

**May 10, 2017
Pacific Fishery Management Council
7700 NE Ambassador Place, Suite 101
Portland, Oregon 97220-1384**

**TRAWL ITQ CATCH
SHARES GEAR SWITCHING PROBLEM
AND SOLUTIONS**

**A NEW TRAPPING FISHERY
HAS BEEN CREATED BY THE NMFS
WITHOUT SAFEGUARDS**

**To protect
the existing Fixed Gear sector.**

The purpose of this letter is to provide critical information to the process of reviewing one specific aspect of the Ground Fish Trawl ITQ Program. These comments are based on my perspective and fishing experience South of Point Conception in both trap and long line fisheries for the

past 25 years and my participation in management processes attempting to help represent local independent commercial fishermen.

I believe that commercial fishery success is dependent on 3 key aspects or factors.

1) A strong work ethic

2) Access to harvest a resource that is held in trust by a State or Federal agency.

3) A harvest planing process that protects the resource from overfishing, by managing fishing effort deliberately so that fishing effort or fishing power does not exceed the carrying capacity of the targeted stock.

Every successful fishery management plan or management process must manage effort deliberately. The Catch Shares Gear switching Program has interfered with the fixed gear effort management strategy. This interference endangers regional stock sustainability and harms many individual fishermen who hold fixed gear Limited Entry Ground Fish permits.

I strongly believe that the ITQ Catch Shares Gear Switching program, critically endangers the black cod stocks South of the 34.27 line and likely cases harm to the entire fixed gear sector due to a lack of oversight and accountability.

I also strongly believe that the Gear switching program, inadvertently circumvents the resource protections, put in place to prevent a cod stock collapse at a regional scale. This letter will detail the factual basis for this belief, and explain how the ITQ Catch Shares Gear Switching program causes harm as well as provide solution recommendations.

It is a clear fact that the development and implementation of the trawl rationalization ITQ program occurred independently and absent, of any rationalization of the fixed gear sector. This is highly problematic when trawl effort is permitted to enter the fixed gear sector and circumvent controls that manage effort in the fixed gear sector. It should be abundantly clear to any competent manager, that the management decision to allow effort from the trawl sector to invade the un-rationalized fix gear sector, and circumvent resource protections measures intended to control gear specific effort, is mismanagement. This reckless action has the potential of instigating or causing an East Coast style cod collapse in the Southern range of the black cod fishery if nothing is done to modify or eliminate the gear switching program. The end of any fisheries range is the area most vulnerable to overfishing, stock recruitment variability, and climate change. The ITQ Gear Switching program has pushed substantial fishing effort southward of the 34.27 line towards the end of the stocks range

I also believe it is unethical to allow the Trawl sector 'de-

facto ownership privileges' of a resource held in public trust and then grant the Trawl sector a privilege preference to participate in the fixed gear sector. A sector which has not been granted 'de-facto ownership' and is in fact a public trust resource. For a more detailed explanation on this topic please see my comments to the PFMC dated October 16, 2016 and attached below.

Identifying the Problem created by the Gear Switching program:

Problems can not be effectively solved until they are properly identified and understood. Excuses making must be avoided if a problem is to be effectively solved. The West Coast Trawl ITQ program has been very costly. The cost and time spent on this program can not be used as an excuse for inaction

We can not hold the solution to the problem caused by the gear switching program, hostage to the mistakes made, or the money spent on the Trawl ITQ program. It is the ITQ management mistakes that caused the gear switching problem. I'm am labeling the problem the "Trawl ITQ Catch Share Gear Switching Problem"(TITQCSGSP). This problem must be properly corrected in a timely manner.

I have been informed that the "Five year review" of the

Trawl Catch Shares Program is the instrument that I must use to participate in the process of helping to solve the problems caused by the Gear Switching element, of the Trawl ITQ Catch Shares Program. I have also been told that the Community Advisory Board (CAB) is the body responsible for developing potential questions and requesting agency analysis of data that would help inform the process of correctly identifying potential problems and development of a range of alternatives for the PFMC to consider.

I am request that the following information and questions be included in the process of correctly identifying the root cause of the TITQCSGSP.

1) Does the PFMC and NMFS understand that Trawl fishing, Traps fishing and Longlines fishing target and catch stocks in distinctly different ways ,and in many cases over different habitat types?

2) Was the original structure and composition of the Ground Fish Limited Entry fixed gear program based on the goal of controlling gear-specific-effort in the ground fish fishery?

3) Were fixed gear Limited entry permits assigned a gear designation of trap or longline for the specific purpose of controlling the amount of effort these uniquely different harvesting methods applied to the resource, or was gear specific endorsements an arbitrary action with no specific

purpose?

4) If the answer to question 3) is negative or no specific purpose , then why are Fixed Gear permit holders prohibited from switching from longline endorsement to Trap endorsement?

5) Does the PFMC and the NMFS understand that unlike the trawl sector the fixed gear sector has not been rationalized and is not operating under an ITQ management structure.

6) Does the PFMC and NMFS understand that the fixed gear sector relies on trip limits and bi-monthly quotes to control fishing effort in its sector not ITQ awards?

Do not be confused by years of process or time expended on trawl rationalization. The original structure of the Ground Fish Limited Entry Program was specifically designed and developed to control three distinctly different, highly effective gear specific pools of fishing effort (Trawl, Trap and Longline). Only one of these pools of effort has been rationalized (Trawl). The other two have not. This is a very critical concept to understand, consider and evaluate. The underlying TITQCSGSP (problem) is rooted in the mistake of not understanding this concept and allowing rationalized trawl effort to gear switch into an unnationalized gear specific fishery without any

safeguards for fishery participants who are impacted by gear switching or analysis regarding the sustainability of this action.

The Map clusters that follow were developed by the NMFS. I have included them to help you better understand the nature of the TITQCSGSP (problem). They are a visual aid that documents gear specific effort before and after the ITQ Gear Switching program. The TITQCSGSP is caused by effort consolidation and its relocation from trawl track tows between 34.27 and 36.00 degree and to fishing grounds that are located south of the 34.27 line. The area south of the 34.27 have been primarily a hook and line fishery not a trawl or trap fishery.

Map cluster 1)

The fixed gear fishery South of the 34.27 line has historically been a longline dominated fishery. The first two maps below show the extent of the hook and line fishery before Gear Switching. pay close attention to the hook and line effort South of the 34.27 line. Observe that the third map shows no hook and line effort in the CS program South of the 34.27 line.

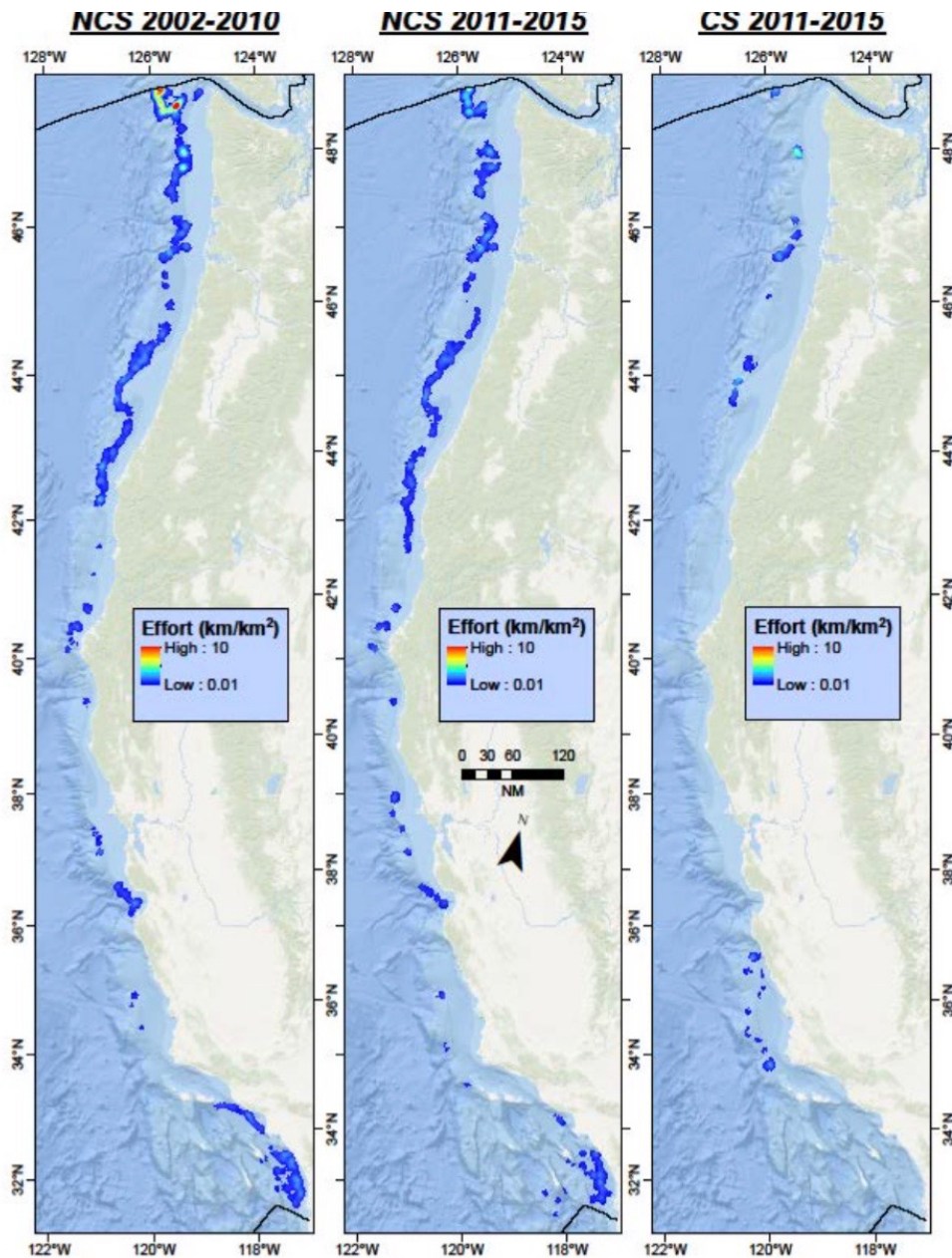


FIGURE 35. Spatial distribution and intensity of fishing effort by hook-and-line sectors. The density values for the color ramps for each map panel are equal, so pixel-by-pixel comparisons can be made. The highest (red) and lowest (blue) values are set arbitrarily so that areas of relatively high and low fishing intensity can be compared across time periods.

(Map cluster 2)

This cluster of maps below shows the extent of the new CS trap fishing effort south of the 34.27 line caused by the Catch Shares Gear Switching ITQ program.

