

October 24, 2010

Dr. Donald McIsaac
Executive Director
Pacific Fishery Management Council
7700 NE Ambassador Place, Suite 101
Portland, Oregon 97220-1384

Dear Dr. McIsaac,

RE: Allocation of Sablefish in The Conception Management Area

A concept paper proposed by an ad hoc group of Limited Entry Permitted longline fishermen from Morro Bay, California.

Under the current fisheries management regime sector allocations are made biennially and through inseason adjustments [Trawl sector allocations and sablefish north of 36°N latitude are among the exceptions]. Sector allocations are sometimes considered inseason, concurrent with the need to constrain harvests and avoid exceeding a harvest guideline. These inseason adjustments are often made under duress, with limited information and severe time constraints. This is particularly true with sablefish management south of 36°N latitude. The consequences of these status quo actions are ad hoc – de facto allocations that contribute to inefficiency, inequity, reduced fishing opportunities and high discard rates.

This has left Limited Entry permitted full time participants in the fishery without any certainty regarding current or future harvest opportunity. The result is a complete inability to make reasonable business decisions, jeopardizing the long-term economic stability of the entire non-trawl groundfish fishery.

One important part of the solution to these serious management problems is the formal and final allocation of sablefish south of 36°N latitude between the Limited Entry (LE) fixed-gear and Open Access (OA) sectors.

Recognizing the need for a full discussion of this concept, we make the following proposal to start the dialogue.

Amendment 21 to the Groundfish Fishery Management Plan states “The division of the fleet into limited and open access participants will require that separate allocations be made for each group where management measures are required to prevent harvest in excess of annual catch limits.” The fleet was divided into LE and OA participants in 1994. In September 2010, the Council recommended an inseason adjustment that reduced LE fixed-gear and OA sablefish landing limits south of 36°N latitude in order to prevent harvest in excess of annual catch limits. NMFS subsequently implemented the revised limits with great urgency. We understand that Amendment 21 has not been fully approved; however the need to formally allocate sablefish south of 36°N latitude is apparent.

Amendment 21 states “Allocations for the open access fishery will be based on historical catch levels for the period July 11, 1984 to August 1, 1988 by exempted, longline and fishpot gears used by vessels which did not receive an endorsement for the gear.” This is in accord with Amendment 6 to the FMP and should be sufficient for determining the OA and resulting LE fixed-gear allocations of sablefish south of 36°N latitude.

However, given the complexities of the qualification requirements for the original license limitation program, history prior to 1994 may be difficult to track and treat in an equitable fashion. If this proves true we propose using an allocation period that runs from the inception of the license limitation program, 1994, and covers a long period afterward – perhaps ten years.

The earliest year, 1994 is recommended because this was the first year of the license limitation program, which substantially changed participation in the fishery. In addition, landings after 1994 are

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delineated between the LE fixed-gear and OA sectors with some certainty, and an initial year of 1994 implies a long allocation period that is not unprecedented. The LE trawl rationalization program used 1994 to 2003 as the allocation period.

Average total catch during the period from 2003 to 2005 was used to determine the percentage of allocation for the LE trawl sector (Amendment 21 as adopted). In general, the Council believed the more recent catch period from 2003 to 2005 should form the basis for deciding sector allocations since discards during this period were better informed, and current management strategies, such as specification of RCAs, are more likely in the near future when these allocations will be implemented. An allocation period that runs from 2003 to 2005 may be appropriate for determining the LE fixed-gear and OA allocation of sablefish south of 36°N latitude for many of the same reasons. In addition, the total catch percentages for LE fixed-gear and OA sablefish south of 36°N latitude [and all Amendment 21 species] for the period 2003 to 2005, as well as other relevant information, are contained in the Amendment 21 final EIS. This would facilitate and assist the allocation process as opposed to starting from scratch. The Council decided early in the process of developing intersector allocation alternatives that Amendment 21 would focus on making long-term allocations to the LE trawl sector. Long-term allocations to non-tribal non-trawl groundfish sectors, which include the recreational, LE fixed-gear, and various open access fisheries, may subsequently be considered in one or more trailing amendments to the FMP.

It is important to use a date no later than 2005 for the final year of the allocation period under any allocation scenario for the following reasons.

Trawl fishing activity all but ceased in 2005 south of 36°N latitude and has not been replaced. As a result, the portion of fish that was unallocated formally but was traditionally harvested by the trawl sector was available to the non-trawl sector. The Council incrementally increased non-trawl landing limits in the area with the intent of increasing participation in the non-trawl fishery in order to harvest the available fish – this was successful and a significant effort increase occurred, particularly for the OA sector. This increase in effort is not representative of the fishery over time and beginning in 2011 42% of the sablefish south of 36°N latitude will be allocated in perpetuity to the LE trawl sector.

The Council began to discuss Limited Entry for the OA sector in 2005. A control date of September 13, 2006 was announced and notice was given that landings after that date likely would not count toward future allocations or participation in a limited access scheme. Because of the substantial time between the initial discussion, and actual setting of the control date, a race to participate began in 2005. Use of landings after the 2006 control date would reward those who disregarded the control date announcement, create perceptions of inequity, and encourage fishermen to ignore such dates in the future, negatively affecting the Council's ability to credibly use control dates.

Finally, use of a date no later than 2005 for the final year of the allocation period may give more weight to those who have long-term investment and participation in the fishery (and their successors in interest) as compared to those who entered the fishery in more recent years and / or raced for participation status to qualify for a permit or allocation.

