen. Even when fishermen make leasing arrangements directly with quota owners, these leases are normally financed by a processor and, therefore, the fish is delivered to this processor as part of the bargain. Processors are brokers of most of the leases because they can afford to pay more upfront, both because of their access to capital and because of their power in allocating fishing opportunity through control of a large amount of quota. It is advantageous for fishermen to have ready access to additional quota during the season if they happen upon more fish than they currently hold quota for. The price of quota when it is leased out to fishermen by the processors is confidential; it varies with arrangements and the bargaining power of the lessee. The lessee usually agrees to deliver catch from other fisheries to the processor as part of the arrangement. There is, therefore, asymmetric information between buyers and sellers of quota leases (considered a transaction cost by economists, along with search and information costs, bargaining and decision costs [21]), which confers market power to quota owners and to a lesser extent to the processors who buy up and reallocate quota leases. Processors may not charge a fee for this transaction, but the guaranteed delivery of the fish to them gives them leverage over the price of the catch. This may be an even more important form of market power. The resulting allocation of quota leases, and the stated and unstated terms under which they are allocated, are not the product of a freely operating market with open competition.⁶

Economists have generalized from a few cases in the trawl fishery in which lease transactions operate transparently and

⁵ A few interviewees reported that some processors offer Employment Insurance stamps to quota owners who lease to them, as an inducement to acquire their quota, even though the quota owners do not actually fish. In these instances, quota owners are able to collect Employment Insurance benefits for the weeks the leased quota is fished. We do not know how widespread this practice is.

⁶ Since groundfish integration in 2006, the necessity of leasing bycatch often gives processors even more leverage. If a fisherman catches non-target species, which are recorded by the cameras on his vessel, he must lease quota for this bycatch to continue fishing. Under these circumstances, a processor is the swiftest and most reliable supplier of by-catch leases.

without appreciable cost, and have assumed that this is the rule in the halibut ITQ fishery: “To facilitate the clearing of the ITQ market, private quota trading companies have emerged. The companies have become so efficient that fishermen can call from their vessels, immediately after realizing the need for additional quota, and arrange for and complete the transfer of ITQ by the time that they reach port to offload their catch” [17]. While this practice may occur in the trawl fishery,⁷ it normally occurs in halibut between a lessee and the processor who leases to them or finances their lease.

4.3. Factor 3. Capital markets are not functioning well, and there is market distortion

The initial fishermen grantees of quota, the processors, the investors, and new fishermen who have purchased quota distort the leasing market because they have far more access to capital than the lessees. This situation is exacerbated by expected future capital investment by the federal government, which leads to speculative investment in quotas. Unresolved aboriginal claims to access rights were not included in the initial allocation of quota, although the Nisga'a Treaty had been under negotiation since the 1970s and both federal policy and court decisions pointed to the fact that aboriginal people would end up with access rights recognized. Therefore, once ITQs had been created and became transferable, the expectation of federal buy-back of quotas from funds coming from outside the industry to settle aboriginal claims had an inflationary effect on price. This caused other sectors to reinvest in the fishery because they had extra capital, and could gain certain tax advantages [22]. Investors in halibut quota expected a 10% return on their investment in 2002 and treated quota as stock market investments [20]. Future federal investments in aboriginal ITQs is the one factor which has been identified as a problem by economists [22], although it is not seen as a significant threat to the system.

5. Analysis: the extent and nature of quota leasing

For a quota owner, leasing provides consistent high revenue with better income and tax implications than selling quota. Income from leasing can be treated almost like a pension, involving a tax on annual income each year, rather than a one time sale with capital gains [20, interviews]. Quota owners who leave the fishery often choose to lease their quota out during their entire lifetime and to will the quota to their children as an investment. By 2006, 79% of the quota was leased out instead of being fished by the quota owners, while only 4% of the quota was sold that year. These quota-owning “armchair fishermen”, also now termed “investors”, and even new investors have been attracted into buying quota because of the high lease prices they can charge. A clear separation is emerging between those who own quota and those who fish quota: by 2005, only about 80 of the initial quota owners were still fishing.