Due to the Gear Switching Program, the longline fishermen South of the 34.27 line must now compete with larger heavier trap gear that is unrestrained and allowed to invade its sector with up to 1.7 million lbs of Trawl based black cod quota that should be fished between 34.27 and 36.00 based on historic landing data and sector allocation decisions made before the advent of the Gear Switching program. The third map in the cluster below visually demonstrates the problem caused by the gear switching program. Compare the area south of the 34.27 line in map three of this cluster with the maps in map cluster 1) to understand the extent of the problem caused by the Gear Switching program South of the 34.27 line. The third map in this cluster represents the new trap fishing effort that has been displaced Southward of the 34.27 line by the Catch Shares Gear switching program. This is an entirely new ITQ Catch Shares fishery that endangers the regional sustainability of the black cod fishery South of the 34.27 line. See third map in this cluster [CS 2011-2015](#)

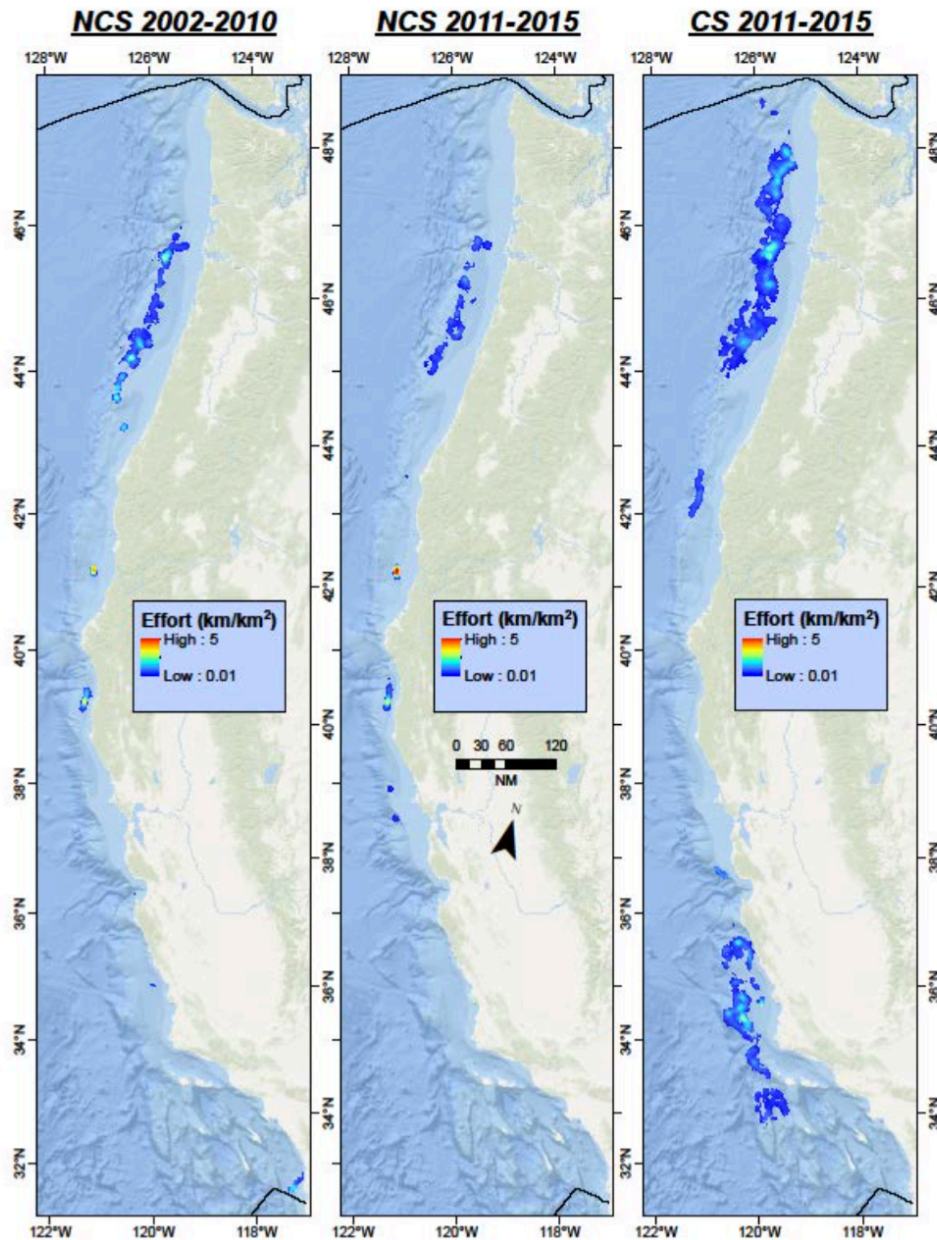


FIGURE 29. Spatial distribution and intensity of fishing effort by pot sectors. The density values for the color ramps for each map panel are equal, so pixel-by-pixel comparisons can be made. The highest (red) and lowest (blue) values are set arbitrarily so that areas of relatively high and low fishing intensity can be compared across time periods.

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Unsustainable levels of Trawl Catch Share ITQ Gear Switching effort have now been relocated South below the 34.26 line from the location where its historic trawl effort

occurred between 34.27 and 36.00. This is causing conflict and regional localized depletion that can be verified by landing data and fishing effort observations. 1.7million pounds of black cod has been allocated to the Trawl ITQ program South of the 36 line. A very small amount of this 1.7 million lbs. was ever caught with trawl gear south of the 34.27 line (see maps one and two below for verification). The Gear switching program can potentially release 1.7 million lbs. of previously restrained black cod trawl fishing effort below the 34.27 line. This is a catastrophic mistake that is endangering the hook and line fishery south of the 34.27 line

The first map (LE 2002-mid-2006) in the 3 map cluster below, documents the greatest extent of bottom trawl activity during the relative time period. It provides the user with a histogram of where the trawl fleet fished prior to the ITQ Catch Shares Gear switching process. Pay close attention to the lack of trawl effort South of the 34.27 line . As you can see virtually no bottom trawl effort occurred South of the 34.27 latitude line. The ITQ Catch Shares program has relocated large unrestricted amounts of converted catch shares ITQ gear switching trap effort South of the 34.27 latitude line. This is a red flag! The black cod stock is now being disproportionately targeted due to flaws in the Gear Switching program and the lack of any meaningful safeguards to control where the 1.7 million lb. of ITQ quota is harvested South of the 36.00 line.

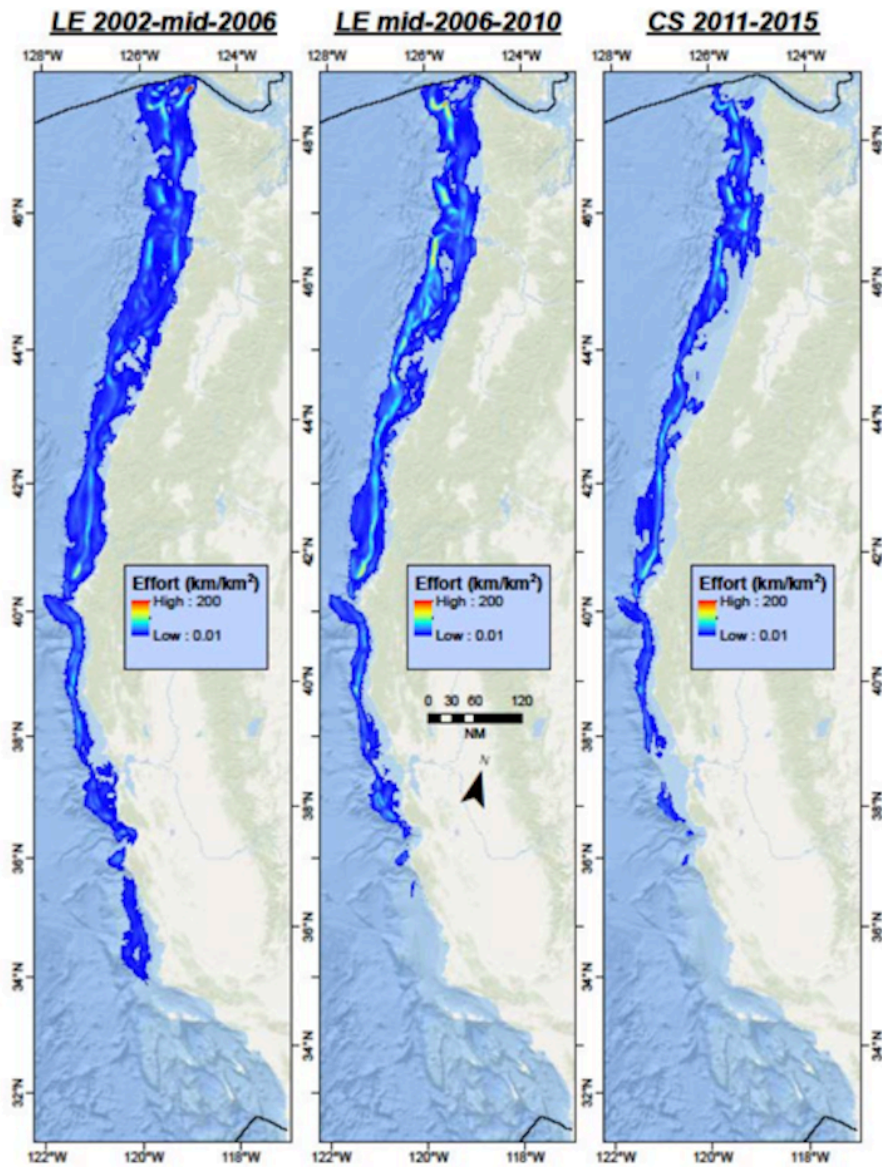


FIGURE 5. Spatial distribution and intensity of bottom trawl fishing effort within 3 relevant time periods, as described in the text. The density values for the color ramps for each map panel are equal, so pixel-by-pixel comparisons can be made. The highest (red) and lowest (blue) values are set arbitrarily so that areas of relatively high and low fishing intensity can be compared across time periods.

Proposed Solutions;

I have attempted to explain this problem in an objective, non-biased evidence based manner. I have done this with the best available data. I clearly have a stake in the outcome, as a fixed gear longline endorsed permit owner. If you don't like my recommendations I am requesting a formal process to separate the key issue of allowing Gear switching away from the 5 year review process so a more stringent evaluation process can be developed to address the utility of Gear switching in the ground fish fishery.

Under the current 5 year review process an assumption has been reached that Gear Switching can occur without safeguards for the fixed gear sector and or the regional sustainability of the resource. The 5 year review assumes that gear switching is a legitimate un-reviewable measure or tool that can arbitrary be implemented without any consideration for its effect on a fishery sector that has not been rationalized and is being put at a competitive disadvantage without any consideration. If gear switching is deemed as an un-reviewable modification due to constraints placed of the 5 year review process or bias in the reviewers, the fixed gear sector must be granted the ability to gear switch from longline to trap so it has the capability to compete with this new fishery created by the Trawl ITQ program.

