



MTC

MIDWATER TRAWLERS COOPERATIVE

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Mr. Dan Wolford, Chairman
Pacific Fisheries Management Council
7700 NE Ambassador Place, Suite 200
Portland, OR 97220-1384

RE: Agenda Item D.7 Reconsideration of the Initial Catch Share Allocations in the
Whiting Fishery

Dear Chairman Wolford and Council Members:

Midwater Trawlers Cooperative (MTC) represents 18 vessels that participate in the at-sea mothership whiting fishery, and 18 vessels that also participate in the shoreside whiting fishery. MTC has participated in the Council process since incorporation (1982), with many members serving on Council advisory bodies and committees. MTC representatives have focused on ending the destructive tolls that overcapitalization has taken on the west coast whiting fisheries (1992 Science and Statistical Committee discusses ITQ's to solve overcapitalization in the whiting fishery).

The Pacific Fisheries Management Council has worked diligently over the years to address capacity issues in the west coast trawl fisheries. Amendment 6 capped the harvesters in 1996, in 2000 the Strategic Plan said to develop and implement a program to reduce capacity by 50%.

March 16, 2000, Science and Statistical Committee report on overcapitalization in the west coast groundfish fishery (overcapitalization is the single most serious problem facing the West Coast groundfish fishery) (The Council should take immediate actions to develop stringent capacity reduction programs)

In 2003 an industry funded buyback was implemented reducing trawl permits to 172 (35%) not reaching the 50% target. In the same year the non-whiting and whiting trawl industry came to the Council asking for the development of a trawl Individual Quota, 2003 was set as the control date.

The Pacific Council and Industry worked for 7 years to implement the West Coast Catch Share program with capacity reduction being one of the intended goals. The whiting fishery had struggled for years with capacity issues beginning in 1992 and growing worse as speculation spurred entrance into the fishery during Catch Shares development. 2003-2010 became the toughest management years for the whiting fishery. Industry representatives had to step in to self manage a fishery that had gone out of control due to increased number of vessels, and limited numbers of constraining species.

The Pacific Council now has the opportunity to go back and review the intentions of the Catch Share Program, the goals and objectives this program was built on will demonstrate that status quo no action alternative, or alternative 1 will maintain the integrity of this program.

The information supplied in the Draft EA submitted in the Briefing Book describes the impacts that will result from any delineation from the first seven words of the problem statement that was relied on to develop this program.

Create and implement a capacity rationalization plan

To add capital to a fishery that has struggled with overcapitalization for 17 years, and reallocate resource from dependent communities and harvesters would be arbitrary and capricious.

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The Council and NMFS defended the programs position on history years and allocation in *Federal Register /Vol. 75, No. 190 / Friday, October 1, 2010 /Rules and Regulations*

b. Allocation Formula

Comment 29.

Several commenter's addressed the qualifying history period selected by the Council for both whiting and nonwhiting non-overfished species.

One commenter criticized the period as "arbitrary." Others expressed a belief that MSA "recency" requirements are not being met because the qualifying period of 1994–2003 is too out of date. One commenter suggested increasing emphasis on recent years by moving the start of the allocation period from 1994 to 1997 and the end from 2003 to 2006 and using 2003 through 2006 for the allocation period for overfished species), recognizing a new control date of January 1, 2007.

Response.

Similar comments were received during the public comment period on the draft EIS "Rationalization of the Pacific Coast Groundfish Limited Entry Trawl Fishery." Parts of the detailed response to those comments bears repeating as directly relevant and responsive to the comments received recently. In recommending initial allocations, the Council is required to consider several factors including current harvests and historic harvests. See 16 U.S.C. 1853a(c)(5)(A); see also 16 U.S.C. 1853(b)(6). Appendix A to the Amendment 20 EIS includes a review of the Council's consideration of all of these factors, including a discussion of the rationale for considering a variety of dates for the allocation period, including start dates of 1994 and each year from 1997 through 2001.