Of the 182 active halibut fishing vessels in 2006, 37 vessels leased 90% or more of the halibut quota they fished, 67 vessels leased 70% or more of the halibut quota they fished, and 91 vessels (half the active fleet) leased 50% or more of the halibut quota they fished, as shown in Fig. 2. It is impossible to know exactly what percent of leasing creates a marginal operation, because individual situations are varied and complex. But it is clear from

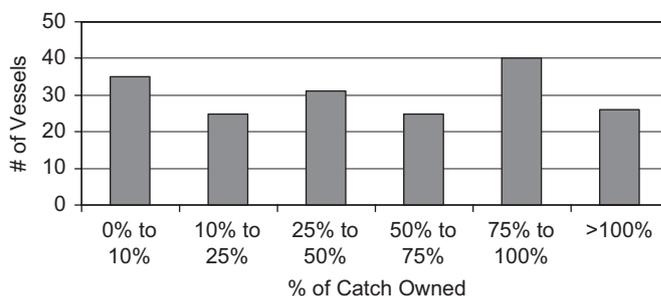


Fig. 2. Number of vessels owning percentages of the halibut quota they fish.

Fig. 1 that leasing is by far the largest fishing cost and that operations become increasingly less profitable, the more of their quota they must lease. It is also clear from Fig. 2 that a significant number of operations—more than a third of the fleet—currently fall in the less viable or marginally viable category (those leasing 70% or more of the quota they fish).⁸

Why do lessee skippers continue to fish if their operations are marginal? Why do not they correctly receive the market signals that they are financially non-viable? Economic theory predicts that such marginal operations will simply cease to lease quota and find more profitable employment. But there are many reasons why marginal operations continue. Sometimes a vessel owner leases quota to pay for the maintenance of the vessel. A vessel may serve multiple subsistence, transportation, identity, or prestige functions, or maintaining it may simply represent the hope that the price will go up. Operating a vessel may be the best or only way to offer a job to a son to help pay for his education, and to have a working experience with him. In some cases, fishermen know no other life, have no other skills, subsidize their fishing with another job or another fishery, or are unwilling to relocate to places with more economic opportunity because they have extended family and community and low cost housing where they live.

6. Analysis: assumptions about economic efficiency, optimal allocation, financial viability, and public benefits

In this situation, the assumption that quota will gravitate toward the most efficient units of production is clearly problematic. Vessels leasing most of their quota may have a very high level of technical efficiency (defined as using the least cost gear, most fuel-efficient engine, lowest ratio of crew to catch, etc.) and still not be financially viable, while vessels fishing their own quota are so highly profitable that they are under little pressure to be technically efficient. The latter case could be seen as an additional wealth effect of the initial allocation. In a system in which 79% of the quota is leased out by quota owners and half of the operating vessels are leasing more than 50% of the quota they fish, it is questionable whether an optimal allocation of resources is being achieved since many of these lessees are barely making a profit. It is questionable whether this system maximizes net benefits to society, since at least a third of operations are either not financially viable or marginally so, and crew are receiving a very

⁷ It is questionable if leasing practices in the trawl fishery are transparent or without appreciable cost since within the private company leasing system, lease prices are confidential and fees are charged for each transaction.

⁸ We made two assumptions to assess quota ownership relative to catch. We assumed that all quota permanently held on a license is owned by the vessel owner. This assumption was necessary because neither halibut licence nor quota ownership is recorded by DFO, only the ownership of the vessel. The second assumption, that the quota remaining on a license at the end of the fishing season was equivalent to the vessel's catch, was necessary because vessel specific catch data is considered confidential information, requiring that we use a proxy for catch.

small share. It is questionable whether this system meets the management objectives identified in the 1999 halibut management plan which included the “stability and viability of the existing fleet” [23]. The 2000 halibut management plan elaborated on the stated objectives and included an assessment of the fishery: “The IVQ program has proven very successful. Not only has IVQ management resulted in a more sustainable, rational and safer commercial halibut fishery, it has also improved the *financial viability* of the industry” [24, *emphasis added*]. It appears from this statement that the system has been analyzed only from the perspective of the quota owner, excluding the perspective of skippers and crew who lease the quota from the owner and actually do most of the fishing. Clearly, a large number of operations and possibly the crew benefits on *all* operations are driven by the costs of the lease arrangement to the lessees, not benefits to quota owners.