RECOMENDATIONS

1) Use trawl logbook data to establish the trawl track locations where the 1.7 million lb. of ITQ black cod Catch Shares allocation was historically caught South of the 36 line. Clearly very little was caught South of the 34.27 line on hard rocky bottom with trawl gear. Therefore restrictions need to be put in place to control this effort at a finer scale. The Trawl ITQ Catch Shares program created an entirely new ITQ trap fishery South of the 34.27 line and allows unlimited amounts of 1.7 million lbs of black cod ITQ quota to be caught on soft and hard rocky bottom South of the 34.27 line with trap gear. A gear type that is more powerful than the existing fishery that already occupies those fishing grounds.

2) Develop an immediate control date to be implemented as soon as possible with the highest level of priority for any new gear switching trawl ITQ transfers. The purpose of this control date would be to inform and advise any new participants in the ITQ gear switching program that they may be limited to more restrictive fishing regulations pending further review of the effects of the gear switching program on the fixed gear sector and the sustainability of redirecting soft bottom trawling effort onto hard-bottom habitat and area already occupied by an existing gear sector.

3) Reorganize the CAB by adding additional fixed gear representative who are not participating in the gear switching program and task them with developing a process to review the entire Trawl ITQ gear switching component of the Trawl ITQ Catch Shares program. This program never received adequate review and consideration before it was rushed into implementation.

Review should be concentrated in these primary areas;

a) Is the program achieving its social objectives or is it just being used as a tool to catch a trawl quota that is captured and constrained by over regulation.

b) How does the new trap fishery, created by the Catch Shares ITQ program, negatively affect the existing fixed gear sector ?

c) Should participants in the Gear Switching program be restricted to longline gear only?

d) Investigate the historic separation of the areas fished by both the trawl and fixed gear sector. Use this information to ask for agency analysis in the following areas:

1c) Is it biological sustainable for 100% of trawl effort to be transferred out of soft bottom habitats and relocated into a new trap fishery on hard and soft bottom without any negative consequences to the sustainability of the stock?

If the answer to this question is that this new trap fishery is sustainable then the CAB should take the following additional actions;

a) Request that all fixed gear permit holder be permitted to

switch between trap and longline gear.

b) Re-open sector allocation between ITQ Trawl and the fixed gear sector and reallocate a percentage of the quota awarded to the gear switching element of the Trawl ITQ Catch Shares program. Reallocation would be away from the Catch Shares gear switchers and to the Fixed gear sector. Relocation is need as compensation to the fixed gear sector. This compensation would offset the disruption and new competition created by the new gear switching fisheries entrance into the existing fixed gear fishery sector.

4) DO NOT remove the 36.00 line which currently contains 1.7 million lbs of black cod ITQ quota South of the 36 line.

The rational for retaining the 36;00 line are;

a) An important factor in the cause of the gear switching problem is that the ITQ program encourages the accumulation of large pools of species specific (black cod) fishing effort by individual fishing operations. For the most part the Gear Switching program has not benefited the Trawl sector, the local fishing ports or their infrastructure and communities South of the 36 line. The ITQ gear Switching program has been used as a legal loop hole to circumvent quota accumulation limit in the tiered-fixed-gear-black cod fishery. We now have Fixed gear black cod tiered boat owners purchasing trawl boats with ITQ Gear Switching allotments. Their fishing strategy is to fish black cod quota with trap gear. They are not interested in maintaining a trawl fishing operation, just cheery picking

out the most valuable fish. The result is concentrated fast past removals of black cod on the most productive fishing sites. This is why the ITQ Catch Shares Gear Switching boats are fishing South of the 34.27 line and not the trawl tracks where the fish were traditional caught by the trawl boats that qualified for the original Catch Shares ITQs. Removing the 36.00 line just moves the problem from below 34.27 to above 36.00. the solution is to contain the effort not disperse it. ITQ. free fishing efforts from management constraints. ITQ management requires a finer scale of effort containment to prevent regional depletion. The Catch Shares ITQ Gear Switching program lacks any meaningful spatial effort distribution strategy. This is an important reason why the Gear Switching program is so problematic.

b) Removing the 36 line does not prevent effort from moving below the 34.27 line, it just adds more value to the 36 quota and allows it to be fished anywhere. If sites North of the 36 line become overfished by the new trapping fishery, the new trapping fishery will just return to areas south of the 34.27 line.

5) Do not permit ITQ Catch Share Quota to be fished with trap gear south of the 34.27 line. Very little trapping occurred south of the 34.27 line until the Catch Shares program developed this new trapping fishery south of 34.27. If the managers decide to create a new fishery, they should consider how that new fishery effects the existing

fishery. This new fishery should not be permitted to overtaking the existing fishery with more effective removal methods.

AN OVERVIEW OF HOW WE GOT HERE FOR CONTEXT

The ITQ gear switching program undoubtedly has enthusiast support from powerful interest groups within the Pacific Fisher Management Council (PFMC), and the National Marine Fishery Service (NMFS). Conservation organizations have long sought to implement restrictions in trawl fisheries around the world. The stated goal of these restrictions is to address issues associated with the effects of trawl fishing impacts. These impacts include the potential damaging effects of trawl gear contact with hard bottom ocean floor and the marine life anchored to that ocean floor substrates. I support maintaining a trawl fishery.

The Catch Shares ITQ Gear Switching Program (CSGSP) was started at the request of a conservation stakeholder not the fishing industry. The Nature Conservancy (TNC) (the worlds largest land holder) purchased most if not all of the trawl fleet operating between the Latitudes of 36.00 and 34.27, with the goal of eliminating the trawl bottom contact issues mentioned above. The TNC took this

controversial action with out any knowledge or experience in the operational aspects of commercial fishing.

Because of their inexperience in commercial fishing operations, the TNC overlooked the utility and necessity of trawl fishing and overlooked the important connection between the fleet they acquired and the local community and its fishing infrastructure. TNC decommissioned almost the entire fleet of trawl boats that historically operated in the waters between 36.00 and 34.27. This decommissioning had a catastrophic effect on the local fishing port infrastructure and the local community fabric that depended on the seafood products and revenues which the trawl fleet previously generated.

I personally attended meetings where the TNC stated that they intended to develop a hook and line fishery for flatfish. Flatfish comprised the majority of the catch of the trawl fleet they decommissioned. This was the genesis of the Catch Shares ITQ Gear Switching Program (CSGSP). The focus of the TNC gear-switching program was to restore the supply of flatfish to the local ports and the community. Under intensive lobbying pressure, all three agencies PFMC ,NMFS and CDFW supported and endorsed the TNC gear switching program as a means of restoring the flow of fish to the local harbors and communities devastated by the TNC trawl fleet decommissioning. The CSGSP South of 36.00, under any metrics did not accomplishing its primary objective yet management continue to act as if the program is

indispensable to the management of the ground fish fishery and can not be altered modified or changed in any meaningful timeframe to bring relief to the fixed gear sector which the gear switching program invades and negatively impacts.

Most of the Catch Shares Gear Switching quota South of 36.00 has been purchased by northern tired blackcod boat that have no connection to the community devastated by the Nature Conservancies' reckless actions. This in its self is strong evidence that gear switching below the 36 .00 line is a failure.

The majority of black cod that are being caught with the ITQ gear switching quota south of the 36.00 line are being caught by northern boats. This fish is then shipped out of the area for processing and sales. None of the results of the CSGSP program address the original objectives or benefit the local ports or their local community fabric in any way. The program only harms them.

To date, the local ports communities and commercial fishing operations south of the 36 have attended counties meeting, communicating to managers the iniquity and frustrations they have with the CSGSP, yet the managers fail to act in any meaningful way to address this injustice. The PFMC, NMFS have failed their management responsibility to the local fishing community. The CDFW is the only agency concerned with the program. They only have one vote on the PFMC, yet they are the agency with

the best understanding of the problem caused by the Gear Switching program. The PPMC and the NMFS have granted special consideration and favor to a process that harms the historic, legitimately established fixed gear sector in order to benefits powerful special interest and a few high-liners who can afford to buy into a management loop hole that circumvents established fixed gear sector management safeguards. These safeguards continue to apply to the fixed gear sector but not the CSGSP. The CSGSP runs roughshod over the fixed gear sector with the full support and endorsement of the agencies entrusted to administer a fair and equitable management system.

The NMFS has a very poor track record at managing Cod stock on the East Coast of the United States.

NMFS claims that the effect of global warming have pushed cod stock North into colder water and that warming water temperatures decrease the egg production and survivability of adult cod brood stock and their young offspring.

The NMFS claims that global warming and overfishing are to two primary contributing factors that account for the collapse of the cod stocks on the East Coast, yet they are endorsing a gear switching program south of the 36 line that permits 1.7 million lbs. of black cod to be caught with trap gear in a location south of the 34.27 line were this level of removal never took place.

The Catch Shares ITQ Gear Switching program

completely disregards and ignores the scientific literature and lessons learned about the collapse of the East coast cod stock. The CSGSP south of the 36 line is repeating the primary mistakes that led to the east coast cod stock collapse. The Program incentivizes and encourages regional overfishing of black cod at the warmest end of the stocks range, where it is most vulnerable to global warming and over fishing. Trapping allows access to stocks on hard rocky habitat where trawler could not fish. Trapping allowed deep water fishing beyond 550 fathoms where longliners can't fish due to cod intermingling with large concentrations of Grenadier that have no market value but will bit every hook. Before ITQ Gear Switching water deeper than 550 fathoms served as a de-facto refuge below 34.27, but it is now being fished by the new ITQ Catch Shares Trap fishery.

We have come full circle in the constituent management process. Now local fishermen want to protect the sustainability of the stocks and a large conservation interest organization is promoting a policy that exploit them.

Below is my 10-16-2016 letter and speech to the PPMC.
Respectfully
Chris Hoeflinger

THE INJUSTICE AND DANGER OF ALLOWING A RATIONALIZED FISHERY TO ENTER AN UN-RATIONALIZED FISHERY:

October 16, 2016

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

RE: 5-Year

Catch Share Review Gear Switching

HAS A MANAGEMENT MISTAKE BEEN MADE?

To answer the question, let's take an objective look back at how we got to this point. Forget the lawyers, forget the NGOs and the Nature Conservancy. Forget how bad some folks want ITQs to be the silver bullet solution to management mistakes. ITQs are a tool not a solution.

The ground fish crisis was caused by two primary factors;

- 1) Too much fishing effort.
- 2) The decadal oscillation changed ocean conditions and those conditions resulted in a prolonged episode of poor groundfish recruitment.

The Management response;

The PFMC acted decisively by adopting the Ground Fish Strategic Plan.

The Strategic plan adopted a two pronged solution approach;

- 1) implement species specific stock assessments as a tool to inform managers as to the health of the stock so that effective measure could be put in place to prevent overfishing.

