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

ENVIRONMENTAL ASSESSMENT AND MAGNUSON-STEVENS ACT ANALYSIS

PREPARED BY
THE PACIFIC FISHERY MANAGEMENT COUNCIL
7700 NE AMBASSADOR PLACE, SUITE 101
PORTLAND, OR 97220
503-820-2280
WWW.PCOUNCIL.ORG

AND

NATIONAL MARINE FISHERIES SERVICE
7600 SAND POINT WAY NE, BIN C15700
SEATTLE, WA 98115-0070
206-256-6150

MARCH 2013

CITATION

This document may be cited in the following manner:

PFMC (Pacific Fishery Management Council) and NMFS (National Marine Fisheries Service). 2013. Reconsideration of Initial Catch Share Allocations in the Mothership and Shoreside Pacific Whiting Fisheries; Environmental Assessment and Magnuson-Stevens Act Analysis. Pacific Fishery Management Council, Portland, OR. February 2013.

EXECUTIVE SUMMARY

This Environmental Assessment (EA) and Magnuson-Stevens Act Analysis for the Reconsideration of Initial Whiting Allocations in the Mothership and Shoreside Pacific Whiting Fisheries was designed to assist decision makers in reaching a fair and equitable allocation of Pacific whiting (whiting) among participants in the above mentioned sectors of the Pacific Coast Groundfish fishery. This reconsideration and its associated rulemaking, the Reconsideration of Allocation of Whiting ("RAW 2") is the second of two rulemakings developed in response to the remedy order in Pacific Dawn, LLC v. Bryson, No. C10-4829 TEH (N.D. Cal.). The first rulemaking was a temporary rule published using emergency action authority, which temporarily delayed or revised several portions of the trawl rationalization program regulations pending resolution of the remand order.

Following a decision on summary judgment that NMFS had not considered all of the required information and failed to provide an adequate basis in setting the initial whiting allocations, the court, on February 21, 2012, issued an order remanding the regulations establishing the initial allocations of whiting for the shorebased IFQ fishery and the at-sea mothership fishery "for further consideration" consistent with the court's December 22, 2011, summary judgment ruling. The order requires NMFS to implement revised regulations before the 2013 Pacific whiting fishing season begins on April 1, 2013.

The Court Order remanded to the Pacific Fishery Management Council (Council) and the National Marine Fisheries Service (NMFS) the regulations addressing the initial allocation of whiting for the shorebased individual fishing quota (IFQ) fishery and the at-sea mothership fishery of the Pacific Coast Groundfish Trawl Rationalization Program (program). After the reconsideration of the initial allocation at the Council, the Court Order requires that NMFS implement revised regulations before the 2013 Pacific whiting fishing season begins. NMFS published an advanced notice of proposed rulemaking (ANPR) announcing the Court Order, the Pacific Fishery Management Council (PFMC) meetings which would address the issue, and the NMFS rulemaking plan (77 FR 20337, April 4, 2012). On August 1, 2012, NMFS published the first of the two rules announced in the ANPR: an emergency rule affecting "the transfer of Quota Share (QS) and Incidental Bycatch Quota (IBQ) between QS accounts in the shoreside IFQ fishery, and severability in the mothership fishery, both of which will be delayed until NMFS can implement any necessary new allocation regulations required by the court's order" (FR 77(148): 45508-45512). The August 1 emergency rule also provided for delayed issuance of quota associated with whiting directed trips at the beginning of the 2013 fishing year, as recommended by the Council.

On October 30, 2012, NMFS received transmittal of the Council's decision to select the no action alternative for Pacific whiting allocation as its final preferred alternative (FPA), which initiated agency review of the action. NMFS reviewed the Council's action for consistency with the Magnuson-Stevens Act and other applicable law and published a proposed rule in the *Federal Register* on January 2, 2013 (78 FR 72). The proposed rule requested comments on NMFS' preliminary conclusion that the Council's selection of the no action alternative was consistent with the Magnuson-Stevens Act and other applicable law. The comment period closed on February 1, 2013. NMFS received 19 letters of comment on the proposed rule, submitted by individuals or organizations, including a letter of no comment from the Department of Interior. One meeting was held with stakeholders who provided similar comments. Comments were divided between those opposed to NMFS proposal to maintain the original allocation periods and those in support of the agency's proposal. After considering public comment on the proposed rule and the record as a whole, NMFS has made the final decision that the no action/ status quo alternative is consistent with the requirements of the MSA and other applicable law and policy considerations.