While processors characterize these skipper lessees as “desperate”, the situation of crew or deckhands is equally or more precarious. It is not surprising that the proposal to move to ITQs was opposed by the Deep Sea Fishermen’s Union (the union of crew), as it constituted the end of bargaining rights that crew had formerly enjoyed [20]. They are now an unorganized surplus labor force (because so many crew jobs have been eliminated) hired at whatever the market will bear. They formerly got 10–20% of the catch value before ITQs and now get 1–5%. Whereas the value of the halibut fishery has increased by 25% between 1990 and 2007, the proportion of that value retained by the crew share has dropped by 73%. There is now a widespread industry practice of taking a lease fee “off the top” as a trip cost (subtracting it from the amount to be divided among the crew), even if a fisherman-skipper owns the quota (and thus pays the lease fee to himself).⁹ The skipper/quota owner justifies this on the grounds that he could get this lease price on the market, and his crew would receive the remaining benefits if he did have to lease quota. Thus even owner-operated vessels which do not have to lease quota usually pay reduced wages to crew. The existence of the ITQ system has altered accounting practices in ways which fundamentally alter wealth distribution.

One consideration in thinking about the net benefits to society is the distributional aspects of the ITQ program. A way that economists might measure net societal benefits is to examine the sum of the “marginal value” to rich and poor alike. In this calculus, a small benefit has far greater value to the poor, which get a higher value for each additional increment of benefit than the rich, and so a policy attempting to maximize total social benefit will at least not penalize the poor more than the rich, and will even attempt to allow the poor to benefit a bit more than the rich. In other words, the greatest overall social benefit is achieved when the poor realize more marginal value than the rich. The halibut ITQ system does not meet this measure of social benefit, since the cost of leasing is passed on the crew, who can least afford to bear the cost. Secondly, the costs are passed on to lessee skippers, who seek entry into the fishery as quota holders, but who face very high barriers to entry, since their operations are not profitable enough to buy quota. The situation rewards those who were fortunate enough to be gifted the public resource because they were fishing in the qualifying years. The situation also rewards those who already have capital to invest, such as investors outside the fishing industry. The situation punishes all those non-quota-holders in the fishery who would like to advance in the future, either through buying or leasing quota. The stated policy goal of both government and economists that ITQs will

reduce fishing costs for the entire industry and will increase societal benefits has not been met in these cases.

It is also not clear that the public benefit of increased safety has been met as much as is claimed. Quota-holding vessels can pick their weather and fish under the safest conditions, but skippers who are desperate will take greater risks and fish earlier in the season when prices are often higher and weather less predictable. Windle et al. [25] found that quota systems which do not limit ownership, such as those of Iceland and New Zealand, tend to maintain relatively high accident and fatality rates under ITQ systems.

The other major area in which public benefit may be diminished is in innovation. Although it is possible for new processors to enter the halibut fishery, and examples of this include the processors that entered the fishery in response to the increased and longer supply of fresh halibut [20], enabling them to access a higher-value, white tablecloth market, other innovations from new processors are likely suppressed by continued delivery to the established processors who often compete more successfully for quota. Another source of innovation is from political debate. In New Zealand [26], where quota owners have become closely partnered with government in the system, government is receiving so much funding from quota owners who increasingly pay for research and management that criticism of the system from within has become unthinkable.

7. Conclusion

Increasingly, those who have advocated ITQs as economically efficient are making broader claims about the general health of the industry and broader public benefits. So in the question of “efficient for whom?”, the answer is assumed to be “efficient not just for holders of ITQs but also for all actors in the fishery and the owners of the resource, the Canadian public”. This discussion has shown that this assumption, as well other assumptions underpinning the indiscriminate promotion of ITQs, do not apply in the British Columbia halibut fishery.

- (1) The usual assumption is that lease price reflects “the market’s perception of the net present value of the future stream of net economic returns from the fishery. As such, the market value of quota is affected by the market prices for halibut, fishing costs and the long-term health of the resource” [17]. “Because lease prices are measures of profitability per unit of catch, (prices minus marginal cost of fishing), it follows that in a well-functioning lease market, lease price should be a fraction of ex-vessel prices” [27]. An examination of the escalating quota lease price in relation to the ex-vessel value of the catch has shown that lease price can be seen instead as an indicator of the non-viability of a large portion of the fleet, constituting an unsustainable financial burden for this portion of the fleet under ITQs rather than an improvement. Thus a significant portion of the halibut fleet is not economically viable, contrary to claims in both DFO reports [23,24] and in economic evaluations of the halibut ITQ fishery [7,10,17].
- (2) It is usually assumed that the fishermen who can operate at the least cost will end up in possession of ITQs, regardless of the initial allocation of ITQs, e.g. “under the ITQ schemes the market, by facilitating the allocation of harvests among fishers.... and by directing harvesting to the most efficient, magnifies the returns from the cooperative fisher games to the benefit of the fishers, and to the benefit of the public at large” [17]. But an increasing number of barely viable operations exist because of the market power of the initial recipients of quota. Therefore, initial allocations have resulted in significant

⁹ This practice has also been documented in the US surf clam ITQ system [8].

wealth effects and market power imbalances that have hindered the transfer of quota in the market to those who can operate with the lowest fishing costs and highest rate of return.

