

To: Mr. Shems Jud, CAB Chair & Mr. Jim Seger, PFMC Staff Officer
Re: West Coast IFQ Program 5-Year Review; Recommendations for Community Advisory Board (CAB) and Council
Cc: Pacific Fishery Management Council Members

Via email on March 30, 2017: sjud@edf.org; jim.seger@noaa.gov

Recommendations to Fix the Shoreside Non-Whiting IFQ Program and Increase Economic Returns for Fishermen and Processors

- 1. Eliminate Vessel Caps, Especially for Choke Species.**
- 2. Conduct Quantitative Analysis to Determine if Changes to Aggregate Caps Would Better Meet the Goal/Objectives of the IFQ Program.**
- 3. Stop Further Allowances for Gear-Switching (i.e., Trawl/Fixed-Gear Sablefish) to Maximize Opportunities for the Trawl Sector to Harvest ACLs of Target Species.**
- 4. Eliminate the Point Conception Line for Sablefish.**
- 5. Reduce Observer Coverage/Monitoring Requirements and Costs, and Standardize the Requirements for Observer Coverage Amongst Gear Sectors.**
- 6. Allocate the Adaptive Management Program (AMP) Quota to Shoreside Processors to Help Preserve Remaining Shoreside Infrastructure in Key Fishing Communities.**
- 7. Increase Flexibility Related to Accessing Unutilized Quota Within Each Biennium.**
- 8. Establish a Process to Provide Incentives for Cooperative Research Using Unutilized Bycatch.**
- 9. Expedite the Regulatory Process to Provide Year-Round Access for Midwater Trawls and Bottom Trawls Inside and Outside of the RCAs.**

Dear Chairman Jud, Mr. Seger and Members of the CAB:

This letter is submitted on behalf of three CAB members representing West coast seafood processing companies, each of which are members in the West Coast Seafood Processors Association. Their businesses and facilities have a long history of operations on the West coast. In addition, many of their team members have multigenerational family ties to the seafood business, in some cases dating back to the 1800s. These companies employ thousands of people in the processing, distribution and marketing of seafood.

The stated positions and representations herein express our view of the current West coast seafood business environment, related issues for groundfish processors and necessary solutions to resuscitate the economic life of the West coast non-whiting trawl groundfish fishery. Furthermore, the rationale we have developed for our recommendations must, as a first step, be made part of the five-year review of the Amendment 20 non-whiting IFQ trawl program (the "IFQ Program"). We strongly believe that modifications outlined within these recommendations will need to be enacted if we are to attain the

stated Goal and Objectives in the Amendment 20 Environmental Impact Statement¹ (EIS) and fulfill the intent and guidance in National Standard 1² (NS-1) as revised.

Current Situation: An Economic Disaster for Non-Whiting IFQ Participants

The non-whiting IFQ trawl groundfish fishery has been declared an economic failure by numerous participants. When the fishery was rationalized in 2011, we were promised increased fish harvests, year-round fishing and increased profitability. This was supposedly going to benefit both fishermen and processors, enhance industry employment and provide a consistent supply of groundfish to the American consumer. Instead, we have a disaster in our groundfish processing sector:

- Only 20-30 percent of the non-whiting groundfish aggregated species of ACLs are harvested;
- Hundreds of our processing team members were forced to leave the workforce due to lack of work; and
- Values of groundfish are tumbling because we cannot provide a reliable fresh supply to customers.

Prior to 2011, the non-whiting groundfish fishery operated on a bi-monthly cumulative trip limit basis. This system was viewed as an inferior regulatory framework from a conservation perspective. Importantly, however, it did produce a steady supply of groundfish for the fresh market. It allowed processors to offer year-round employment and was the glue that held a core team together so we could keep trained seafood experts in our plants. These employees and the knowledge they embody are an essential link in the supply chain to manufacture our seafood and have it properly prepared on an “on-time basis” for our markets. Even with the declaration of the groundfish disaster at the turn of the last century, we were able to weather the storm, provide year-round employment and maintain a supply of groundfish to our fresh markets. This all went south with the advent of the Amendment 20 program.

When Amendments 20 and 21 went into effect, non-whiting shoreside processors got the short end of the stick. Unlike whiting processors who received a significant percentage of whiting quota, shoreside non-whiting groundfish processors were not granted any non-whiting quota. And unlike processors in the offshore sectors that were allowed to engage in co-op formation, shoreside processors were prohibited from establishing a vessel-linkage system.

