

RECONSIDERATION OF INITIAL CATCH SHARE ALLOCATIONS IN THE MOTHERSHIP AND SHORESIDE PACIFIC WHITING FISHERIES

The Council is in the process of reconsidering the initial allocations of whiting in the trawl catch shares program, in response to the December 22, 2011 District Court Judge Thelton E. Henderson decision in the case C10-4829-TEH: Pacific Dawn, LLC, et al. v. John Bryson, et al., referred to here as the Pacific Dawn litigation, including the February 21, 2012 Court Order on Remedy (see full March Council meeting reference materials, including public comment at <http://www.pcouncil.org/resources/archives/briefing-books/march-2012-briefing-book/#groundfish>). This order remands “for further consideration” the regulations addressing the initial allocation of whiting for the shoreside individual quota fishery and the at-sea mothership fishery. In response, the Council adopted a three-meeting process to meet the court-ordered deadline. Under that process, the Council adopted a set of alternatives for analysis in April and is scheduled to select a preliminary preferred alternative at this meeting. Analysis will be completed over the summer, and a final preferred alternative will be selected at the September 2012 meeting. Any changes to the allocations would be implemented on time for the 2013 whiting season.

A preliminary analysis of the alternatives selected by the Council in April is provided in Agenda Item D.7.a, Attachment 1. In particular, please note:

1. Chapter 1 provides a description of the action and the purpose and need. Some initial background information is also provided.
2. Chapter 2 describes the no action alternative (status quo) and four action alternatives. It also includes rationale for excluding some alternatives from further analysis.
2. Chapter 3 provides information on changing conditions in the whiting fishery up through recent years. This chapter is provided in Agenda Item D.7.a, Supplemental Attachment 2 and will continue to be developed over the summer.
3. Chapter 4 provides data indicating how the alternatives will impact initial allocation recipients, processors, communities, etc. This chapter will continue to be developed over the summer.
4. Chapter 5 contains a qualitative analysis of the impacts of alternatives as they relate to Magnuson-Stevens Act, groundfish Fishery Management Plan, and other policy goals and objectives. Each section includes three subsections:
 - a. policy guidance related to the topic,
 - b. an assessment of how the original allocation provisions affected achievement of the goals and objectives, and
 - c. an assessment of the effects of the alternatives on the goals and objectives.The quantitative analysis for this chapter will be completed over the summer.

If the allocation period for whiting is changed, there may be a need for a number of corresponding adjustments to the quota share distributions and status quo regulations in order to implement the change while maintaining all other intents and purposes of the program. These topics are addressed in Section 2.1.2 of the preliminary analysis. The primary nonregulatory adjustment to the program would be a redistribution of the nonwhiting quota shares (QS) allocated to cover bycatch on whiting trips; this is not a regulatory change in that the bycatch QS is automatically calculated as a

percentage of the whiting allocation (as described in Agenda Item D.7.a, Attachment 3). The corresponding regulatory adjustments would be as follows.

- a. Change the recent participation period for processors so that it covers the end of the allocation period (use the most recent seven years within the allocation period). For example, for a 1994-2010 allocation period, the recent participation requirement period would be 2004-2010.
- b. Change the qualification period for the mothership catcher vessel endorsements to match the allocation period (current provisions require a permit deliver a total of 500 mt from 1994 through 2003 in order to qualify for an endorsement).
- c. Change the regulation for determining the amount of QS to be allocated equally so that the equally allocated portion of the QS will continue to be based on 1994 through 2003 landings by buyback permits (i.e. the equal allocation amounts will not change regardless of the allocation period used for the history-based portion of the allocation).
- d. Change the entity to which the QS allocations will be distributed from the permit owner to the owner of the QS account (allocations to QS accounts would be based on the history of the permit which generated each QS account). This change would account for the fact that some permits transferred to different owners after the initial QS allocations were completed.

In addition to selecting a preliminary preferred alternative, the Council should confirm or provide guidance on these corresponding changes to status quo regulations. Also under this agenda item, the Council may wish to provide additional guidance on the analysis.