The allocation dates selected represent a balance between emphasis on more recent history and considering the historic fishing opportunities which may have had a determining effect on the levels of capital investment by individual firms. The start date of 1994 was selected because 1994 was the first year of the license limitation program. The decision to utilize a long allocation period was deliberate; it is likely that capital investment is based on longer term opportunity and that capital persists after contractions in the fishery such as that reflected by the disaster declaration in 2000. On this basis it is appropriate to give some weight to landings from the 1990s. Because more fish was taken during that time period, the relative pounds approach measuring catch history as a vessel's share of total catch) reduces the emphasis on a pound of fish caught in the 1990s as compared to a pound of fish caught after 2000. While some argue that fishermen who caught fish in themid-1990s caused the disaster and should not receive QS for that fish, the catch taken in the mid-1990s was in line with what was allowed under the regulations and believed to be sustainable at the time. The Council selected the ending year of 2003 because that year corresponds to the previously announced control date for the fishery. The Council adopted and published the control date of November 6, 2003 (see 69 FR 1563 (January 9, 2004); 70 FR 29713 (May 24, 2005)). The Council believes it is very important that the 2003 control date be used in order to prevent future fishery disruptions.

The purpose of announcing a control date in advance of developing a LAPP is to discourage entry into a fishery and increased harvest while the Council goes through the process of developing the program details, which can be a lengthy exercise. If the Council develops a pattern of announcing and abandoning control dates, then the announcement of control dates will become a signal to harvesters to intensify their efforts to catch fish in order to increase their odds of qualifying for greater initial allocations. Such a response would be disruptive to fisheries and exacerbate the challenges of meeting conservation objectives. Additionally, abandoning the original control date would reduce the perceived fairness of the program by rewarding those who fished speculatively after the control date (fishing primarily on the chance that the control date would be abandoned and they would acquire more quota as a result of their post control date fishing) at the expense of those who heeded the control date. In balancing the importance of the reliable control date, and the importance of considering historic participation, against the potential for some disruption of using a time period ending several years prior to the start of the program, the Council found that it was preferable to use the 2003 control date. The public was given significant notice of the use of November 6, 2003, as a potential control date. The notice was originally published in the Federal Register on January 9, 2004, and an additional notice was published on May 24, 2005. Both notices were posted on the Council's Web site, with an explanation of the possible consequences of the control date. In addition, starting in October 2003, The Council and its Trawl Individual Quota Committee held numerous public meetings and discussions at Council meetings on the trawl rationalization program including the use of the control date and the alternate qualifying periods.

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The Council disagrees with the commenter's assertion that Amendment 15 to the Groundfish management plan created a new control date of January 1, 2007, that should be controlling here. Nowhere does Amendment 15 address the 2003 control date or purport to change the qualifying period for the groundfish trawl program. Amendment 15 was a limited interim action for the non-Tribal whiting fishery issued in anticipation of the trawl rationalization that in no way attempted to address matters beyond its limited scope. Moreover, the Council has explicitly stated that vessels that qualified for Pacific whiting fishery participation under Amendment 15 were not guaranteed future participation or inclusion in the Pacific whiting fishery under the provisions of Amendment 20. See <http://www.pcouncil.org/groundfish/fishery-management-plan/fmp-amendment-15>.

With regards to "recency" The Council does take into account recent participation patterns in the fishery by allocating QS to current permit holders rather than to individuals or vessels that originally caught the fish. In this way, during the extensive period required to develop a program of this kind, entry and exit can occur and QS can be allocated in a less disruptive manner than would occur if the allocations went to the individuals who caught the fish historically.

While the overfished species allocation formula includes logbooks for 2003–2006, these records are used to determine the fishing pattern, not the overall level of harvest activity. The Council's methodology for allocating overfished species is significantly different than the methodology for allocating target catch. The 1994–2003 periods is still used to determine the target species allocation, and the harvest patterns from the 2003–2006 logbooks are used to determine the amount of overfished species an entity would need to take its target species. In this fashion, more recent information for the fishery is used without rewarding post control date increases in effort. The 1994–2003 harvest patterns were not used to determine a target species QS recipient's need for overfished species QS. This is because of the substantial changes in fishing patterns which were induced by the determination that some species were overfished and the implementation of the rockfish conservation areas (RCAs) and because the RCAs will remain in place after the trawl rationalization system is put into place. Therefore the Council considered that an estimate of likely patterns of activity should be based on a period of time when the RCAs were in place. The RCAs were not in place for most of the 1994–2003 periods but were in place for 2003–2006.

One commenter made the point that the initial allocation, because it is different from the current distribution of harvest, may reward inefficiencies and reverse recent conservation gains, including reductions in bycatch.