An unanticipated consequence was the inordinate disruption of the fresh market supply chain. The fresh market produces the highest value for most groundfish species. Cheaper frozen whitefish is supplied in large volume from foreign imports or from Alaska. The frozen sales prices for imported, or Alaskan, whitefish do not support the vessel price levels paid for West coast groundfish. In addition, retailers have stated

¹ **Goal:** “Create and implement a capacity rationalization plan that increases net economic benefits, creates individual economic stability, provides for full utilization of the trawl sector allocation, considers environmental impacts, and achieves individual accountability of catch and bycatch.”

Objectives (economic): “The above goal is supported by the following objectives: 2. Provide for a viable, profitable, and efficient groundfish fishery; 4. Increase operational flexibility; 5. Minimize adverse effects from an IFQ program on fishing communities and other fisheries to the extent practical; 6. Promote measurable economic and employment benefits through the seafood catching, processing, distribution elements, and support sectors of the industry; 7. Provide quality product for the consumer.” <http://www.pcouncil.org/groundfish/fishery-management-plan/fmp-amendment-20/#EIS>; (Exec. Summary-p. iv)

² Magnuson-Stevenson Act Provisions; National Standard Guidelines: Table of Contents: 1. Overview of Revisions to NS Guidelines: <https://www.federalregister.gov/documents/2016/10/18/2016-24500/magnuson-stevens-act-provisions-national-standard-guidelines>

overwhelmingly that their number one priority is reliability of supply. Without an adequate staff of trained employees -- and exacerbated by “feast or famine” delivery patterns -- we are now freezing a greater percentage of the catch at costs that exceed sales value. The interruption of the supply chain has not only devalued processor’s assets but has led to a loss of nearly 50 percent of our experienced fillet workforce necessary to produce fillets for the fresh market. Inadequate crews to fillet, and inconsistent supply result in a value equation for many groundfish species that is diminishing year by year.

To Summarize the Impact: Feast-or-famine delivery has led to uncertainty, periods of facility shutdowns and an inability to prosecute our groundfish business plans. Following this, key employees have had to leave the workforce and coastal communities to seek employment elsewhere. Our employees' exodus impacts the processor’s ability to process the fish when deliveries materialize. This outcome further foments disruption of supply to the customer, produces market confusion and, ultimately, a forfeiture of market confidence. This builds a momentum of negative consequence that, if allowed to reach certain levels, may not be reversible without outside subsidies.

To add insult to injury, the so-called economic studies being conducted by NMFS are not designed to analyze what has transpired in our individual shoreside fishery businesses. To date, the only informative outcome of NMFS’ Economic Data Collection (EDC) Program is that it has created an input source for necessary improvements to the non-whiting program through the testimony of those people most impacted. What is lost in this analysis is the actual economic status of the IFQ non-whiting groundfish fishery. No data has been gathered on market displacement, vanished harvest opportunity, decreases of employment, or other key factors that will readily apprise reviewers that the non-whiting IFQ fishery is not meeting the A-20 Goal and Objectives, nor fulfilling the intent of NS-1.

NMFS has painted a rosy picture of the program successes, but for the fishermen and processors in non-whiting groundfish, we need remedies, not more reviews outlining “successes.”

Recommendations to Fulfill the Economic Goals and Objectives in Amendment 20, Jump-Start the Non-Whiting Groundfish Trawl IFQ Program, Create a Pathway to Higher Quota Attainment, Enhance Job Growth, Restore Market Opportunity, and Meet NS-1 Requirements

- 1. Eliminate Vessel Caps, with Emphasis on the Need to Increase the Limits for Choke Species:** The economic cost of choke species distribution and constraints on the IFQ Program’s harvesters and processors has not been analyzed and is only poorly understood as a “cost of doing business.” No meaningful actions are being contemplated by NMFS or the Council, which would mitigate the devastating impacts choke species constraints have manifested upon harvesters, processors, employment, and markets. Vessel caps should be eliminated. At a minimum, vessel caps must be increased or made flexible enough that the trawl fishery can access those choke species necessary to attain the highest practicable utilization of target species without exceeding the individual species’ IFQ allocations of bycatch ACLs. Present restrictions constrain harvest specialization strategies and strand too many fish in the water, which have been deemed harvestable through best available science.

