



Pacific Whiting Conservation Cooperative

American Seafoods • Glacier Fish Co. • Trident Seafoods

A Partnership to Promote Responsible Fishing

November 4, 2018

Mr. Phil Anderson, Chair
Pacific Fishery Management Council
7700 NE Ambassador Place, Suite 101
Portland, OR 97220

RE: Five-Year Catch Share Follow-On Action FMP and Regulatory Amendments – Final Action

Chair Anderson:

I am writing on behalf of the Pacific Whiting Conservation Cooperative (PWCC) and its three members, American Seafoods Company, Glacier Fish Company and Trident Seafoods, to provide comments on the proposed whiting catcher processor processing and license ownership caps (Agenda Item G.3). As PWCC and its members have testified at previous meetings, we support the “No Action” (Alternative 1) for both the processing and license ownership caps.

1. Background

The basis for this action is framed in the Problem Statement as follows: “Action is needed to ensure that limited access privilege holders in the CP sector do not acquire an excessive share of the total limited access privileges in the program, as required by Section 303(c)A(5)(D) of the Magnuson-Stevens Act.” The key to satisfying this requirement is a determination of what exactly is an “excessive share.” Neither the Magnuson-Stevens Act nor its guidelines define the term “excessive.” The simple dictionary definition is “an amount or degree too great to be reasonable or acceptable.” In discussing the issue with NMFS counsel, they believe that the term refers to a harmful consolidation of market power and that while many of the caps adopted in other fisheries ensure compliance with the excessive shares provision, they serve to achieve Council-identified social objectives, not specifically excessive share caps. This perspective is supported by a review of the various caps adopted in other fisheries throughout the United States (U.S.). In several programs, social objectives were identified by the Council and caps were structured to support those objectives. In other fisheries, caps were not adopted if adopting caps would not further Council or Magnuson-Stevens Act goals. The North Pacific fisheries provide examples at both ends of this spectrum. Historically, the halibut fishery was a derby fishery comprised of hundreds of vessels of many different sizes operating from dozens of ports. While developing the individual transferrable quota (ITQ) system, the North Pacific Council felt it was important to preserve as many characteristics of the fleet as possible.

The result is a complex ITQ system with vessel size categories and accumulation limits designed to preserve the diversity of the fleet, provide entry level opportunities, limit consolidation, support small fishing communities, and ensure fleet accountability. By contrast, in the Bering Sea pollock fishery, the largest commercial fishery in the U.S., there is no accumulation limit in any sector of the fishery. Although the Department of Justice would certainly step in to review such a transaction, there is no NOAA regulation that would prevent a single owner from purchasing 100% of the pollock quota shares.

2. Benefits of Action

The staff analysis of the processing and permit ownership cap action seeks to identify the costs and benefits of imposing caps. After both preliminary and final rounds of analysis, the authors were unable to identify any potential benefits of the proposed action. This is the same conclusion reached during preliminary action by both the GMT and GAP. A review of the catcher processor (CP) sector helps clarify why no benefits of a cap would be expected. Each of the CPs was originally built as a pollock catcher processor and whiting is its secondary fishery. As the name implies, CPs both catch and process their own fish. They do not provide markets to catcher vessels. They operate in cooperatives in both the pollock and whiting fisheries and their operations are substantially identical from vessel to vessel and company to company. From a supplier or market perspective, there is very little difference which PWCC company owns or operates a particular vessel. All of the vessels use a largely common set of vendors for supplies and repairs and all of the vessels produce a largely similar product mix. The CP sector is allocated roughly 20% of the annual Pacific whiting quota (34% of the non-tribal U.S. whiting quota). Whiting competes with pollock and other species in a 6-7 million mt annual world whitefish market. Even control by a single company of the full 100% of the CP whiting allocation almost certainly have no market impact. It is notable that each of the three PWCC members strongly oppose the proposed caps and that not a single member of the public, from vendors to competitors to markets, has submitted testimony either supporting or identifying any potential benefit of caps.

3. Practical Impact of Action

In September, the Pacific Council chose preliminary preferred alternatives of no action on CP processing caps and an ownership cap of five CP permits. Because of the cooperative nature of the CP whiting fishery, these alternatives would have little practical impact on the PWCC members and adoption of a permit cap would not further the Council's stated goals and objectives. Because fishery cooperatives are formed by private agreement of the cooperative members, there is no requirement for any correlation between number of permits owned and cooperative shares. For example, under PWCC cooperative rules, a member that owns even a single permit can have an allocation of 100% of the CP allocation if all of the PWCC members agree. The result is that a cap of five permits would not restrict the member's cooperative shares and would not be expected to limit the amount of fish that any individual vessel or company could harvest. The permit cap could impact the members if the cooperative dissolved and the CP sector allocation was converted into individual transferable shares. At that point, under current regulations, each of the ten CP permits would receive 10% of the CP sector allocation so a five-permit limit would effectively become a 50% ITQ limit. Although the PWCC opposes both

processing and permit ownership caps, if the Council were to choose a permit cap, it would be more consistent with the intended result that the cap not become effective unless the CP cooperative is dissolved.

4. Magnuson-Stevens Act Consistency

This action was begun in order to ensure that the West Coast groundfish rationalization program is consistent with the Magnuson-Stevens Act requirement that limited access privilege holders do not acquire an excessive share of the total limited access shares in the groundfish program. Although the law does not define the term “excessive”, Council practice on share limits throughout the country suggests that the term means a share percentage so large that if held by a single holder, it is likely to cause harm. By that definition, the analysis, advisory body recommendations, and public testimony have established that a share of up to the full 100% of the CP sector licenses would not cause harm and a limit on the number of permits held by a single company would not produce benefits. A regulation is already in place that limits the CP sector to 34% of the non-tribal U.S. fishery. By itself, that limit satisfies the requirement for the Council to restrict a CP company from acquiring an “excessive share.” Further, it is helpful to note the extreme stability in the CP sector. In the PWCC’s 20 year history, only one permit has changed owners and even that transaction was only a part of the larger acquisition by Glacier Fish Company of the Alaska Ocean. Finally, if a CP permit transfer were to occur, it almost certainly would be part of a larger transaction that would be subject to Department of Justice review under the Hart-Scott-Rodino Act and there would be a full review of anticipated benefits and harms to both the fishing community and the nation as a whole.

In conclusion, as the GAP stated at the time of preliminary action, “This action is a solution looking for a problem”. The PWCC and its members concur with the advice of the Council advisory bodies and request that the Council select the No Action (alternative 1) on both the processing and permit ownership caps.

Sincerely,

A handwritten signature in blue ink, appearing to read "Daniel A. Waldeck", with a horizontal line extending to the right.

Daniel A. Waldeck
Executive Director