National Marine Fisheries Service (NMFS) has provided a draft rulemaking schedule for the two rules that are expected to be required if a modification to the whiting catch shares is to be implemented (Agenda Item D.7.b, NMFS Report 1). These two rules are identified as Reconsideration of Allocation of Whiting 1 and 2, (RAW 1 and 2). RAW 1 was published May 21 and is to be implemented by emergency action (NMFS Report 2). The comment period for RAW 1 is open through June 29, 2012. As an emergency rule, it would only be effective for 365 days. Any provision that needs to be effective for more than 365 days would also be included in RAW 2. The following table indicates the issues to be covered in each of these two rules.

	RAW 1 (Proposed Effective Dates: Sept 1, 2012 – Aug, 31 2013)	RAW 2 (Effective Date 4/2013)
a. Trading Moratorium: Delay the transfer QS and IBQ between QS accounts in the shorebased IFQ fishery for all species. ^{a/}	Included	Possibly extend effective dates to cover appeal period.
b. Divestiture Period: Delay the requirement to divest excess QS amounts for the shorebased IFQ fishery (December 31, 2014) and the at-sea mothership fishery (December 31, 2012).	Shorebased IFQ delay included	Include, if a delay is implemented in RAW 1 and extend to include at-sea mothership, if necessary.
c. MS/CV Endorsement Severability: Delay the ability to move MS/CV endorsement and catch history assignments from one limited entry trawl permit to another.	Included	Possibly extend effective dates to cover appeal period.
d. Start of Year QP Issuance: Modify the provisions for the start of year issuance of QP in 2013 to accommodate possible reallocation of QS.	Included	Not needed (fully accomplished in RAW 1)
e. Catch share Reallocation: Whiting QS, Bycatch Species QS, and Mothership Sector Endorsement and Catch History Reallocation	-	Include

a/ Other trailing actions are needed to completely specify process for transferring QS (including the process to apply for new QS permits/accounts). These have been delayed due to workload and must be completed prior to the expiration of the trading moratorium. They will be addressed in a future rulemaking.

For most issues, decisions made under RAW 1 will not directly constrain the choices made under RAW 2. The exception may be the divestiture period. Catch share holder expectations based on a RAW 1 extension of the divestiture period might make it difficult not to carry through with the extension in RAW 2. At the same time, there may be no immanent need for action on divestiture under RAW 1 since the divestiture deadline is not until December 31, 2014, and a delay can be implemented in a timely fashion through RAW 2. NMFS has provided a report on issues related to the RAW rules (Agenda Item D.7.b, NMFS Report 3).

A decision template for possible Council use in making motions is provided in Agenda Item D.7.d, Attachment 1.

Council Action:

- 1. Identify preliminary preferred alternatives for the time periods used for initial whiting catch share allocations.**
- 2. Confirm or provide guidance on corresponding regulatory adjustments.**
- 3. Provide guidance on analysis, as needed.**
- 4. Provide comment on RAW 1 (comment period closes June 29).**

Reference Materials:

1. Agenda Item D.7.a, Attachment 1: Reconsideration of Initial Catch Share Allocations in the Mothership and Shoreside Pacific Whiting Fisheries, Draft Environmental Assessment.
2. Agenda Item D.7.a, Supplemental Attachment 2: Description of the Affected Environment
3. Agenda Item D.7.a, Attachment 3: Description of Segments of the QS Allocations Potentially Affected by Reconsideration of Allocation of Whiting.
4. Agenda Item D.7.b, NMFS Report 1: Draft Rulemaking Schedule for the Reconsideration of Initial Individual Fishery Quotas in the Mothership and Shoreside Pacific Whiting Trawl Fisheries (RAW 1 and 2).
5. Agenda Item D.7.b, NMFS Report 2: Federal Register, 77(98): 29955-29961 (RAW 1, Proposed Rule, Request for Comments).
6. Agenda Item D.7.b, NMFS Report 3: Issues Related to the Reconsideration of Allocation of Whiting: Divestiture and Transfer of Quota.
7. Agenda Item D.7.c, Public Comment (**see briefing book CD-ROM and briefing book website for full version**).
8. Agenda Item D.7.d, Attachment 1: Council Decision Template.

Agenda Order:

- a. Agenda Item Overview
 - b. Reports and Comments of Advisory Bodies and Management Entities
 - c. Public Comment
 - d. **Council Action:** Select preliminary preferred alternative and provide guidance on analysis, as necessary.
- Jim Seger

PFMC

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