Current IFQ vessel cap rules hinder a healthy level of consolidation in the fishery, and they lock out quota that would contribute to direct and indirect economic benefit. The solution is to allow the quota market to operate freely to open these quota “lock boxes.” This would make accessible harvest opportunities that benefit vessels, processors and markets. Another tool to create harvest flexibility is the

use of “soft caps” that can be used in-season to supply quota pounds to vessels that want to specialize or harvest underutilized species. This provides resources to processors, sustains employment and leads to new market development. Permitting attainment rates to remain at these abysmal levels contradicts all economic logic.

2. **Conduct Quantitative Analysis to Determine if Changes to the Aggregate Caps Would Better Meet the Goal/Objectives of the IFQ Program:** While we have not yet developed a specific position regarding changes to the caps, we note that an aggregate ownership cap set below the mathematical sum of the individual species caps can truncate opportunities to achieve the total optimum yield in the fishery. This became manifestly apparent when quota share (QS) holders made business decisions to return, without compensation, underutilized species QS to NMFS in order to stay under the aggregate cap. This was necessary in order to acquire or retain species of higher value. The reality is these underutilized species will never become utilized, unless harvesters can keep underutilized species QS in their accounts without penalty for acquiring other, more valuable, species. In order to achieve maximum utilization and begin rebuilding eroded markets, any use of aggregate caps would be best set at levels above the mathematical sum of the aggregated total of the individual species cap limits. Aggregate limits and the individual species limits must be tested for efficacy and to see if they meet the economic goal and objectives in Amendment 20 and comport with revised NS-1 guidelines. NMFS' own economists have questioned whether elements such as aggregate caps “*may actually constrain useful distribution mechanisms ...*”³ (in reference to quota distribution in fisheries: Holland/Norman). This issue must be analyzed in a thorough and quantitative manner during the five-year review so the Council can consider appropriate adjustments to the caps.
3. **Stop the “Gear-Switching” Transfer of the Trawl Sablefish Allocation for Fixed Gear Harvest:** The Amendment 20 EIS Goal states: “*Create and implement a capacity rationalization plan that increases net economic benefits, creates individual economic stability, provides for full utilization of the trawl sector allocation*” and under Objectives #6, “*Promote measurable economic and employment benefits through the seafood catching, processing, distribution elements, and support sectors of the industry*” and #7. “*Provide quality product for the consumer.*”

Sablefish is now a choke species. In large part, this is due to the outflow of quota pounds (QP) to fixed gear users. Gear switching, though legal, is antithetical to realizing the goal of full utilization of the trawl sector allocation. Nor does sablefish transfer promote economic and employment benefits through the seafood catching, processing and distribution elements, and support sectors. It is clear that the EIS goal/objectives are intended to benefit the entire trawl industry dependent on trawl harvested fish. This includes processors, our employees, our distribution companies, and the consumer as well as the harvesters.

We must eliminate the transfer of sablefish to the fixed gear sector. This is essential if trawl harvesters and processors are to achieve the stated goal and objectives in Amendment 20. Gear switching impedes necessary income streams to active trawl sector participants and degrades the fresh supply chain to markets for trawl species such as Dover sole. While we recognize that the Council may consider “grandfathering in” those who have already purchased sablefish QS and trawl permits, we note that without more sablefish, the trawl sector will never maximize its economic potential. Solutions could

³ The Anatomy of a Multispecies Individual Fishing Quota (IFQ) “Market” in Development, Daniel S. Holland and Karma Norman. Link: <http://spo.nmfs.noaa.gov/tm/TM158.pdf>

follow any number of paths, but if the IFQ Program is going to meet the required economic goals, objectives, and guidelines the trawl sector will require more sablefish.

It is noted that Alaska now allows pot fishing for their IFQ sablefish fishery. The pots and gear are similar or identical to those used on the West coast. It is probable a number of Alaskan fishermen, who begin to use pots to fish in Alaska, will also begin to fish in the lower 48 to amortize their investments. This would result in another escalation in the trawlers' cost of doing business and further destabilize the processors' business operations.