2) Control fishing effort with limited entry permits issued based on fishery participation history. Commercial fishing effort was then further segregated by gear type and a limited number of transferable permit were established for each gear sector; Trawl—Longline—and Trap. Sector allocations were determined and apportioned. Weekly trip limits and by-monthly quotas controlled fishing power and protected overfished stocks. Losses in profitability were shared equally by all sectors.

The Strategic Plan approach was rooted in the concept that fishing was a privilege.

Since overfishing was a major problem, this privilege was reserved for the individuals that historically participated in the fishery and future individuals who purchased the original privileged-based permits on the open market. An open access component was adopted but with significant opportunity restrictions.

This Strategic Plan approach, applied the principal of fairness to this privileged based system;

- 1) It restricted the allowable rate of catch for each permit holder through the mechanism of trip limits and bi-monthly quotas. Each gear sector competed with the others on a level playing field.
- 2) No sector was granted any special privilege or right over any other sector. This is the root principle governing the concept of fairness. Our democratic system is rooted in this key principle of fairness. When laws are applied unfairly society unravels, human dignity is lost and problem are created.

MANAGEMENT MISTAKE PART ONE: Failure to comprehend the implications and negative consequences associated with mixing or merging two distinctly different management approaches into the same fishery and gear type.

ITQs are inherently a rights based management system. Rights based system are very different from privileged based systems. Rights based ITQ systems award ownership rights and encourage the pooling of individual units of fishing effort. The goal of this management approach is to match individual fishing power with resource extraction availability. This practice

grants ownership of what were, at one time, multiple individual pools of accumulated bi-monthly quotas. This 'owned pool of fish' can be sold, leased, transferred, and harvested, any where, at any time, and at any rate. It is the complete, polar opposite of the privileged based management system currently governing the Fixed Gear Limited Entry Fishery!

The ITQ trawl program has transformed a privilege based system into a rights based system. Trawl permit holders are no longer constrained to the rigid set of restrictions which control individual fishing effort and ultimately profitability in the Fixed Gear Limited Entry (longline/trap) sector.

Understanding this important distinction between the two management approaches is the key to understanding the first part of the management mistake that was made when gear switching was authorized.

RIGHTS BASED MANAGEMENT SYSTEMS CAN NOT BE FAIRLY MIXED OR INTERTWINED WITH PRIVILEGE BASED MANAGEMENT SYSTEMS. THE TWO MANAGEMENT SYTEMS ARE INHERENTLY INCOMPARABLE. THE ITQ GEAR SWITCHING PROGRAM MIXES THE TWO SYSTEMS TOGETHER .

With regard to the first management mistake, developing a trawl ITQ program is not the root problem. Trawl sector allocation and trawl gear based permits acted as a fire wall protecting fixed gear sector permit holders. For the most part, South of 36, the trawl and fixed gear sectors fished different location for different species. Black cod was more of a by-catch in the trawl sector generally speaking. Attempting to longline or trap in a trawl zone would likely result in a lot of lost and damaged fishing gear. The ITQ Trawl program is not the problem

THE ROOT PROBLEM WAS CAUSED BY THE TRAWL ITQ GEAR SWITCHING PROGRAM. THIS PROGRAM REMOVES THE FIRE WALL THAT PROTECTS THE FIXED GEAR SECTOR FROM THE RIGHTS BASED ITQ TRAWL PERMIT HOLDERS. RIGHTS BASED PERMITS OVERPOWER PRIVILEGE BASED PERMITS IN EVERY FISHERY AROUND THE WORLD. THEY OPERATE FREE FROM THE RESTRICTION THAT CONSTRAIN PRIVILEGED BASED, FIXED GEAR, LIMITED ENTRY PERMITS HOLDERS IN THIS FISHERY.

THE ITQ GEAR SWITCHING PROGRAM DISENFRANCHISES THE FIXED GEAR SECTOR BY ALLOWING INDIVIDUALS WHO QUALIFIED FOR TRAWL QUOTA, A COMPETITIVE ADVANTAGE IN THE FIXED GEAR SECTOR. A SECTOR WHICH THEY DO NOT HAVE A PRIVILEGE OR A RIGHT TO PARTICIPATE IN, UNDER THE FRAMEWORK OF THE GROUND FISH STRATEGIC PLAN ADOPTED BY THIS COUNCIL.

Mixing the two systems without any meaningful safeguards for the weaker, more vulnerable, privilege based, fixed gear sector is mismanagement. Failure to correct the error is dereliction of management duty. For a more detailed explanation of the consequences of this management mistake, please reference my letter to the PPMC dated October 5, 2016

MANAGEMENT MISTAKE PART TWO; Failure to develop and install safeguards to prevent regional depletion, by the newly created, uncontrolled pools, of gear-switching fishing effort at a specially explicit level.

The ITQ gear switching fishery is so poorly conceived and implemented that it endangers the sustainability of the stocks it targets, and the fishery sector it invades (fixed gear) . ITQ Gear switching, removed the successful effort controls put in place by the Council under the Ground Fish Strategic Plan. These ‘fixed-gear-harvest-rate-effort controls’ were functioning as de-facto regional management. They were safeguarding the resource from excessive regional harvest extraction. The fishery science supporting the strategic plan, mandates at least a 50% reduction in fishing effort in each gear sector. In the Fixed Gear Sector, this reduction was achieved by instituting weekly trip limits and bi-monthly quotas. Gear switching introduces large pools of new, unrestrained fishing effort into the fixed gear sector. Mismanagement is not only allowing, but encouraging the introduction of gear switching effort into the fixed gear sector, Managers should have known that the fixed gear sector relied on these highly restrictive management control, in order to meet the mandated 50% effort reduction. introducing more effort only

make the problem more difficult to solve. While ITQ gear switching may have the support of the fishermen it benefits and the NGOs who naively and eagerly promote it as their preferred fishery management solution, it is devastating to many in the fixed gear sector which it unfairly invaded.

Gear switching effort can concentrate high levels of extraction on individual deepwater reef structure without any consideration for regional extraction rates or regional sustainability.

All successful ITQ longline fisheries which target residential or semi-residential species have built in control to prevent the concentration of fishing power from causing regional stock depletion and regional overfishing. The ITQ gear switching program does not have any dedicated controls to prevent regional depletion it encourages it! This is a major management mistake that was caused by failing to evaluate the program correctly.

For a more detailed explanation on the consequences of this management mistake, please reference my letter October 5, 2016. For a better understanding of regional effort controls in ITQ fisheries, please examine the Pacific ITQ halibut and blacked fisheries.

If your goal is to transform our management system from a privileged based system into a rights based ITQ system, that task requires much more thought, consideration and coordination with the fixed gear permit sector. changes in the structure of the fixed gear sector must apply to all participants fairly, not just a select few invading it with trawl ITQ quota.

Action item request.

Terminate the gear switching program or restructure the entire Fixed Gear limited entry program.

**Respectfully,
Chris Hoeflinger**

From: **Paul Clappitt** <pfishcl@gmail.com>
Date: Mon, May 29, 2017 at 8:44 AM
Subject: 5-year review of the Pacific groundfish catch share program
To: pfmc.comments@noaa.gov

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

Dear Chairman Pollard;

My family purchased a trawl permit and trawl quota when it first became available through the trawl rationalization program. We have a loan and mortgage on this investment. We depend on gear switching to catch the sablefish acquired from this purchase on our longline vessel Augustine.

This program has worked well for us as we also lease quota through the Jefferson State Trading Company auction site administered by Mr. Pete Leipzig. As you are aware since our quotas are at historic lows this has helped us survive.

We purchase and lease this quota through an open auction system with a willing seller and willing buyer nobody's arm is twisted. Stopping the ability to gear switch would be a mistake. Fixed gear fish are larger and of better quality and are worth more in the market. Trawlers catch smaller fish which for the most part haven't had a chance to spawn, and since the implementation of trawl rationalization the discard rate has gone down dramatically. Stopping gear switching would be counter to the purpose of the trawl rationalization. Since trawl rationalization we are seeing our catch rates for both sablefish and halibut increase. We believe this program is a success and eliminating gear switching would prevent a cleaner less damaging gear type from harvesting sablefish and obtaining the best value for this fish and the American public.

Thank you,
Paul Clappitt
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Robert L. Eder

Michele Longo Eder

May 30, 2017

Public Comment F.2
Five Year Review
Trawl Individual Quota Program

Mr. Chairman and the Members of the Pacific Fisheries Management Council:

My name is Michele Longo Eder. My husband, Bob Eder, and I own the F/V Timmy Boy, a 60 ft steel vessel. Bob has commercially fished for over 40 years, for salmon, crab, tuna, herring, halibut, pink shrimp, and black cod. He is the owner and operator of the vessel, now sharing skipper's responsibilities with our son, Dylan Eder. We have three additional crew members who rely upon us to provide the opportunity to make a living for themselves and their families.

We bought the Timmy Boy in 2011. The vessel is 49 years old, and has an extensive history in the trawl fishery for groundfish. The boat and its previous owners, Denny and Judy Burke, also fished for Dungeness crab, pink shrimp, and for black cod with pots. Yes, that's right—a trawler that trawl fished AND also used pots to fish for black cod for more than 20 years before we bought it in 2011. In fact, the vessel's landings qualified it for a permit in the LE fixed gear fishery with both a pot and trawl endorsement, as well as a separate LE Trawl permit.

When we purchased the boat, we bought the vessel and its crab, shrimp and trawl permit, including its quota. We bought the boat and these permits with the intent, and **in reliance** on, the ability to "gear switch" as provided for in the rules of the Trawl IQ program. Because we rebuilt the boat in 2012, and the boat was in the yard for 11 months, we were unable to actively fish our quota that year, and instead, leased out our sablefish quota.

However, for 5 years we have personally fished our sablefish quota with pots, utilizing the gear switching provision. Each year since then we have leased additional sablefish quota. And in 2015, we made another significant investment in the trawl fishery by purchasing additional sablefish quota.

It's important to state that in the 2008 Decision document for the Rationalization of the Limited Entry Trawl Fishery, this outcome of trawl vessels converting to fixed gear was both specifically provided for, intended, anticipated and analyzed. The document notes "The definition of the scope (of the gear switching provision) allows a Limited Entry trawl vessel to switch between trawl and non-trawl groundfish gears, including fixed gear, for the purpose of catching their QP. It also allows a non-trawl vessel to acquire a trawl permit, and thereby use trawl quota pounds to catch the LE trawl allocation." We continue to support the inclusion of gear switching in the Trawl IQ program, and retaining gear switching as an essential element going forward.