NMFS is also addressing the portions of the regulations that were temporarily delayed or revised by RAW 1 (items 1 through 4 below) in this final rule. These regulatory changes are simply delaying implementation of components of the original trawl rationalization program that was put in place by Amendments 20 and 21. Therefore, coverage for this rule under the National Environmental Policy Act (NEPA) is through a finding of no significant impact (FONSI) statement and through the FEISs for Amendments 20 and 21, which may be found in Chapter 6. In accordance with Council recommendations, NMFS will:

(1) Allow transfer of QS or IBQ, except for widow QS, among QS permit holders in the shorebased IFQ fishery beginning January 1, 2014;

(2) Require QS permit holders in the shorebased IFQ fishery holding QS or IBQ in excess of the accumulation limits to divest themselves of excess QS (except for widow QS) or IBQ by November 30, 2015;

(3) Allow limited entry trawl permit holders in the mothership fishery to request a change (or transfer) of mothership/catcher vessel (MS/CV) endorsement and its associated catch history assignment (CHA) beginning September 1, 2014;

(4) Require MS/CV endorsed limited entry trawl permit owners to divest themselves of ownership in permits in excess of the accumulation limits by August 31, 2016; and

(5) Extend the divestiture period delay and moratorium on transfer of widow rockfish QS in the shorebased IFQ fishery indefinitely.

In addition, this final rule will extend the moratorium on transfer of widow rockfish QS in the IFQ fishery indefinitely, pending reconsideration of the allocation of QS for widow rockfish, as recommended by the Council. The divestiture period for widow rockfish QS, in the IFQ fishery, will also be delayed indefinitely.

The initial allocations might impact the geographic distribution of processing employment opportunities over the short term and could have some impact on the income available from employment on vessels (increasing income on some while decreasing income on others). See sections 3.3.2, 4.3.1, 4.3.2, and 4.3.3 for descriptions of the expected distributional effects on vessels, processors, and communities. The total number of jobs and total levels of payments to labor are not expected to be affected by the alternatives for reallocation of quota. The reallocation of quota among permits and among processors is not expected to impact safety.

The effects of the initial allocations on the distribution of fishing among communities over the short- and long-term are difficult to predict. Quota is tradable and highly divisible, so that it will likely move toward those ports where profit margins tend to be the highest, regardless of the initial allocations. Additionally, the ports where fish are landed are at least partially determined by the distribution of the fish in the ocean in any particular year. As an example, in 2011, deliveries to Astoria increased substantially more than would have been expected based on the allocations going to entities associated with the port. Indicators of the shifts in geographic distribution of QS are provided in Section 4.3.3.

The analyses contained within this EA are organized in the following chapters and appendices:

- Chapter 1 explains why the action is being considered. The purpose and need statement defines the scope of the subsequent analysis. This chapter also briefly summarizes recent developments that led to this reconsideration of the initial allocations of whiting quota, the process by which the trawl rationalization program was originally developed, and the process by which the final recommendation covered by this document was reached.

- Chapter 2 outlines the No Action and action alternatives that were considered to address the purpose and need. The Council recommended the No Action Alternative from among these alternatives, which maintains status quo allocations of Pacific whiting QS and CHA.

- Chapter 3 describes the environmental components potentially affected by the action alternatives, including groundfish and other marine fish, fishery sectors, fishing communities, protected species, essential fish habitat (EFH), and the marine ecosystem.

- Chapter 4 describes the direct, indirect, and cumulative effects of the proposed action, including the No Action Alternative, on the environmental components described in Chapter 3. This chapter also describes the Council's rationale for selecting the no action alternative, and NMFS independent rationale for concurring with the Council's selection of the no action alternative.

- Chapter 5 details how this action addressed National Standards set forth in the MSA (Section 301(a)) and groundfish FMP goals and objectives.

- Chapter 6 describes how this action is consistent with the requirements of NEPA, and includes information from the Amendments 20 and 21 FEISs, as well as the RAW 1 CE and the RAW 2 FONSI. This chapter also includes a list of persons and agencies consulted.

- Chapter 7 provides a list of literature cited.

- Chapter 8 – Appendix provides relevant excerpts from the Amendment 20 analysis.

- Chapter 9 – Appendix provides a transcript of the public comment from the September 2012 meeting at which the Council took final action.