Many trawl fishermen cannot compete with the high prices paid by the fixed gear fleet to lease IFQ trawl sablefish. There are ongoing, but as yet unpublished, economic studies which indicate the overall dockside value of the trawl caught portfolio of species supported by trawl sablefish bycatch, including the trawl sablefish itself, exceeds the value fixed gear IFQ sablefish alone generates. However, it is probable that there is more monetary risk and investment uncertainty associated with that trawl harvest. Will the trawler lessee catch the Dover sole or thornyheads he needs to cover the lease cost? Will they run into tiny sablefish which receives a low price and which the fixed gear fishermen can avoid catching? Even though the value of the aggregated portfolio of species associated with trawl sablefish may exceed the value of the same sablefish used in the fixed gear fishery, the associated risk of income return/loss associated with leasing sablefish for trawling discourages many trawlers from chasing the rising lease prices. Disrupted supply chains exacerbate this risk factor.

Processor trip limits: It has been stated many times that processor “vessel limits” are the problem of concern, not the gear switching. Processor limits are used when there are market or capacity issues. Unfortunately, the IFQ Program was not designed to meet fresh market requirements. Pre-implementation delivery patterns went from somewhat predictable to boom or bust under the IFQ Program. Inconsistent delivery reliability under the IFQ Program is a nonstarter for our fresh market customers. As importantly, the delivery lapse cycles have devastated our fillet crews. In the Eureka community meeting, testimony was given that there was “*not enough black cod quota to target Dover throughout the year*”⁴. This testimony was given by a Pacific Seafood manager. Not in the testimonial record, but in point of fact, the plant shut down groundfish operations for several months and lost nearly half of its fillet crew when their vessels could not obtain sablefish QP necessary to harvest Dover.

This feast or famine delivery pattern is what necessitates trip limits and then starves our markets. The IFQ Program was purported to increase net benefits. It has had the opposite impact. In order to succeed in rebuilding lost markets, we need the support of a regulatory platform that allows the West coast supply chain to develop, function efficiently, and compete with imported seafood supply chains.

In conclusion, the gear switching arguments over sablefish must take into account the Amendment 20 Goal and Objectives as they are written. Trawl caught sablefish fuels the harvest of a portfolio of species that are essential to the processors' businesses, employees, and markets. Regulatory action should be enacted to prevent the further loss of trawl sablefish to fixed gear harvest. Once our businesses have been crippled it will be exceedingly difficult to regain lost ground. The trawl sector needs the sablefish that is being “switched” to fixed gear harvest or it will not attain economic sustainability.

⁴ Eureka Community Meeting on Catch Share Review: <http://www.pcouncil.org/groundfish/five-year-review-trawl-catch-share-program-amendment-20-intersector-allocation-amendment-21/#BackgroundDoc>

4. **Eliminate the Point Conception Line for Sablefish:** The Point Conception Line is a regulatory artifact that has no biological basis. If the purpose was to preserve opportunity for the vessels south of the line, it may actually have created the opposite effect because larger boats are now fishing south of this line. If sablefish were available as “one” coastwide quota, the larger vessels would likely stay north of the line as it would not be necessary to chase a separate southern quota. It would also make currently un-utilized sablefish quota from the southern area more available to the trawl fleet, helping to address some of the current problems associated with sablefish. If this sablefish quota can be utilized in the northern area, then lease fees for quota in the northern area may decrease, allowing operating costs for trawlers in the north to decrease as well.
5. **Reduce Observer Coverage/Monitoring Requirements and Standardize the Requirements for Observer Coverage Among All Sectors:** Many trawl vessels are now operating at levels that are not economically feasible. In effect, when combined with vessel observer coverage, shoreside monitoring equates to 200 percent observation, paid for by the industry. The burden of this redundant cost encumbrance further reduces the economic viability of this fishery and makes West coast groundfish products less competitive in a market that is awash in cheap imported whitefish. Moreover, since IFQ trawl sablefish is allowed to be harvested with fixed gear under the gear switching provisions, participants who catch IFQ trawl fish with fixed gear often also participate in the “tier” sablefish fishery which has much less restrictive observer coverage requirements. The tier sablefish participants can stack permits on their vessels, fish with less observer coverage, high-grade their fish, and increase profits while reducing their operating costs relative to trawl vessels. This creates a market disadvantage and adds a disproportionate economic burden to the trawl vessels.

Other regions and gear types are not required to maintain observation levels as rigorous as the West coast trawl fleet. Reduction in observation is a major departure from what the catch share program purported was necessary to guarantee certain warrants about bycatch. However, this program also promised economic benefits that would cover these costs. These benefits simply have not materialized. The bottom-line is, a greater monetary return is a necessity, as a matter of survival to many vessels and to groundfish processors. If we are to maintain 200% observer coverage the federal government needs to pay the difference between the additional expenditures borne by the West coast in order to equalize the West coast to what other regions or gear types are required to pay. Coupled with other regulations that have stymied development of our supply chain, these excessive observer costs put our industry at a competitive disadvantage with seafood imports from foreign nations and other U.S regions.