- (3) It is usually assumed that there are no wealth effects from initial allocations, no lack of information, and low transaction costs, although all of these are acknowledged to inhibit efficient trading if they do exist. It has been assumed in the BC groundfish fisheries that the dominant form of trading would be free public movement of quotas through brokers, auctions, or within fishermen's networks [17], that these activities would occur without significant transaction costs or wealth effects, and that, therefore, transferability through selling and leasing would lead to efficiency. But it has been shown that there is asymmetric information (a transaction cost) between buyers and sellers of quota leases, and that considerable market power is exercised by the holders of quota and by the processors who lease up and reallocate quota, thereby gaining significant influence over the catch price. The existence of transaction costs and market power means that efficiency should not be assumed to be achieved through trading in the BC halibut fishery. Economist Ronald Coase [30] warned that "One result of this divorce of the theory from its subject matters has been that the entities whose decisions the economists are engaged in analyzing have not been the subject of study and in consequence lack any substance", emphasizing that the market operates within institutional arrangement which must be understood in order to understand how the market functions. This discussion has attempted to provide more insight into how quota leasing arrangements actually operate.

It is clear that ITQs in the BC halibut fishery were an effective mechanism to promote efficiency gains through the concentration of fishing effort onto fewer vessels. However, there are low incentives for quota-owning vessels to maintain or increase efficiency after the first wave of consolidation. Furthermore, this discussion has shown that this efficiency is achieved at the expense of many lessees of quota, at the expense of crew even on owner-operated vessels, at the expense of the financial viability of many current operations, at the expense of future quota holders who have to buy quota from the original grantees vs. inheriting them as grandfathered public goods, and at the expense of those who will continue as lessees. Thus the efficiency achieved for quota owners comes with a cost in the lack of public benefits created by the ITQ system. Fishing operations are only sometimes conducted by parties who are able to obtain the most value from the resource.

The leasing of halibut quota is the "elephant in the room" because its importance has been missed by analysts, and not incorporated into the overall evaluation of quota programs. Instead, many argue for the complete relaxation of limits on transferability, as witnessed in Munro's [10] analysis of halibut ITQs and McRae and Pearse's [28] arguments for how a BC salmon ITQ system should be designed. These and other analysts have focused on the seemingly successful limits on vertical integration, without noting the reassertion of some traditional forms of market power [29] conferred on processors when they become the brokers of lease arrangements.

In a major study of ITQs, the US National Research Council [8] recommended: "The capacity of IFQs for transferability, consolidation, and leasing has led to a general concern that independent owner-operators of fishing vessels or crew members will be led into economic dependence on absentee owners as quota shares increase in value and small investors are excluded from the field.

Consequently, some programs (e.g., Alaskan halibut and sablefish) have adopted owner-on-board and other provisions intended to prevent absentee ownership. Leasing of quota shares should generally be permitted but, if necessary, with restrictions to avoid creation of an absentee owner class. Making shares freely transferable is generally desirable to accomplish the economic goals of an IFQ program. However, if it is desired to promote an owner-operated fishery or to preserve geographic or other structural features of the industry, it may be necessary to restrict long-term transfers of quota shares to bona fide fishermen or to prohibit transfers away from certain regions or among different vessel categories". In future work we will elaborate on the economic and ecological alternatives which address the problems which ITQs systems intend to solve. It should be noted that mechanisms other than ITQs have been used in many fisheries to spread fishing effort over a longer season and promote a more even flow of fresh fish into the market. In the BC halibut fishery, the voluntary "layover" system operated successfully for a time to achieve this, but was not made mandatory.

The quota leasing market in the BC halibut fishery is limiting efficiency, stifling innovation, and causing financial hardship. It is clear that a well functioning ITQ fishery requires greater forethought, oversight, and regulation in the design and implementation of transferability rules.