We are not alone in our investment in this fishery. Other trawl permitted vessels, using fixed gear, like ourselves, have also participated in the trawl fishery for the past five years. Let me assure you—the investments made are in the millions of dollars. The Trawl IQ Review document would be significantly improved if it were to examine the investment in the gear switching aspect of the fishery, by way of vessel

purchase, permit purchases, gear investment, quota purchases and quota leasing. Without this type of analysis, the Council has no framework to examine what kind of impact there has been, and investment, in all three states, as to the gear switching provision.

In addition to vessels investing in the trawl fishery with fixed gear, the gear switching provision has addressed many of the review criteria and standards, whether in Magnuson, the FMP, or the NMFS standards for review to trawl catch share programs.

For example: Gear switching has provided opportunity for new entrants. It would be interesting to see, but I would suggest, with some confidence, that new entrants into the fishery have mainly been on the gear switching side. The trawl IQ program isn't seeing new people become trawlers using nets. The idea that someone off the street is going to buy a vessel, trawl permit, quota and trawl nets and suddenly start fishing—that isn't the type of new entrant the program realistically anticipated. But the ability to gear switch has allowed individuals to use existing equipment and a vessel in both the trawl and traditional fixed gear fishery, to buy or lease fish. Additionally, including vessels that gear switch allows a larger number of crew or skippers (from both trawl and fixed gear) to have access to a divisible quota and purchase or lease incremental amounts at a time. While this hasn't yet happened, to any significant extent, it would be contrary to the goals of the program to narrow, rather than keep broad, an opportunity for new entrants.

Another goal of the program, and standard for review, has been to reduce bycatch and total mortality. Use of gear switching has contributed to the reduction of the catch of certain overfished or prohibited species. While it is difficult to isolate exactly what has contributed to the decline, it's indisputable that pot fishing has relatively little bycatch. See the draft review document Chapter 3—331 and the chart. Regarding mortality, the mortality assumption for pot caught sablefish is 20%--for sablefish in a trawl net, it is 50%. Again, to the extent that reducing bycatch mortality is a goal of this program and a standard for review, gear switching accomplishes that.

Gear switching also allows us to contribute species to meet trawl net vessel needs. Important is the fact that we have annually leased to trawl net harvesters constraining and/or overfished species such as POP, darkblotch and canaries, as well as whiting, arrowtooth and petrale: all commercially valuable species that are not caught by pot gear. This has allowed some trawl harvesters greater access to their allocated trawl quota, than they may have otherwise been unable to fully access.

Given that we have been both good stewards and acted cooperatively in this fishery, it is distressing to see fellow commercial fishermen, and processors, seek to eliminate or otherwise limit our participation in this program.

There's no doubt that we are all challenged, trying to keep our operations as profitable they can be. But I would point to the 5% buyback, and the 3 % cost recovery as the significant stressors that have caused the claimed reduction in profits, if indeed, that is the case. The difficulty is that we, as an industry, have been unable to reduce or eliminate those two costs—and so, for some, it is easier to look for a closer target.

Statements have been made by trawl-net fishermen in front of this Council that fixed gear fishermen pay too much for quota, and have priced trawlers out of the market for sablefish. That simply isn't the case.

Take a look at the Jefferson Exchange. So far in 2017 on Jefferson, 187,272 lbs of Northern Sable has been leased. There were 133,963 lbs, or 71.5% transferred to processor Pacific Seafood at an average price of \$1.37. Other trawlers paid \$1.25 and \$1.39 average per pound. Two fixed gear fishermen leased Northern Sable this year: one paid \$1.15 and one paid \$1.26.

These numbers in 2017 follow a trend regarding increasing participation of processors in the Northern Sablefish market during the trawl IQ program. In 2015, Pacific Seafoods leased 10 of the 29 Northern Sable offers on Jefferson. Bornstein leased 2. In 2016, Pacific Seafood leased 18 of 43. Bornstein leased 6. So, in 2016, processors accounted for more than half of the leasing of Northern sable. Individuals

leased the others. In 2017 so far, Pacific Seafood has leased 8 of 14 listings of Northern sablefish. Bornstein 0. And by the way—to our knowledge, Pacific Seafood isn't leasing those fish to trawl boats using fixed gear.

If vessels fishing with nets feel they are paying too much to lease their sablefish, it looks like the problem lies at the processor's door. And it is clear from the analysis done by NMFS in the Trawl 5 yr review document, that analysts did not consider the role of processor leasing and its effect on prices of Northern Sablefish.

If there is a "caps" discussion to take place, I'd strongly suggest we add to the list of proposed actions a "cap" on how much sablefish quota may be leased or purchased by processors. Although Pacific may be leasing sablefish to vessels that they don't already own and control, the price that trawl-net fishermen are paying for that privilege isn't known--and the price to those trawl net fishermen might be even higher than the inflated prices that are being paid by processors on the exchange.

Those who participate in the trawl fishery using nets have also testified to this Council that they are unable to access sablefish quota sufficient to run their operations profitably. But it is clear from the Council draft document and analysis that eliminating gear switching will not help trawl fishermen attain a higher percentage of their Dover and thornyhead quota. "...the analysis in this review shows that, even without any participation by fixed gear vessels in the trawl sector, utilization rates for these species are not likely to be close to full attainment, especially when the higher quotas starting in 2015 for Dover sole and thornyheads are considered (3.1.3(a))."

Finally, it should be acknowledged that you won't hear a processor say "We'll buy all the Dover you can catch." A major constraint for the net fisherman are processor-imposed trip limits on Dover deliveries.

Given that it isn't gear switching itself that is causing a perceived problem in the trawl permitted IQ fishery, rather than eliminating gear switching, it would be helpful for all of us to see if there's additional sablefish that could be made available to all trawl-permitted vessels, whether using fixed gear or trawl.

Trawl Sablefish in the South.

We've previously suggested removing the management line between the North and the South for purposes of managing the trawl quota. Looking at past participation by trawl-permitted vessels in the south, here's what the charts show us:

Between 2011-2015, an average of only 37.2 % of the allocation of sablefish in the south was taken. This average is skewed somewhat high by 2011, when 83% of the quota was removed. In 2015, when there was an allocation of 720 MT, only 161 MT, or 22.4 % of the quota was landed, resulting in sablefish stranded, and economic waste.

Think about adding 720MT (or more) of sablefish to the entire trawl fishery. That's about 1.5 million pounds. In 2016, of the 1.7 million pounds allocated in the South, 1.4 million pounds (including carryover) remained unharvested.

Remove that management line? Can it be done? Without a lengthy plan amendment? To make the "unharvested" fish available to be caught--Yes. Without getting into the details here, it looks like some changes can be accomplished through the biennial specifications process.

Rather than looking to take away from fellow fishermen who have invested in good faith in this program, let's look at some solutions to increase availability of sablefish across the trawl-permitted fleet.

Michele Longo Eder
F/V Timmy Boy

michele@michelelongoeder.com



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

RE: TRAWL CATCH SHARES REVIEW DRAFT REPORT

Dear Mr. Pollard:

This letter provides comments of Pacific Seafood (“Pacific”) to inform the PFMC Five-Year Review of the West Coast Groundfish Trawl Catch Share Program (the “Review”). 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 – Draft” (the “Draft”) and discussed (A) why the Draft fails to adequately analyze quota limits, and (B) provides Pacific’s recommendations to fix this broken non-whiting groundfish program. We appreciate the Council’s consideration of these comments at the June 2017 Council meeting, and request that this letter be included in the administrative record supporting the five-year review.

A. The Draft Fails To Meaningfully Analyze Accumulation Limits In A Way That Would Help Improve the Program.

It is no secret that a legitimate review of the 2.7 % aggregate quota limit for the non-whiting shore-based trawl sector (the “Aggregate Limit”) is of paramount importance to Pacific. Last year we purchased seafood from 817 independent vessels, most of which are family owned businesses. These 817 individual vessels (small businesses) are counting on us to succeed and provide them a market.

As we noted in our letter to the Council dated March 30, 2017, a legitimate review of the Aggregate Limit is required by federal law, mandated by NMFS guidance, urged by the Council’s advisory committees.¹ We reviewed the recent Draft, and were disappointed to see that it falls woefully short of providing any meaningful analysis of the Aggregate Limit in a way that could improve program performance. For example:

1. Despite the fact that non-whiting trawl landings have fallen from 237 million pounds to 168 million pounds (29.11 percent) and that the attainment (utilization) rate for

¹ A copy of Pacific’s March 30 2017 letter (“March 30 Letter”) is attached here and incorporated as part of this letter.



non-whiting groundfish has plummeted to an abysmal 20.22 percent,² there is *no analysis* in section 3.1.1(b)(2) (“Efficiency and Productivity”) regarding how the Aggregate Limit is affecting efficiency, productivity, or attainment rates. On the contrary, the Draft makes the outrageous claim that “the non-whiting catcher vessel sector has experienced substantial increased in efficiency and productivity.”³

2. Despite the fact that the program’s capacity reduction (consolidation) goals have not been met and that in 2015 there were 94 active vessels (roughly double the stated goal of 40-50)⁴, section 3.1.1(b)(1) of the Draft (“Consolidation”) provides *no analysis* of how the Aggregate Limit is affecting consolidation.
3. Section 3.1.1(b)(1)(A) of the Draft (“Limiting Consolidation”) does not analyze whether the Aggregate Limit is contributing to limiting consolidation. On the contrary, the Draft states that very few entities are close to the Aggregate Limit⁵, which proves that an Aggregate Limit is not necessary to limit consolidation because other factors in the program are already accomplishing that objective.
4. Section 3.1.1(b)(4) of the Draft (“Quota Market Performance”) cites to a NMFS economic report (Holland 2016) for the proposition that an efficient quota market serves to allocate QP to its highest value use. However, the Draft ignores the finding in that report that artificially low limits such as the Aggregate Limit actually constrain efficiency and hurt quota market performance. This section of the Draft provides *no analysis* of how the Aggregate Limit is affecting the quota market and whether raising the limit would improve market performance.
5. Section 3.2.1. of the Draft (“Individual Economic Outcomes”) discusses the costs imposed by quota leasing but provides *no analysis* of how the Aggregate Limit is affecting economic outcomes, for example, whether increased consolidation would provide significant increases in individual vessel revenue.
6. Section 3.1.3(a)(1) of the Draft (“Utilization of Non-Whiting Species Allocations”) provides *no analysis* of how the Aggregate Limit may be constraining the unbelievably poor utilization rate of this fishery. Instead, the Draft makes the outrageous claims that “the multispecies nature of this fishery means that full

² See March 30 Letter at footnote 3.

³ Draft at 3-10.

⁴ See March 30 Letter at footnote 4.

⁵ Draft at 3-17.



utilization of all species in the program may be an unrealistic goal”—in effect, rather than attempting to fix this broken system, the authors simply dismiss the Amendment 20 goal to provide full utilization of the trawl sector allocation as “unrealistic.” This should be an outrage to every participant in the fishery.