6. **Allocate Adaptive Management Program (AMP) Pounds to Shoreside Processors to Achieve the Objective of Utilizing AMP Quota for Community Preservation:** Presently, the Adaptive Management Program (AMP) serves as a pass-through of quota pounds to fishermen. At its inception, AMP was considered a compromise on the issue of processor quota, so rather than allocate 20 percent of the quota to the processors, the Council held back 10 percent as AMP quota pounds. The pounds were to be used as necessary to mitigate negative consequences that may arise as part of this program.

Arguments for processor shares then are the same arguments needed today. Processor shares are the surest pathway to anchor quota into the communities, maintain fishery infrastructure, secure the community’s workforce, preserve market relationships, and perhaps even attract new entrants into the fishery. There is a lot of potential to leverage processor shares into even greater economic gains since the processors’ true goal is to get more fish to our docks, not to collect "mailbox money" in the form of the highest possible lease rate. The whiting fishery is a stark contrast and obvious example that the use of processor shares is a beneficial management tool the Council should use.

- 7. Increase Flexibility Related to Accessing Un-utilized Quota within Each Biennium:** Current carryover provisions should be revisited to increase flexibility (for example, up to 80 percent of unutilized bycatch QP from the first year could be utilized in the second year of the biennial cycle). This would promote short-term harvest opportunities and would further complement the basic economic objectives in the environmental impact statement (EIS) while still adhering to the scientifically derived ACLs within each biennium. Similarly, the groundfish biennial specifications process could be modified to allow vessels to harvest a specified ACL over two years (vs. the current process that specifies annual ACLs for each of two years).
- 8. Establish a Process to Provide Incentives for Cooperative Research Using Un-utilized Bycatch:** Unharvested bycatch from the previous year in the biennial cycle could fund cooperative research projects. There would be no increase of harvest levels above the scientifically approved ACLs but it would allow industry and government to work collaboratively to explore new methodology to further reduce bycatch and/or develop biological research projects.
- 9. Expedite the Regulatory Process to Provide Year-Round Access for Midwater Trawls and Bottom Trawls Inside and Outside of the RCAs:** Both midwater trawl and bottom trawl vessels managed under the IFQ program should have year-round access to the groundfish fishery in all areas (within reasonable constraints to protect habitat). There is no need for spatial/temporal measures to control fishing mortality under the IFQ program.

One great failing of the IFQ Program was that it did not take into consideration the fact that the fresh market is the single differentiation factor that adds value to the West coast groundfish fishery. Marketing fresh products requires a distinct and separate supply chain model from frozen fish products. Reliability, consistency and predictability are words large retail chains continually repeat when describing their requirements. Imported seafood can meet each of their requirements. West coast trawl fish is a tougher proposition. Repairing the supply chain for West coast groundfish and rockfish cannot be done successfully in the face of archaic regulations that serve no useful conservation purpose and hinder economic development. Prohibition of midwater trawl fishing on a year-round basis is at the top of this regulatory list. This should be a relatively easy task, and there is no reasonable excuse not to do so. We need to remove these and other regulatory impediments that block achievement of the IFQ program's goal and objectives. We should begin with reinstating a year-round midwater trawl fishery and ensuring access to groundfish for bottom trawl vessels in all areas.

Conclusion: A Matter of Survival

We realize there are many different participants and economic interests in the West coast fishery. Achieving consensus is extraordinarily difficult. However, large numbers of monetized assets are at risk and many livelihoods are at stake. Many of our coastal communities were based on fishing when they sprang into existence. The West coast fishing heritage and culture go back more than 100 years. If the IFQ program continues as-is, the groundfish shoreside industry will deteriorate, and the program itself will be a memorable failure. Conversely, we have an opportunity to turn the IFQ program into a success if we can rectify the issues and address the positions WCPA has raised. If we can establish the will to work cooperatively and to that end, it can be accomplished. We respectfully ask the CAB to support the above-listed recommendations for further action by the Council.

Sincerely,

A handwritten signature in black ink, appearing to read "Mike Okoniewski". The signature is fluid and cursive, with a large initial "M" and "O".