Acknowledgments

The authors thank Daniel Bromley, U.R. Sumaila, Chris Bataille, Duncan Knowler, Ron Smith, Caroline Butler, David Donaldson, and Anne Salomon for helpful discussion of a number of ideas in this paper. They also thank the many fishermen and processors who have shared their experience and ideas and who wish to remain anonymous. None of the above is responsible for any errors of fact or interpretation.

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November 20, 2008

Mr. Frank Lockhart
Assistant Regional Administrator
NMFS, NW Region
Sustainable Fisheries Division
7600 Sand Point Way NE
Seattle, WA 98115

Dear Frank,

We want to thank you for taking the time to meet with Burt Parker, Chris Peterson, Mark Scheer and me on Thursday, November 13 to discuss the Pacific Dawn, LLC's unique circumstances within the context of Amendment 20. This letter is to confirm and provide a summary of our discussions regarding the combined whiting harvesting history associated with Pacific Dawn, LLC and the F/V PACIFIC CHALLENGER. As we discussed, the whiting harvesting history of two vessels (the AMBER DAWN and the PACIFIC CHALLENGER) has been combined onto a single vessel and the Pacific whiting history to a single permit (GF0273) and both vessels were long time participants in the fishery.

The Peterson family has owned the PACIFIC CHALLENGER since it was built in the late 1960's and has a long history in the Pacific whiting fishery. The PACIFIC CHALLENGER made its first deliveries in the fishery in 1983. And, for 20 of the last 22 years, it made significant landings in the mothership sector. In addition to its extensive mothership sector history, the PACIFIC CHALLENGER also made significant whiting deliveries to shoreside processors each season from 2000 to the present.

Burt Parker is the owner of Amber Dawn Fisheries, LLC (the owner of the F/V AMBER DAWN). The AMBER DAWN participated in the Pacific whiting fishery for many years, beginning in 1988. It delivered to the GOLDEN ALASKA from 1990 through 2001. After the LEP program was implemented in 1993, the AMBER DAWN made significant shoreside and mothership deliveries in 1994, 1995 and 1996 using a West Coast Groundfish Trawl B permit issued by the NMFS to Amber Dawn Fisheries, LLC.

Steve Hughes

Agenda Item I.1.b
Supplemental Public Comment 5

Although 1996 was the last season that the "Trawl B" permits were utilized, the AMBER DAWN continued to participate in the Pacific whiting fishery utilizing leased permits until 2002, when the vessel was lost in a tragic accident.

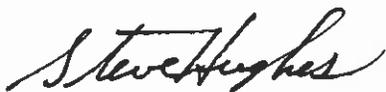
After the loss of the AMBER DAWN, Burt looked for another vessel to place his fishing rights and history on. The F/V PACIFIC CHALLENGER turned out to be the right fit. The vessel had a West Coast groundfish permit and was very active in the Pacific whiting fishery, as well as several other fisheries that the AMBER DAWN had participated in. So, in November 2004, the Petersons (Chris and his father Chet) and Burt (through Amber Dawn Fisheries, LLC) formed Pacific Dawn, LLC. All fishing rights and history associated with the AMBER DAWN were assigned and merged with those associated with the PACIFIC CHALLENGER. As part of the same transaction, Pacific Dawn, LLC became the sole owner the PACIFIC CHALLENGER. Pacific Dawn and the PACIFIC CHALLENGER have continued their active participation in the shoreside and mothership sectors of the Pacific whiting fishery every season since the operations merged.

The reason for our request to meet with you is to ensure that, when calculating the total fishing history associated with GF0273 and the relative harvesting percentages for the initial allocation of quota shares in each sector under Amendment 20, the AMBER DAWN history for 1994-6 is included as part of that calculation. As we discussed, the AMBER DAWN's whiting history was unquestionably derived under the express authorization of, and license issued by, the NMFS. This history is directly associated with and has been inseparably merged with that of GF0273. Therefore, the Amber Dawn harvesting history should appropriately be included as part of the total history of GF0273 when NMFS makes its "Official Record".

Thank you again for your time and attention. Should you have any further questions or comments, or need any further information, please do not hesitate to contact me.

Sincerely,

NATURAL RESOURCES CONSULTANTS, INC.



Steven Hughes
President

cc: Chris Peterson
Burt Parker
Chet Peterson
Mark Scheer at Young deNormandie, P.C.