

Summary of Rationale for the Pacific Fishery Management Council's Final Action on Reconsideration of Allocation of Whiting

Decision Date: September 18, 2012

At its September 2012 meeting, by unanimous action of those voting, the Council chose status quo Pacific whiting allocations as its final preferred alternative. Seven out of the eleven Council members who voted on this action were not on the Council when it took its original action on this issue in November 2008 (the three state agency representatives and one member of the California delegation were present to participate in the original November 2008 vote).

A complete discussion of the central rationale for this action is provided in Section 2.2 of the preliminary draft environmental assessment. Key to this decision were the Council's findings that

- ❖ The questions posed by the court regarding the rationality of the Council's original decisions on allocation periods can be answered with further explanation and consistency with the MSA and other applicable law demonstrated.
- ❖ The Council developed the program through an extensive, open, and transparent process with broad representation from stakeholder interests.
- ❖ Because it was both controversial and one of the most complex programs in the nation developed to date, and because of the major changes imposed by the program and uncertainty about outcomes, even with the additional personnel and financial resources that were brought to bear in the policy development and implementation process, an extensive amount of time was required to develop and implement the program.¹
- ❖ Veracity of control dates is essential to the Council's ability to develop limited access programs in an orderly manner that minimizes the potential biological, economic, and social disruptions that might otherwise occur as a result of such considerations.
- ❖ The control date was not "stale" because there had been consistent and constant progress developing the program (other examples where control dates under consideration by a council appear to have become "stale" and were changed are generally associated with a significant hiatus in policy development).
- ❖ Use of 2004 as the end date for the allocation period for processors is consistent with the Council's 2003 control date because initial *Federal Register* notices regarding the 2003 control date did not make clear that the date applied to processors, until after the start of the 2004 season (moving a control date under such circumstances is consistent with previous Council policy under which the 1987 control date originally adopted for the license limitation program was moved to 1988 due to failure to publish adequate notice in the *Federal Register*).
- ❖ Selection of a date other than that for which the *Federal Register* notice was provided becomes arbitrary.
- ❖ The allocations were contemporaneous with present participation because the allocation went to permits rather than to the entities that harvested the fish, thus taking into account

¹ There were also numerous other important and competing policy needs, some of which had to be put on hold in order to advance this program to completion.

post-2003 entry and exit such that those who were considered present participants, by virtue of owning a permit at the time of the initial allocation, received the allocation for that permit.

- ❖ Those holding permits are generally invested in and dependent on the fishery for recovery of their investments. Permits are valuable assets that have no alternative use. Because of the equal allocation component, every permit received a substantial quota allocation in addition to the allocation associated with the catch history of the permit (43 percent of the nonwhiting QS and 7 percent of the shoreside whiting QS was divided equally among all permits).
- ❖ Most of the permits (and associated QS) that appeared to be inactive after 2003 were actually held by active fishing and processing entities that had likely maintained and/or invested in the permits to adjust their initial allocations to their needs.
- ❖ Changes in the whiting fishery after 2003 were not exceptional as compared to the fisheries for other groundfish species covered by the program. There were exceptional changes in the nonwhiting fishery.
- ❖ The purpose of the allocation to processors was not to reflect recent fishing patterns, but rather to give some consideration and measure of stability to those processing businesses that had built themselves up and invested under the old system.
- ❖ While processors were not required to buy processing permits, they had the opportunity to secure allocations by acquiring vessel permits, which some did.
- ❖ That use of post-2003/2004 history would create inequities by
 - Using different years for the whiting and nonwhiting sectors of the fishery, creating a situation where a single entity that increased its effort in the whiting fishery after 2003 could get credit for more than full-time participation (for similar reasons, use of different periods for the shoreside and mothership sectors was rejected).
 - Reducing allocations to those current permit holders who have maintained or invested (post-2003) in permits on the basis of the 2003-and-earlier catch history of those permits.
 - Reducing allocations to those who, in the absence of a credible control date, would have increased their harvest effort in order to maintain their share of the harvest.
 - Reducing allocations to those who pursued business plans that furthered the Council's policy aims to limit effort and capacity.
 - Increasing allocations to those who had the opportunity to increase their harvest because of the actions of those who pursued business plans that furthered the Council's policy aims to limit effort and capacity (i.e. because of those who stood down from increasing their investments and harvests).²
 - Increasing allocations to those who were on notice that they may not receive allocational credit for increased history and who, under this situation of known risk, made the business decision that it was nevertheless worthwhile for them to increase their participation—i.e., increasing allocations to those who knew that they might have to buy additional allocation if they desired additional security in maintaining their new participation levels.^{3, 4}

² One Council member cited the following statement from public comment: "It is irrational for a management program to subsidize the behavior it is attempting to suppress while punishing the behavior it is trying to encourage."

³ Regardless of the motivation, there was a speculative aspect to any decision to increase participation and investment in the fishery after the control date was announced.

- ❖ Conversely, adherence to the 2003/2004 allocation period end dates is equitable because
 - Those escalating participation after that period were on notice regarding their likely status in an allocation.
 - Use of a later allocation period end date would adversely affect and disrupt future LAP program considerations.
 - The program used a mechanism other than harvest levels to account for current participation, investment, and dependence.
- ❖ Regardless of which alternative is selected, there will be losers, winners, and those who will feel that there was not a proper weighting of the multiple factors which must be weighed in determining the best policy that meets fairness and equity standards.
- ❖ There is little difference among the alternatives in terms of conservation and net economic benefits, unless Council action impugns the veracity of future control dates, in which case substantial adverse impacts may result.

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⁴ The Council also noted, as a sign of the fairness of the status quo alternative, that a number of those who would benefit from a later allocation period nevertheless testified in opposition to an action alternative that would include those later years.