Mike Okoniewski, Pacific Seafood

A handwritten signature in black ink, appearing to read "Andrew Bornstein". The signature is very stylized and cursive, with a large initial "A" and "B".

Andrew Bornstein, Bornstein Seafoods

A handwritten signature in black ink, appearing to read "Jim Caito". The signature is cursive, with a large initial "J" and "C".

Jim Caito, Caito Fisheries

cc: PFMC members



LEGAL DEPARTMENT

VIA Email to pfmc.comments@noaa.gov

March 30, 2017

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

Re: Comments of Pacific Seafood Group on the West Coast Groundfish Trawl Catch Share Program Five-year Review

Dear Mr. Pollard:

This letter provides comments of Pacific Seafood Group (“Pacific”) to inform the Pacific Fishery Management Council’s (“Council”) five-year review of the West Coast Groundfish Trawl Catch Share Program (“Program”) as required by the Magnuson-Stevens Fishery Conservation and Management Act (“Magnuson Act”).¹ Specifically, these comments address the scope of the review as currently stated in the draft document entitled “West Coast Groundfish Trawl Catch Share Program Five-year Review — Annotated Outline (Blueprint)” (“Blueprint”). As set forth below, the Blueprint inadequately addresses key components of the Program, such as the 2.7% aggregate limit for the nonwhiting shorebased trawl sector (“Aggregate Limit”). In this respect, the approach proposed in the Blueprint is inconsistent with the Magnuson Act, relevant policy and guidance documents, and with NMFS’s own statements. As part of the five-year review, the Council must perform an analysis of the efficacy and appropriateness of the Aggregate Limit.

We appreciate the Council’s consideration of these comments at the April 2017 Council meeting and, more generally, as part of the five-year review of the Program. We also request that this letter be included in the administrative record supporting the five-year review.

¹ West Coast Groundfish Trawl Catch Share Program Five-year Review — Annotated Outline (Blueprint), http://www.pcouncil.org/wp-content/uploads/2016/10/F6a_Blueprint-Fin_BB_NOV2016BB.pdf.

I. BACKGROUND

A. Program Performance

Since the beginning of its implementation in 2010, the Program has consistently fallen short of its stated goal and objectives for the nonwhiting shorebased trawl sector. For instance, in the Program's fifth year, landings fell to 168 million pounds, a 34 percent decrease from the previous year, and well below the 237.4 million pounds landed in 2011.² In addition to reduced landings, the attainment (utilization) rate for 2015 has plummeted to an abysmal 20.22%.³ Similarly, capacity reduction (consolidation) goals have not been met. In 2015, there were 94 active vessels, which is approximately double the optimum number of vessels (40-50) targeted by the Program.⁴ Finally, although ex-vessel revenue has increased, that increase is well below the Council's anticipated revenue that was to exceed one million dollars.⁵ In light of these and other shortcomings, the five-year review process provides the Council with an opportunity to identify and remedy serious programmatic problems.

B. Authorities Applicable to Five-Year Review

The Magnuson Act mandates periodic reviews of limited access privilege programs that (1) assess progress in meeting programmatic goals and (2) recommend modifications necessary to better meet those goals.⁶ Indeed, the fundamental purpose of a periodic review is "*to ensure a*

² NOAA Office of Science and Technology, Groundfish Trawl Rationalization, <https://www.st.nmfs.noaa.gov/economics/fisheries/commercial/catch-share-program/fact-sheets/West-Coast/west-coast-ground-fish-trawling>.

³ Non-whiting Shoreside IFQ Fishery Review, Issues and Necessary Solutions, http://www.pcouncil.org/wp-content/uploads/2016/06/G5c_Sup_PC_PPT_Okoniewski_JUN2016BB.pdf.

⁴ NOAA Office of Science and Technology, Groundfish Trawl Rationalization, <https://www.st.nmfs.noaa.gov/economics/fisheries/commercial/catch-share-program/fact-sheets/West-Coast/west-coast-ground-fish-trawling>.

⁵ Compare NOAA Office of Science and Technology, Groundfish Trawl Rationalization <https://www.st.nmfs.noaa.gov/economics/fisheries/commercial/catch-share-program/fact-sheets/West-Coast/west-coast-ground-fish-trawling> with Final Environmental Impact Statement, Appendix A, A-310 (2010), available at http://www.pcouncil.org/wp-content/uploads/2_1005_TRatFEIS_ApdxA_IFQ.pdf.