- Chapter 10 – Appendix provides a transcript of Council discussion from the September 2012 meeting at which the Council took final action.

Table of Contents

Citation ii
EXECUTIVE SUMMARY iii
Table of Contents 1
List of Tables 7
List of Figures 10
CHAPTER 1 Introduction 13
1.1 Proposed Action 13
1.2 Purpose and Need 13
1.3 Background 14
1.3.1 Previous Deliberations 14
1.3.2 Recent Developments 19
1.4 Council and Agency Process for Reaching Final Action 20
CHAPTER 2 Description of Alternatives 22
2.1 Alternatives 22
2.1.1 No Action Alternative - Preferred 22
2.1.2 Action Alternatives 22
2.1.2.1 Corresponding Adjustments to the Amendment 20 Trawl Rationalization Program 23
Eligibility for Allocations and Terminology 24
Redistribution of Nonwhiting Species QS 24
Processor Recent Participation 25
Mothership Catcher Vessel Whiting Endorsement 25
Equal Allocation 25
2.1.3 Summary of Alternatives Adopted for Analysis and Allocations Affected 26
2.1.3.1 Terminology Note 27
2.1.4 Alternatives Considered But Rejected From Further Analysis 28
CHAPTER 3 Description of the Affected Environment 30
3.1 Physical Environment, including Habitat and Ecosystem 30
3.1.1 West Coast Marine Ecosystems 30
3.1.2 Physical and Biological Oceanography 31
3.1.3 Interannual and Interdecadal Climate Forcing 31
3.1.4 Biogeography 31
3.1.5 Essential Fish Habitat 32
3.1.6 Marine Protected Areas 32
3.1.7 Ecosystem considerations 32
3.2 Biological Resources 33

3.2.1 Groundfish 33
3.2.1.1 Overfished Groundfish 33
3.2.1.2 Pacific Whiting (Hake) 33
3.2.1.3 Other Groundfish 36
3.2.2 Pacific Halibut 36
3.2.3 Coastal Pelagic Species (CPS) 36
3.2.4 Highly Migratory Species and Salmon 37
3.2.5 Protected Species, including ESA, MMPA, and MBTA 37
3.2.5.1 ESA-listed Salmon and Steelhead 37
3.2.5.2 Green Sturgeon 37
3.2.5.3 Eulachon 37
3.2.6 Marine Mammals and Seabirds 38
3.2.6.1 Marine Mammals 38
3.2.6.2 Seabirds 38
3.3 The Socioeconomic Environment 38
3.3.1 The Fishery 39
3.3.1.1 Management of Pacific Hake 39
3.3.1.2 Overview of Major Events Affecting the Whiting Fishery 40
3.3.2 Harvest, Processing, and Economic Trends 42
3.3.2.1 Pacific Whiting Harvests, Revenues, Prices 42
3.3.2.2 World Whiting Markets 45
3.3.2.3 Number of Active Permits, Processors, and Ex-vessel Revenues by Permit 49
3.3.2.4 Effort and Capacity Utilization 51
3.3.2.5 Entry and Exit Patterns of Permits and Processors 57
Entry and Exit of Permits from the Shoreside Whiting Fishery 57
Entry and Exit of Catcher Vessel Permits from the Mothership Whiting Fishery 59
Entry and Exit of Shoreside Whiting Processors 61
Permit Transfers and Investment 62
3.3.2.6 Participation and Other Fisheries 62
3.3.2.7 Historic Distributions and the 2011 Fishery 70
3.3.3 Community Harvest Trends 75
CHAPTER 4 Impacts on the Affected Environment 78
4.1 Direct and Indirect Impacts to the Physical Environment, Including Habitat and Ecosystem 78
4.2 Direct and Indirect Impacts to the Biological Environment 78
4.3 Direct and Indirect Impacts to the Socioeconomic Environment 90
4.3.1 Harvesting Sector Impacts 90
4.3.1.1 Shoreside Whiting 90