7. Section 3.2 of the Draft (“Community Performance”) confirms that “the volume of groundfish in California continues a declining trend”⁶ but fails to consider the Holland report indicating that quota is being sold away from California, and provides *no analysis* about how increasing the Aggregate Limit could help companies like Pacific (who is one of the last two remaining year-round groundfish processors operating in Northern California) to keep vessels fishing in California.

In these ways the Draft inadequately addresses the Aggregate Limit which is a key component of the Program.

We further draw the Council’s attention to the public comment supplied by Mr. Merrick Burden at the recent SSC Economic Subcommittee meeting held on May 24th-25th to review the EDC report. Mr. Burden, a primary architect of the Program commented that it would be appropriate to “reset the clock” to analyze the original assumptions on Accumulation Limits that were contained in the March 2009 GMT Report,⁷ and used as the basis for the Council to set the Accumulation Limits in Amendment 20. His comments further highlighted that many of underlying assumptions on ideal vessel size for maximum efficiency, and income levels necessary to sustain non-whiting trawl vessels were too low. This is a key declaration from an accredited individual who was a key architect of the Program. We concur with his comments.

As part of the five-year review, the Council must perform an analysis of the efficacy and appropriateness of all accumulation limits. This includes the Aggregate Limit. The Draft provided to this Council completely fails to adequately analyze the efficacy and appropriateness of the accumulation limits, including the Aggregate Limit, and unless it is revised, it will be inconsistent with:

- Magnuson-Stevens Fishery Conservation and Management Act ⁸
- NMFS⁹

⁶ Draft at 3-199

⁷ http://www.pcouncil.org/bb/2009/0309/G4b_GMT_0309.pdf (Agenda Item G.4.b)

⁸ NOAA Catch Share Policy (“NOAA CSP”) at 17 (emphasis in original), http://www.nmfs.noaa.gov/sfa/management/catch_shares/about/documents/noaa_cs_policy.pdf

⁹ 80 Fed. Reg. 69,138, 69,141 (Nov. 9, 2015)



- NEPA Requirements¹⁰
- Draft Guidance¹¹
- Final Environmental Impact Statement¹²
- Recommendation from the GAP¹³
- Recommendation from the CAB¹⁴
- Santa Rosa III Workshop participant concerns¹⁵

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

- 1) Perform an Analysis of the Efficacy and Appropriateness of all Accumulation Limits, with specific focus on the Aggregate Limit, as to whether they achieve and /or further the EIS Goal and Objectives for the future economic development and success of the non-whiting IFQ fishery.**
- 2) Eliminate Vessel Caps, Especially for Choke Species.
- 3) Allocate the Adaptive Management Program (AMP) Quota to Shoreside Processors to Help Preserve Remaining Shoreside Infrastructure in Key Fishing Communities.
- 4) 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.
- 5) Expedite the Regulatory Process to Provide Year-Round Access for Midwater Trawls and Bottom Trawls Inside and Outside of the RCAs.
- 6) Reduce Observer Coverage/Monitoring Requirements and Costs, and Standardize the Requirements for Observer Coverage Amongst Gear Sectors.
- 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) Eliminate the Point Conception Line for Sablefish.

¹⁰ <https://www.epa.gov/laws-regulations/summary-national-environmental-policy-act>

¹¹ See Draft Guidance at 12-13

¹² FEIS at 5, http://www.pcouncil.org/wp-content/uploads/1_Pacific-CoastGroundfish-Limited-Entry-Trawl-Fishery-FEIS.pdf

¹³ http://www.pcouncil.org/wp-content/uploads/2016/11/F6c_Sup_GAP_Rpt_NOV2016BB.pdf

¹⁴ http://www.pcouncil.org/wp-content/uploads/2017/03/F4c_Sup_PubCom_Apr2017BB.pdf

¹⁵ http://www.pcouncil.org/wp-content/uploads/2016/06/G5a_Sup_QS_Wkshp_Rpt_FullElectricVer_JUN2016BB.pdf (page35)



Thank you for your attention and 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,

A blue ink signature of Daniel C. Occhipinti.

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Director of Government Affairs*
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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,



Daniel C. Occhipinti
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Pacific Seafood Group
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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.



May 31, 2017

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

Dear Mr. Herb Pollard

The Morro Bay Community Quota Fund (MBCF) is writing to provide you, and the Pacific Fishery Management Council, an update on the MBCQF's activities and operations from 2014 to 2017.

The Morro Bay Community Quota Fund is an independent, public-benefit 501(c)(3) non-profit organization with the mission to develop and enhance a financially and environmentally sustainable Central Coast fishery, built upon local stewardship of groundfish resources and secured fishing rights anchored in the community.” The MBCQF believes community ownership and management of fishing quotas are essential to a resilient port community and thriving local fleet. The MBCQF was created to secure local access to the groundfish fishery for the purposes of promoting economic stability, preserving fishing infrastructure, helping maintain an active fleet, incentivizing conservation practices, and providing opportunities for future generations to participate in the fishery, all while ensuring the region, state and nation are supplied with an important, sustainable source of protein.

The MBCQF has been successful in working with both local and other coastwide fishery participants and from 2014 to 2016 nearly 1.8 million pounds of quota held and managed by the MBCQF have been landed locally in Morro Bay at an estimated value of \$2.3 million. Based on this, community quota funds, such as the MBCQF, represent viable business opportunities in the IFQ groundfish fishery for all fishermen, both existing and new entrants.

We thank you in advance for your cooperation. Should you have any question, please do not hesitate to contact me.

Sincerely,

Dwayne Oberhoff
Executive Director

Morro Bay Community Quota Fund Annual Report and Update - 2014 to 2017



Report Prepared by the Morro Bay Community Quota Fund and submitted to the Pacific Fisheries Management Council's June 7-14, 2017, Meeting in Spokane, Washington

May 31, 2017



Morro Bay Community Quota Fund Need and Formation

The Morro Bay Community Quota Fund is an independent, public-benefit 501(c)(3) non-profit organization with the mission to develop and enhance a financially and environmentally sustainable Central Coast fishery, built upon local stewardship of groundfish resources and secured fishing rights anchored in the community." Community quota funds (also referred to as permit banks, quota banks, or fisheries trusts) are organizations that can acquire and manage fishing rights for public benefit in a community or region, as is the case in Morro Bay, with the Morro Bay Community Quota Fund. Like other community quota funds and fisheries trusts operating in the U.S., the MBCQF believes community ownership and management of fishing quotas are essential to a resilient port community and thriving local fleet.

The MBCQF was established in 2011 by community leaders and city officials in Morro Bay that recognized the risk to marine dependent infrastructure and the local fishing economy with the continued loss of local access rights to the groundfish fishery. The MBCQF was created to secure local access to the groundfish fishery for the purposes of promoting economic stability, preserving fishing infrastructure, helping maintain an active fleet, incentivizing conservation practices, and providing opportunities for future generations to participate in the fishery, all while ensuring the region, state and nation are supplied with an important, sustainable source of protein. The MBCQF works and collaborates with other fishery stakeholders, but decisions are made by the MBCQF's diverse seven-person Board of Directors. The MBCQF's bylaws are provided on its website at <http://www.morrobaycommunityquotafund.org/s/MBCQF-Bylaws-as-Amended-on-150401.pdf>.

MBCQF Purposes and Objectives

In order to further the MBCQF's mission of developing a and enhancing a financially and environmentally sustainable Central Coast groundfish fishery, the MBCQF has five primary purposes, which include:

1. Obtain and secure fishing rights in San Luis Obispo County;
2. Manage these fishing rights by working with local fishermen and the community for social, environmental and economic benefits;
3. Preserve local access to these fishing rights and continued fishing activity to support associated fishing dependent infrastructure and services in the community;
4. Support collaborative fisheries research to improve scientific knowledge and support local fisheries; and,

5. Improve consumer knowledge of and access to high quality local seafood products and engage in efforts to create a market distinction for local and sustainably caught seafood

The MBCQF works to accomplish these through three main objectives and associated actions. The three main objectives are:

1. Manage Assets for Local Stewardship and Long Term Environmental and Economic Sustainability
2. Stabilize and Improve the Economics of the Fishery
3. Research – Create a Fund to Advance Scientific Knowledge of Economically and Environmentally Sustainable Fishing Practices and Marine Health.

MBCQF Fishery Assets Management - QS Holdings, Annual QP Allocations and Community Impacts

In June 2014, the MBCQF purchased a portfolio of Quota Share from The Nature Conservancy with the mission of anchoring fishing assets and retaining local access to the groundfish fishery off the Central Coast. The Nature Conservancy transferred the MBCQF a portion of its Quota Share portfolio as part of their Divestiture Plan, which included Quota Share for most, but not all IFQ species. The Quota Share portfolio purchased from The Nature Conservancy is shown in Table 1. Like all Quota Share holders in the fishery, the MBCQF's Quota Shares are translated into annual Quota Pounds, which the MBCQF's primary goal is to license to local fishermen at discounted rates that will allow them to effectively operate in the IFQ Fishery and allow them to make landings on the Central Coast with the goal of generating social, economic and environmental benefits, while providing an important, sustainable protein source.

The MBCQF receives an annual allocation of Quota Pounds that is based on the IFQ Fishery sector allocation and the MBCQF's Quota Share holdings and from 2015 to 2017 the MBCQF received an annual Quota Pound allocation of more than 7.6 million pounds and nearly 24 million pounds in total (refer to Table 2). These Quota Pounds are held and managed locally on the Central Coast with the goal of furthering the MBCQF's mission.

Some of the Quota Pounds held by the MBCQF are for species that are generally not caught along the Central Coast (e.g. Pacific whiting, arrowtooth flounder, etc.) or have management lines above North of 40°10' (e.g. minor shelf rockfish north, minor slope rockfish north, and lingcod north). The MBCQF attempts to annually license these species' Quota Pounds to fishermen outside of Morro Bay in ports where they are generally targeted and landed. The licensing of these Quota Pounds allows the MBCQF

Table 1. MBCQF Quota Share Holdings.

IFQ Species	Quota Share (%)
Arrowtooth flounder	0.319
Bocaccio rockfish South of 40°10' N.	13.2
Canary rockfish	0
Chilipepper rockfish South of 40°10' N.	3.91
Cowcod South of 40°10' N.	17.7
Darkblotched rockfish	0
Dover sole	2.6
English sole	3.447
Lingcod North of 40°10' N.	2.5
Lingcod South of 40°10' N.	2.5
Longspine thornyheads North of 34°27' N.	3.28
Minor shelf rockfish North of 40°10' N.	1.399
Minor shelf rockfish South of 40°10' N.	9
Minor slope rockfish North of 40°10' N.	1.751
Minor slope rockfish South of 40°10' N.	6
Other flatfish	7.608
Pacific cod	1.827
Pacific halibut (IBQ) North of 40°10' N.	0
Pacific ocean perch North of 40°10' N.	0
Pacific whiting	0.436
Petrable sole	1.95
Sablefish North of 36° N.	0.684
Sablefish South of 36° N.	10
Shortspine thornyheads North of 34°27' N.	2.561
Shortspine thornyheads South of 34°27' N.	6
Splitnose rockfish South of 40°10' N.	5.254
Starry flounder	3.859
Widow rockfish	0
Yelloweye rockfish	0
Yellowtail rockfish North of 40°10' N.	1.39

to develop relationships with other fishery participants outside of the Morro Bay community and generate revenue for operating costs.