⁶ 16 U.S.C. § 1853a(c)(1)(G).

*program is meeting its goals and objectives.*⁷ This requires a “formal and detailed” analysis of key programmatic components, including goals and objectives, accountability measures, and accumulation limits and caps.⁸ After engaging in a fair and thorough review of a program, the Council must objectively evaluate recommended changes to the program and determine which changes are necessary to optimize the program’s achievement of its goals and objectives.⁹

II. COMMENTS

As detailed in the Final Environmental Impact Statement (“FEIS”), the overarching goal of the Program is to:

Create and implement a capacity rationalization plan that increases net economic benefits, creates individual economic stability, provides for full utilization of the trawl sector allocation, considers environmental impacts, and achieves individual accountability of catch and bycatch.¹⁰

In addition, Program objectives include, among other things, “[p]rovid[ing] for a viable, profitable, and efficient groundfish fishery,” “[i]ncreas[ing] operational flexibility,” and “[p]romot[ing] measurable economic and employment benefits through the seafood catching, processing, and distribution elements, and support sectors of the industry.”¹¹ The Program

⁷ NOAA Catch Share Policy (“NOAA CSP”) at 17 (emphasis in original), *available at* http://www.nmfs.noaa.gov/sfa/management/catch_shares/about/documents/noaa_cs_policy.pdf.

⁸ *See* 16 U.S.C. § 1853a(c)(1)(G); Draft Guidance at 9; Blueprint at 51 (“If a program component is required or must be considered under the MSA or the NMFS Catch Share Policy, NMFS Guidance for Conducting 5/7 Year Reviews requires that it be addressed in a 5/7 year review.”); NOAA Catch Share Policy at 18 (“Performance measures need to be linked back to the initial objectives in a FMP.”).

⁹ *See* Draft Guidance for Conducting Review of Catch Share Programs (“Draft Guidance”) at 5-6, *available at* http://www.pcouncil.org/wp-content/uploads/2016/02/Draft_Guidance_ConductingRvws_CatchSharePrograms.pdf; *see also* Blueprint at 53; Groundfish Fishery Management Plan, Amendment 20, Trawl Rationalization, Appendix E.2.1.6 (2010), *available at* http://www.pcouncil.org/wp-content/uploads/PCGFFMP_A20_AsApproved.pdf.

¹⁰ FEIS at 5, *available at* http://www.pcouncil.org/wp-content/uploads/1_Pacific-Coast-Groundfish-Limited-Entry-Trawl-Fishery-FEIS.pdf.

¹¹ *Id.* at 6.

components directly relevant to these goals and objectives, as documented in the FEIS and elsewhere, include accumulation limits, and specifically the Aggregate Limit.¹²

Indeed, the Draft Guidance specifically directs the Council to “analyze and evaluate equity/distributional impacts of existing caps [such as the Aggregate Limit] and the impacts those caps have on the creation of market power by affected entities.”¹³ This “analytically complex” study is critical to assessing whether improvements can be made to enhance “technical efficien[cy]” and allow entities to “utiliz[e] existing economies of scale” without causing market power problems.¹⁴ Accordingly, consistent with the Magnuson Act, the NOAA CSP, and the Draft Guidance, the Council must perform a comprehensive and detailed analysis of the Aggregate Limit (and other accumulation limits) when addressing the programmatic goal and objectives as part of the five-year review.

The Blueprint is grossly deficient in this regard. According to the Blueprint, the only apparent analysis of the Aggregate Limit is briefly referenced in the section addressing the avoidance of excessive consolidation.¹⁵ There, the only planned “analysis” is a single calculation of the percentage of shareholders with quota holdings near the Aggregate Limit.¹⁶ In other words, the Blueprint does not contemplate any meaningful and detailed analysis of the Aggregate Limit, as required by the Magnuson Act, NOAA CSP, and the Draft Guidance.

The Blueprint’s deficiency is particularly stark when compared with the market power analyses conducted by other Councils and referenced in the Draft Guidance. For example, after

¹² See, e.g., FEIS at 461, 547, 679; FEIS, Appendix A at A-285, A-301-02, A-310. See also Draft Guidance at 9; Blueprint at 51; see also Blueprint at ii (identifying accumulation limits and caps as “[k]ey design component[s]”); http://www.st.nmfs.noaa.gov/Assets/economics/catch-shares/documents/Catch_Shares_Report_FINAL.pdf (identifying the Aggregate Limit as one of five key features of the entire Program); GAP Report at 2, available at http://www.pcouncil.org/wp-content/uploads/2016/11/F6c_Sup_GAP_Rpt_NOV2016BB.pdf (identifying accumulation limits and caps as one of four priorities for the five-year review).