While it is possible that the initial allocations may not go to the most efficient and innovative harvesters, because of the need to draw a balance between a reliable control date and disruption, fairness and equity, recent participation and historic participation issues, it is expected that society will benefit over the long haul as the quota is transferred to use by the most efficient harvesters as the program progresses. Independent of the initial allocation, the QS system is expected to provide substantial incentive for vessels to avoid bycatch. One hundred percent observer coverage will ensure full individual vessel accountability. These individual vessel incentives are expected to preserve gains made in bycatch avoidance in recent years.

The same commenter also made the point that the discard and catch composition data quality from those years is poor and will skew the picture of the true state of nature.

Response

The allocation formula does not use discard data from the mid-1990s. With respect to catch composition data, it has been accepted that these data may skew the mix of species any particular permit would receive away from its actual catch, simply because the catch composition data was designed to estimate catch at the fleet level rather than the individual vessel level. Catch composition data has the same problem whether it is from the mid-1990s or early 2000s. While the catch composition data might be of better quality in more recent years, the Council felt that it was more important that the control date and longer allocation period be maintained and worth the tradeoff entailed in relying on older catch composition data.

Comment 30.

A comment was submitted on behalf of owners and operators of a harvesting vessel, in support generally of Amendments 20 and 21 for improving management of groundfish but noting that the program improperly excludes valid "B" Permit

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groundfish fishing history in the initial allocation process. The commenter submitted multiple exhibits in support of their comments.

Response.

NMFS has reviewed the comments and the supporting exhibits. The commenter's position is that the prior permit owner's assignment in 2004 of all fishing history to the current vessel/permit owner included the groundfish "B" Permit fishing history from 1994, 1995 and 1996, and therefore the program improperly excludes valid "B" Permit groundfish fishing history in the initial allocation process. Further, the comment notes that nothing in Amendment 20 or 21 precludes inclusion of that "B" Permit history in the total catch history owned by the current permit owner.

NMFS disagrees, for the following reasons.

Amendment 20 specifies that the initial allocation will be made to the current owner of groundfish limited entry permits. These permits have been in place since 1994, as part of the implementation of Amendment 6, the groundfish limited entry program. Limited entry permits with "A" and "B" endorsements were implemented as part of the groundfish limited entry program (57 FR 54001-01, November 16, 1992). The program established permits with "A" endorsements, which were transferable, for trawl vessels that met specific minimum landing requirements. It also established permits with "B" endorsements, which were not transferable, and which expired upon transfer to a different owner, or at the end of 1996 (whichever occurred first). These "B" endorsements were intended for vessels that had some low level of activity in the fishery prior to August 1, 1988, and under the current owner, but did not meet the landing requirements for vessels receiving "A" endorsements. The "B" endorsements provided a three year adjustment period during which the vessel owners could either make arrangements to stay in the fishery through the purchase of an existing "A" endorsed permit or stop participating in the limited entry fishery. NMFS accordingly removed the "B" endorsement provisions from the regulation after the "B" endorsements had expired; in addition to the "A" endorsement, the only endorsements on limited entry permits are now gear endorsements (trawl, longline, pot or trap) and size endorsements (*see* 66 FR 29729, June 1, 2001, and 50 CFR 660.333).

Consistent with this background, the current limited entry permits are "A" endorsed only and have no relationship to "B" endorsed permits, which expired at the end of 1996. The current limited entry permits in the trawl fishery with trawl endorsements originally, under Amendment 6, were called limited entry permits with "A" endorsements. When the "B" permits expired, NMFS revised the regulations to refer to limited entry permits with trawl endorsements. These are the limited entry permits referred to in the trawl rationalization program and they and their landings history, are distinct from the permits with "B" endorsements that are no longer in existence. NMFS recognizes that the supporting exhibits submitted by the commenter show that for purposes of the American Fisheries Act (AFA), the NMFS, Alaska Region, approved the request that the F/V Pacific Challenger be named as a replacement vessel for the F/V Amber Dawn. However, this decision for the AFA fisheries is separate from and has no effect on the relation to the Pacific Coast Groundfish permits and the trawl rationalization fishery.

Midwater Trawlers Cooperative supports the Catch Share Program as implemented; it's achieving the goals and objectives that the program was developed on.

Sincerely,



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