Limited Entry Permit Management

In addition to the Quota Share portfolio held and managed by the MBCQF, the MBCQF also purchased from The Nature Conservancy five Limited Entry Trawl Permits that it now

Table 2. MBCQF Allocated Quota Pounds, 2015 to 2017

IFQ Species	2015	2016	2017
Arrowtooth flounder	24,957	23,703	86,351
Bocaccio rockfish South of 40°10' N.	26,479	27,491	97,779
Canary rockfish	0	0	0
Chilipepper rockfish South of 40°10' N.	115,221	114,576	183,971
Cowcod South of 40°10' N.	624	624	607
Darkblotched rockfish	0	0	0
Dover sole	2,928,476	2,928,476	2,928,488
English sole	772,869	560,378	781,769
Lingcod North of 40°10' N.	69,404	66,346	83,268
Lingcod South of 40°10' N.	27,417	25,819	34,227
Longspine thornyheads North of 34°27' N.	238,012	226,181	216,919
Minor shelf rockfish North of 40°10' N.	37,412	37,577	39,344
Minor shelf rockfish South of 40°10' N.	42,372	42,399	42,372
Minor slope rockfish North of 40°10' N.	52,303	52,754	54,421
Minor slope rockfish South of 40°10' N.	62,315	62,500	63,596
Other flatfish	1,429,506	1,176,908	1,389,419
Pacific cod	46,159	46,159	46,159
Pacific halibut (IBQ) North of 40°10' N.	0	0	0
Pacific ocean perch North of 40°10' N.	0	0	0
Pacific whiting	1,197,746	1,355,382	1,464,185
Petrable sole	121,299	125,789	131,133
Sablefish North of 36° N.	36,851	40,401	40,487
Sablefish South of 36° N.	176,340	192,904	191,263
Shortspine thornyheads North of 34°27' N.	99,213	98,080	97,319
Shortspine thornyheads South of 34°27' N.	7,348	7,348	7,348
Splitnose rockfish South of 40°10' N.	208,403	212,193	213,876
Starry flounder	71,544	71,780	59,639
Widow rockfish	0	0	0
Yelloweye rockfish	0	0	0
Yellowtail rockfish North of 40°10' N.	156,393	149,022	144,577
Total	7,948,663	7,644,790	8,398,517
		Overall Total	23,991,970

owns and manages locally. The MBCQF can license these Limited Entry Trawl Permits to fishermen interested in participating in the IFQ Fishery. The MBCQF licenses these Limited Entry Permits at or below market rates to fishermen that are committed to running their businesses with the goals of the MBCQF in mind, such as landing their

catch locally, engaging in collaborative fisheries research and using sustainable fishing practices. For local fishermen that are committed to landing their catch locally, the MBCQF is able to offer multi-year Limited Entry Permit license agreements to ensure security and stability for participating fishermen, which allows them to make long term business decisions and to plan fishing operations.

Community Impacts

The IFQ fishery in which the MBCQF participates includes over 90 different species, such as sablefish, Petrale sole, Pacific whiting, and many flatfish and rockfish species. For Morro Bay the top five most important IFQ fishery groundfish species targeted and landed are shortspine thornyhead, sablefish south, Petrale sole, Dover sole and the minor slope rockfish complex (e.g. blackgill and bank rockfish).

Since 2014, the MBCQF has licensed approximately 6.2 million pounds of its Quota Pounds to fishermen participating in the IFQ Fishery on the West Coast (refer to Table 3). However, approximately 3.2 million of these licensed Quota Pounds were associated with Pacific whiting and due to the large allocation of Pacific whiting to the MBCQF annually, they are removed from the following discussion. When Pacific whiting is removed from the MBCQF's licensing efforts, the total non-whiting Quota Pounds licensed by the MBCQF coastwide totals approximately 2.98 million pounds. The MBCQF holds Quota Pounds for species that are not targeted and/or found locally and are thus licensed to fishermen in other ports. Since 2014 the MBCQF has licensed approximately 1.16 million pounds, or 39%, of its total non-whiting Quota Pounds to fishermen in other ports outside of the Central Coast. Licensing these Quota Pounds the MBCQF helps support other fishermen outside of the Central Coast by making the Quota Pounds available on the open market.

Table 3. Summary of MBCQF Quota Pound Licensing Efforts, 2014 to 2016.

Total MBCQF QP* Licensed	6,248,500
Total MBCQF NW** QP Licensed	2,988,500
Total MBCQF NW QP Licensed Outside Central Coast	1,164,894
Total QP Licensed Locally	1,823,606
Percentage NW QP Licensed Outside Central Coast	39.0%
Percentage NW QP Licensed Locally	61.0%

*QP - Quota Pounds

**NW - Non-whiting

Since local utilization, and ultimately local landings, of MBCQF Quota Pounds is paramount to its mission, the MBCQF's Quota Pound licensing priority is to engage local vessels that will make local landings. Locally, the MBCQF has been successful in licensing Quota Pounds and from 2014 to 2016 the MBCQF licensed approximately 1.82 million pounds or 61% of its non-whiting Quota Pounds to local fishermen (refer to Table 3).

Of the approximate 1.82 million MBCQF pounds licensed from 2014 to 2016, approximately 1.78 million pounds were landed locally in Morro Bay with an estimated total "Ex-vessel Value" (value to fishermen at the dock) of \$2.31 million (refer to Table 4). These landings and the estimated value have provided critical economic benefits to Morro Bay through employment on fishing vessels and at the dock, local purchases of supplies and equipment (e.g. ice fuel, groceries) and keeps fisheries dependent infrastructure maintained and operational.

Table 4. Landings and Ex-vessel Value (EVV) of MBCQF Quota Pounds Landed in Morro Bay from 2014 to 2016.

	Total
Landings (pounds)	1,789,471
Ex-vessel value (\$)	\$2,312,055

MBCQF Programs, Operations and Collaboration

The MBCQF has specific programs and policies in place with the goal to create a viable and successful business opportunity for local fishermen and prospective new entrants. Creating programs and policies that attract and allow fishermen to develop a successful fishing business not only benefits them, but ultimately provides a critical benefit to the local community via landings. An example of such policies is the MBCQF's adopted License Policy, which states the MBCQF may offer to new entrants:

- Pay the first annual membership fee to join a local Fish Marketing Association or similar entity;
- Allow new entrants to pay QP license fees only for fish they land;
- Provide staff assistance in scheduling observers, completing fishing plans, business planning and budgeting, etc;
- Help fund the cost of liability insurance for initial license term;
- Cover part of the observer cost for the initial license term; and/or,
- Discount the license price on some species during the initial license term

In addition to these, the MBCQF can also provide other incentives to participating fishermen such as:

- Provide licenses to fishermen for Limited Entry Trawl Permits for up to five years to reduce uncertainty about fishery access;
- Provide annual quota pound agreements to fishermen with discounted license rates; and,
- Facilitate fishermen in purchasing their own Quota Share to bolster individual ownership in the fishery through requirements that participating fishermen save 1% of ex-vessel revenues for future purchases of Quota Share or permits.

Overfished Species Management

As was shown in Table 1, the MBCQF owns a diverse portfolio of species that are critically important to the Central Coast. The MBCQF, however, holds Quota Share for just two of the overfished species (Bocaccio rockfish and cowcod) and thus is not annually allocated Quota Pounds for the other overfished species. Overfished species are those species within the fishery that have been federally declared as being overfished and prior to 2017 there were six species that were federally designated as such. Overfished species have annual sector allocations that are quite small when compared to other species and due to these small allocations fishermen are constrained and prevented from being able to target more abundant species. The sector allocation for some overfished species is so small that a single unintentional encounter by a single fisherman could result in their fishing operations being stopped for the year or even has the potential to close the entire fishery. This is why it is critical overfished species are managed on a holistic basis.

Since the MBCQF only holds Quota Share for two overfished species, it was recognized during the development of the MBCQF's bylaws the lack of Quota Share for the other overfished species could pose a risk for local fishermen, and also the community that relies upon their landings. To ensure that local participating fishermen are covered from an encounter with any of the overfished species (not just the two species held by the MBCQF), the MBCQF included in its bylaws how it would allocate its overfished species. This is found as an action item in the previously mentioned *Objective 1- Manage Assets for Local Stewardship and Long Term Environmental and Economic Sustainability* – discusses how the MBCQF will manage its overfished species Quota Pounds. This action item within Objective 1 of the bylaws states the following:

Overfished Species Quota Pounds will be allocated to the California Groundfish Collective annually for the purpose of reducing OFS interactions, creating a more efficient Fishery, and maximizing the economic and conservation performance of the Fishery through adaptive management.

Per its bylaws the MBCQF allocates its overfished species Quota Pounds to a “risk pool,” currently the California Groundfish Collective on behalf of the local fishermen due to the California Groundfish Collective’s year-after-year proven results and associated benefits to participating fishermen, which ultimately benefits the local community. The California Groundfish Collective’s 2015 annual report can be found here: <http://www.cagroundfish.org/s/2015-California-Groundfish-Collective-Report.pdf>. The California Groundfish Collective is a voluntary cooperative agreement between fishing associations that makes decisions about how to manage fishing activities across 15 million acres, while also creating an “insurance pool” of quota for overfished species, which are species in short supply within the fishery. The MBCQF has no direct role in the operations or decision making within the California Groundfish Collective.

In addition to the benefits the California Groundfish Collective provides participating fishermen, the MBCQF also recognizes the importance of the California Groundfish Collective as a way to bring fishermen together and also foster partnerships and collaborative efforts that can benefit the individual fishermen and the entire fishery. For example, in 2014, the California Groundfish Collective worked with the Monterey Bay Aquarium’s Seafood Watch Program to conduct an assessment and evaluate the ecological sustainability of a subset of eight species caught by the participants of the California Groundfish Collective. The goal was to test whether fishermen-collected spatial data and the specific harvest guidelines of the California Groundfish Collective could inform an assessment that could provide a market distinction for sustainable practices for eight specific groundfish species. The external assessment was published in October 2014 by Seafood Watch and resulted in eight species caught by the California Groundfish Collective (using trawl gear or fixed gear) receiving the “Best Choice” (Green) rating. The species include chilipepper rockfish, Dover sole, English sole, Pacific sanddab, Petrale sole, sablefish, and both shortspine and longspine thornyhead.