¹³ See Draft Guidance at 12-13.

¹⁴ *Id.* This concern is relevant to both vessel limits and the Aggregate Limit. By requiring entities to acquire QP from other sources once the Aggregate Limit is reached, those entities must incur additional transaction costs thereby reducing the efficiency of the Program.

¹⁵ Blueprint at 12.

¹⁶ *Id.*

implementing its catch-share program, the New England Fishery Management Council commissioned a detailed independent study to address accumulation limits that ultimately recommended an aggregate limit of 15.5% for the Northeast Multispecies Fishery, which was equivalent to the highest percentage at which the fishery would remain unconcentrated based on the Herfindahl Index.¹⁷ Applying a similar approach in the Program's five-year review would allow the Council to meaningfully evaluate potential increases in the Aggregate Limit that could be made without risking market power problems.¹⁸

Finally, the Council's currently planned scope for the five-year review is contrary to NMFS's own statements. Specifically, when Pacific raised its concerns about the Aggregate Limit in a recent proposed rulemaking, NMFS responded by stating that "[i]f the commenter wishes that this program review include an examination of the impacts and appropriateness of the nonwhiting aggregate control limit, the commenter should participate in the program review." 80 Fed. Reg. 69,138, 69,141 (Nov. 9, 2015). NMFS has also made representations to the United States District Court for the Northern District of California implying that the five-year review would address any flaws associated with the Aggregate Limit.¹⁹ As NMFS has indicated, the five-year review must evaluate the Aggregate Limit.

¹⁷ See Recommendations for Excessive Share Limits in the Northeast Multispecies Fishery at iii, 47, *available at* http://archive.nefmc.org/nemulti/planamen/Amend%2018/compass_lexecon/NEMFC%20Report%20Final.pdf.

¹⁸ See Herfindahl Index Report at 20 (originally determining that an aggregate limit of 10% would guarantee an unconcentrated outcome in the nonwhiting fishery), *available at* http://www.pcouncil.org/bb/2008/1108/F3c_SUP_ADD_ANALY2_1108.pdf. A new market power analysis would be required here.

¹⁹ See Federal Defs.' Notice of Mot. and Combined Mem. in Support of Defs.' Cross-Mot. for Summ. J. and in Opp'n to Pls.' Mot. for Summ. J. (Dkt. 78, Case No. 3:15-cv-05572-HSG, Dec. 2, 2017, at 44) ("Finally, the ongoing five-year review process, and the extent to which the control limits are interlinked with multiple policy decisions of the Council that must expertly balance competing objectives, weighs against vacatur of the challenged rules."); Federal Defs.' Notice of Mot. and Mot. to Dismiss (Dkt. 22, Case No. 3:15-cv-05572-HSG, Feb. 1, 2016, at 28) (Pacific is not "without a remedy for their concerns" regarding the Aggregate Limit because the five-year review addresses "implementation issues.").

III. CONCLUSION

In sum, applicable authorities require the Council to perform a detailed analysis of the Aggregate Limit, but the Blueprint suggests that the Council does not intend to comply with these requirements. Pacific requests that the Council immediately remedy this deficiency by incorporating a planned detailed assessment of the Aggregate Limit into the five-year review, and by completing that assessment in an objective, comprehensive, and fully-informed manner.²⁰ Such an analysis is necessary to ensure that the Program serves its purpose of “support[ing] healthy and resilient coastal economies and ecosystems and foster[ing] innovation.”²¹

Thank you for your consideration of these comments. Pacific reserves the right to submit additional information regarding the Aggregate Limit and other issues to inform the ongoing five-year review of the Program.

Sincerely,



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²⁰ Recognizing the Blueprint’s deficiencies, the Groundfish Advisory Subpanel (“GAP”) has recommended that the Council amend the Blueprint to analyze how the Aggregate Limit “relate[s] to efficiency.” GAP Report at 2, *available at* http://www.pcouncil.org/wp-content/uploads/2016/11/F6c_Sup_GAP_Rpt_NOV2016BB.pdf. The Council should adopt the GAP’s recommendation, as well as the broader recommendations made in this letter.

²¹ NOAA Catch Share Policy at 1.