For the above stated reasons, we feel the PFMC should begin the process of allocation of sablefish south of 36°N latitude as soon as possible. We hope we can be a partner with the PFMC as we work together to accomplish mutual goals, and we stand ready to assist the PFMC in working through the complex issues associated with allocation. Thank you for your consideration.

Sincerely,

Bill Diller, Owner/Operator; FV TKO,
Roger Cullen, Owner/Operator; FV DORADO,
Brett Cunningham, Owner/Operator; FV TOMMY LYNN II



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Larry J. Collins
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October 11, 2010

United States Department of Commerce
National Oceanic and Atmospheric Administration
National Marine Fisheries Service, Northwest Region
Fisheries Permits Office
7600 Sand Point Way NE,
Seattle, WA 98115-0070

Re: Quota Share Permit and Initial Issuance Application

Dear Sir/Madam:

We are reading the instructions for a blank application for initial allocation of quota share and we find ourselves in a "Catch 22". Your instructions say that this is a one-time opportunity to apply for this permit and an initial issuance of Quota Shares and Individual Bycatch Quotas and that this application must be filed by November 1, 2010 or the opportunity is forever lost. It says under Section A that "only the owner of a valid trawl-endorsed Pacific Coast groundfish limited entry permit...is eligible..."

The above language appears to conflict with the Magnuson-Stevens Fishery Conservation and Management Act, Sec. 303A (Limited Access Privilege Programs) under the "Allocation" provision. While many of the requirements apply, it is particularly important to see subsection 5 (C) which says the Secretary shall "include measures to assist...fishing communities through set-asides of harvesting allocations..."

We understand that the Council may deal with these inconsistencies with their "Trailing Actions," but it is clear that the deadline for this application will have passed before the Council

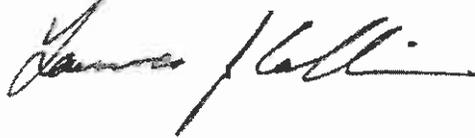
will get to it and, in all likelihood, there won't be any fish left to allocate by that time. Certainly there will not be enough to provide for some initial quota for ours and other community fishing associations (CFAs). Other than a small amount of "adaptive management" quota we understand is to help trawlers with bycatch issues, no provision whatsoever has been made for CFAs prior to allocating all of the Pacific groundfish resources.

CFAs are forming along the coast (e.g., Port Orford, OR) to assure our ports will have continuing access to groundfish and other fish resources that support coastal fishing economies. But the only alternative left - if your application for quota shares excludes CFAs - is that CFAs, such as ours, will not have fish enough to operate or will be forced to go heavily in debt trying to purchase back for community use what were publicly-owned resources. This is not, we believe, what Congress intended when it reauthorized the MSA in 2006, creating the LAPPs language.

A second problem we have found with the application you have circulated for initial groundfish allocation is that it specifies it is for "trawl only." However, since trawlers are allowed under it to switch to other, non-trawl, gear, it clearly is not a "trawl only" program, despite the "sign at the door" attempting to exclude all others with a history of groundfish landings from meaningful participation in the fishery.

As a result of the application you have circulated, we are in a quandary. Our community has a documented history of groundfish landings and we are ready to fill out an application that is appropriate for a Community Fishing Association. We hope you can mail one soon.

Thank you,



Larry J. Collins, President
San Francisco Community Fishing Association

cc: Honorable Nancy Pelosi
Honorable Dianne Feinstein
Honorable Barbara Boxer
Honorable Maria Cantwell
Honorable Nick J. Rahall
Honorable Madeleine Bordallo
Honorable Mike Thompson
Honorable Anna Eshoo
Honorable Jackie Speier
Honorable Lynn Woolsey
Honorable Peter DeFazio
Honorable David Wu
Honorable Earl Blumenauer
Honorable Kurt Schrader

Honorable Gavin Newsom, Mayor of San Francisco

Honorable Gary Locke, Secretary of Commerce

Dr. Jane Lubchenco, Under Secretary of Commerce for Oceans and Atmosphere (NOAA)

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PETER H. FLOURNOY

October 26, 2010

Pacific Fishery Management Council
7700 NE Ambassador Place
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Portland, Oregon 972201384

Re: Agenda Item B.1 C Open Comment Period
California Ocean Protection Council

Dear Council Members:

In watching the California Ocean Protection Council over the last several years, and having appeared before them and read many of their documents, it is my impression that this state body intentionally, or perhaps unintentionally, has under-cut the authority of the Pacific Fishery Management Council, and that it has wandered into matters that are within the Council's jurisdiction.

In several initiatives, the Governor of California, by combining with the governors of Washington and Oregon, has put into effect, or attempted to put into effect, several programs that would appear to be within the Council's jurisdiction. This is particularly true when it is noted that the Council has representatives from these three West coast States' fishery agencies, the tribal councils, the Departments of Commerce, State, and Interior, and the Coast Guard and is intended to be the forum where federal fishery matters are determined at the first level.

Thus far the Governor has indicated that these initiatives only apply to State waters, and State managed fisheries. In fact, many of these measures infringe on federal waters and federal fisheries. The most recent example is the Sustainable Fisheries Promotion Initiative which would set sustainable standards higher than those of the NOAA-Fisheries on highly migratory species such as albacore and other tunas in order for those fisheries to receive financial and other aid in the promotion of their products.

Speaking for myself alone, I believe this is a matter to which the Council should devote time at a future Council meeting.

Sincerely


Peter H. Flournoy

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