In addition, the MBCQF commends and supported the California Groundfish Collective’s efforts in 2015 and 2016 when fishermen of the California Groundfish Collective participated in an Exempted Fishing Permit project to test electronic monitoring (i.e. video cameras) in lieu of the required human observers. In the end, this Exempted Fishing Permit and its results have informed fishery managers and the development of regulations and standards for use of EM equipment in the IFQ Fishery. Such results are important to the MBCQF as it will likely provide local fishermen that participate in the IFQ Fishery with a cost effective monitoring option that is hoped will translate into decreased operational expenses, increased gross revenue for fishermen and ultimately more local landings from increased participation in the IFQ Fishery.

MBCQF Collaborative Research Fund

Per its bylaws, the MBCQF has established a “Research Fund” to advance research that improves the environmental and economic performance of fisheries and supports area based management on the central coast. The intent is that the MBCQF would utilize a portion of its annual revenue and/or Quota Pounds and contribute to research projects and/or a collaborative research entity for fisheries research along the central coast that is consistent with the mission, purposes and objectives of the MBCQF. Submitted proposals are reviewed by the Science Advisory Committee, which is a three-member panel appointed by the MBCQF Board of Directors that reviews all proposals and make a recommendation to the Board of Directors. The bylaws state that funding priorities should support area-based management and improved environmental and economic performance of Central Coast fisheries, which could include, but are not limited to, improving stock status understanding, bycatch avoidance, habitat impacts, barotrauma, gear innovation, market rewards or certifications, market/product development, and evaluation of effectiveness of management measures (e.g. closures, gear temporal or habitat restrictions etc.).

Since 2014, the MBCQF has awarded \$16,000 in research funds to two separate research projects. This included providing funding to support a seafood summit that focused on developing a collective understanding of community supported fisheries and a second project that looked at the “Role of local marine protected areas in enhancing nearshore groundfish abundance.”

California Community Quota Funds Collaboration

Since the formation of the MBCQF, three other Community Quota Funds/Fishery Trusts have formed in California. This includes the Monterey Bay Fisheries Trust, the Half Moon Bay Commercial Fisheries Trust and the Fort Bragg Groundfish Conservation Trust. Like the MBCQF, they were created to secure local access to the groundfish fishery in an effort to promote economic stability, incentivize conservation practices, preserve fishing infrastructure, help keep a diverse fleet active, and provide opportunities for future generations to participate in the fishery. Even though each of these groups have formed separately and independently of the MBCQF, the MBCQF and all of these groups recognize the benefits to collaboration and in 2016 held a California Community Quota Fund Workshop from August 11 to 12, 2016, in Half Moon Bay, California.

This workshop was convened to bring leaders from these Community Quota Funds together to discuss the functions and goals of each organization and begin building the basis for collaboration across the network of organizations for the first time. The objectives of the workshop were to establish a shared vision, improve communication between port communities, build understanding of common challenges, and identify

opportunities for increased effectiveness and coordination across organizations and communities. An annual workshop is planned to be held in 2017 to continue discussing these topics. In addition to the annual workshop, all four California CQFs participate in quarterly conference calls to continue the discussion and efforts from the annual workshop.

MBCQF Current Topics and Updates

The MBCQF wishes to clarify its position regarding its mission and certain licensing activities due to comments made by a local fisherman who licensed Quota Pounds from the MBCQF. In May of 2016, this MBCQF licensee made the business and personal decision to terminate his participation in the California Groundfish Collective. That fisherman made subsequent requests to the MBCQF board of directors to make changes to the organization's bylaws that access to the MBCQF's overfished species Quota Pounds be allowed outside a risk pool. The MBCQF Board of Directors discussed this request at three different board of directors meetings and each time agreeing unanimously the bylaws should remain as originally written and intended in order to provide the greatest overall benefit to the community.

In addition, the MBCQF is a non-profit organization and like all non-profits it must operate in such a manner as to prevent what is known as "private inurement" or special financial benefit to an individual. The MBCQF has program requirements of licensee fishermen which prevent this inurement, however the requested change to the bylaws as was proposed would risk creating private inurement, thus endangering the non-profit status of the organization.

There were additional comments related to the large amount of time and associated costs of participating in the California Groundfish Collective that need to be clarified too. The California Groundfish Collective is formed through an annual contractual agreement between fish marketing associations, which are allowed under the Fishermen's Marketing Act and provides limited protection to fish marketing associations and fishery cooperatives from antitrust concerns and allows them to collaborate together on production, market development, promotion and advertising, risk pooling, and set and maintain product quality standards. Within the California Groundfish Collective, the participating fish marketing associations allow participating fishermen to collaborate by pooling their overfished species Quota Pounds and develop regional spatially-explicit fishing plans to minimize the associated risk of catching overfished species during normal fishing operations. Fishermen in a community, like Morro Bay, had the option of creating a fish marketing association or joining an already established fish marketing association in another port to facilitate their participation in the California Groundfish Collective. Other fish marketing associations that participate in the California Groundfish Collective exist in Half Moon

Bay and Fort Bragg, and both of these organizations have been open to accepting fishermen members from Morro Bay, which would have reduced the associated costs for Morro Bay fishermen from creating a local fish marketing association. The level of participation and the amount of time spent by the fish marketing associations or the individual fishermen that are engaged in the California Groundfish Collective's additional projects and efforts is, and has always been, entirely up to the respective entity or individual fishermen. There are no requirements by the California Groundfish Collective for the fish marketing associations or individual fishermen to be engaged at any level beyond the development of their fishing plans and adaptive management measures (if necessary).

Looking forward

Following the public announcement that the only trawler in Morro Bay would be leaving during the spring of 2017, the MBCQF fielded numerous inquiries from fishermen asking about potential MBCQF fishing opportunities. The MBCQF subsequently executed an agreement with a new trawler that will be relocating to Morro Bay in June 2017. This new operation coming to Morro Bay is committed to running his business with the goals of the MBCQF in mind and is considered a new entrant as he is purchasing his first trawl vessel and is entering the IFQ fishery with the sole intent of landing his catch in Morro Bay.

Execution of an agreement with this new fisherman indicates community quota funds, such as the MBCQF, represent viable business opportunities in the IFQ groundfish sector, and not just for existing fishermen, but for new entrants as well. In addition, one mission of the MBCQF is to secure fishing rights anchored in the community in perpetuity, and the realization of this has come to pass as one fisherman has left Morro Bay, the fishing rights held by the MBCQF remain and are now available for access by a new fisherman that is dedicated to the fishing and landing his catch locally.

MBCQF Office and Location

Interested fishermen are encouraged to contact the MBCQF to discuss participation in the IFQ Fishery and the availability of permits and Quota Pounds. The MBCQF has an office located on the waterfront in Morro Bay and holds office hours daily from 10 am to 2 pm daily or by appointment. The office is located at 601 Embarcadero, Suite 11, Morro Bay, CA 93442. Full information on the MBCQF can be found at its website: <http://www.morrobaycommunityquotafund.org/>.

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 incertitude 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 WCSA 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 script is fluid and cursive, with the first name "Mike" being more prominent.

Mike Okoniewski, Pacific Seafood

A handwritten signature in black ink, appearing to read "Andrew Bornstein". The signature is stylized and cursive, with the first name "Andrew" being more prominent.

Andrew Bornstein, Bornstein Seafoods

A handwritten signature in black ink, appearing to read "Jim Caito". The signature is cursive, with the first name "Jim" being more prominent.

Jim Caito, Caito Fisheries

cc: PFMC members



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.



May 31, 2017

Dear Pacific Fishery Management Council:

On behalf of the California Groundfish Collective, we appreciate the opportunity to comment on areas of top concern for the five-year review of the trawl catch share program for California fishing communities. As you know, the CGC is comprised of members in ports in Fort Bragg, Half Moon Bay, and Morro Bay, and has proven successful in maintaining a low utilization rate of overfished species and a high utilization of all target species. Members of the California Groundfish Collective pride themselves in being pragmatic, solutions-oriented fishing community members committed to creating healthier oceans and better, more productive fisheries. We believe that the five-year review is a critical opportunity to rigorously evaluate all aspects of the program's performance to date; identify areas where there are remaining issues; and inform subsequent efforts to address those shortcomings and ensure the IFQ program meets its stated goals

Our priorities for the five-year review include follow on actions that contribute to or improve the stability of the IFQ program and its dependent businesses, the flexibility required for innovation and adaptation, and reductions in costs and regulatory complexity. In light of that, while there are many potential follow on actions that could be considered, the fishing communities we represent urge the Council to prioritize the four listed here, which can also be found in Agenda Item F.2.a, Catch Share Analysts Report: West Coast Groundfish Trawl Catch Share Program Five-year Review – Draft:

1. Review of how Overfished Species (OFS) are managed is a top priority. OFS currently is managed both under individual fishing quotas and spatial management. This approach is overly burdensome; constrains attainment of target harvest levels; and unnecessarily restricts access to important fishing grounds. Additionally, we recommend full consideration of allowing 100% carryover of low optimal yield species.
2. Costs in this program continue to be a significant deterrent to economic viability in the fishery. Addressing the issue of cost through follow on action is imperative. Specifically, we have concerns over funding for scientific observer coverage and how that is currently obtained from human observers onboard non-EM vessels that are paying the full cost of the observers' duties, including scientific data collection. We want to emphasize the need to fully understand where cost recovery fees go and whether there may be opportunities to reduce cost recovery to vessels that participate in some type of cooperative management activities.
3. We believe that gear switching and the 36° N. Sablefish Management Line are important to evaluate together and that an immediate control date on the gear switching provision should be set while a comprehensive review of the gear switching provision takes place.

4. Adaptive Management Program: There is a need for stability and certainty in the fishery, which is directly related to costs in the fishery. Removing the 10% QP that is passed through to vessels would be detrimental to an already struggling fleet. As there is some concern over the instability caused by not knowing what will happen to AMP, there may be benefit in addressing the goals of the AMP through other programs.

Thank you for the opportunity to provide input on these top priorities for our participating fishing community members. We believe the current Community Advisory Board (CAB) meeting is of utmost importance to fully understand the analysis and its implications for follow on actions. We look forward to working through the CAB and the rest of the Council process to find the solutions that work best to ensure we meet the goals of the IFQ program.

Sincerely,

A handwritten signature in black ink, appearing to be 'Michelle Norvell', with a large, sweeping loop at the end.

Michelle Norvell, Project Manager
Fort Bragg Groundfish Association

A handwritten signature in black ink, appearing to be 'Lisa Damrosch', with a stylized, cursive script.

Lisa Damrosch, Executive Director
Half Moon Bay Groundfish Marketing Association