Comparison of Allocations to Recent and Historic Shares of Harvest by Permit 90
Comparison of Allocations by Recent and Historic Years of Participation by Permit..... 97
Allocations to Permits and Entities Relative to Accumulation Limits 98
Allocations to Permits Associated with AFA and Amendment 15 Vessels 100
Allocations Relative to Permit Dependence 100
Exvessel Value Equivalents..... 104
4.3.1.2 Mothership Catcher Vessels..... 104
Comparison of Allocations to Recent and Historic Shares of Harvest..... 104
Comparison of Allocations by Recent and Historic Years of Participation 110
Allocations to Permits Associated with AFA and Amendment 15 Vessels 111
Allocations Relative to Accumulation Limits 112
Allocations Relative to Dependence..... 114
Exvessel Value Equivalents..... 115
4.3.1.3 Combined Shoreside and Mothership Activities..... 115
Allocations..... 115
Allocations among AFA and Non-AFA Vessels..... 119
Apparently Latent Permits..... 120
4.3.1.4 Other Harvesting Sectors, Including Tribes and Recreational Fisheries..... 122
4.3.1.5 Adjacent Council Fisheries 122
4.3.2 Processing Sector Impacts 122
4.3.2.1 Shoreside Processors..... 122
Allocations to Shoreside Processors for Processing History..... 122
Allocations and Processor Involvement and Dependence..... 128
Ex-processor Value Equivalents..... 131
Allocations to Shoreside Processors for Processing and Permit Harvesting History 131
Effect of Adjusting the Recent Participation Period (Alternative 3) 132
4.3.2.2 Mothership Processors 132
4.3.3 Impacts on Communities 133
4.3.4 Impacts on Agencies and Public Decision Processes..... 142
4.4 Cumulative Impacts..... 142
4.4.1 Consideration of the Affected Resources..... 142
4.4.2 Geographic Boundaries..... 142
4.4.3 Temporal Boundaries..... 143
4.4.4 Actions Other than the Proposed Action..... 143
4.4.4.1 Past, Present, and Reasonably Foreseeable Future Actions 143
Fishery-related Actions..... 143

4.4.5 Magnitude and Significance of Cumulative Effects 147
4.4.6 Preferred Action on all of the Affected Resources 153
4.5 Council's Rationale for Council Action 154
4.5.1 Issues of Marginal Relevance – Conservation, Net Benefits, and Safety Impacts 154
4.5.2 Reasons to Allocate Based on More Recent Periods 154
4.5.2.1 Current Harvests, Investment, and Dependence 154
Allocations to Latent Permits but No Credit for Post-2003/2004 Harvest 155
Permit Ownership as a Highly Fishery Dependent Investment 155
Permit Ownership as Part of Portfolio that Supports Historic Practices of Business Entities Dependent on the Fishery 155
Allocation Based on More Recent Years Would Be Possible but there are Negative Effects to Consider 157
4.5.2.2 Changing Conditions in the Whiting Fishery 157
Assessment of Changes for Harvesters 158
Assessment of Changes for Processors 160
Assessment of Changes for Communities 160
4.5.2.3 Disruption 161
Effects on Initial Distribution of Wealth – Transferability Mitigates Potential Disruptive Effects 162
Potential Disruption in Whiting Sector Balanced with Potential Disruption in Other Sectors 162
Disruption to Management System Must Also Be Considered 162
4.5.3 Reasons not to allocate based on more recent periods 162
4.5.3.1 Concern about Control Date 162
Importance of Control Date Integrity 162
Consistency in Relying on Control Date 164
Staleness of Date – "Alliance Against IFQs" is Situationally Distinct 167
4.5.3.2 Concern about Fairness and Equity 169
4.6 Rationale for NMFS Action 171
CHAPTER 5 Consistency with the West Coast Groundfish FMP and MSA National Standards and Requirements 174
5.1 Conservation 174
5.1.1 Policy Guidance 174
5.1.2 Relation of Rationalization Program Provisions to Policy 175
5.1.3 Analysis of Effects of Alternatives 175
5.2 Net Benefits and Efficiency 176
5.2.1 Policy Guidance 176
5.2.2 Relation of Rationalization Program Provisions to Policy 176
5.2.3 Analysis of Effects of the Alternatives 177

5.3 Excessive Shares 177
5.3.1 Policy Guidance 177
5.3.2 Relation of Rationalization Program Provisions to Policy 177
5.3.3 Analysis of Effects of Alternatives 178
5.4 Fairness and Equity 178
5.4.1 Allocations and Imposition of Hardships 180
5.4.1.1 Policy Guidance 180
5.4.1.2 Relation of Rationalization Program Provisions to Policy 180
5.4.1.3 Analysis of Effects of the Alternatives 180
5.4.2 Investment and Dependence 180
5.4.2.1 Policy Guidance 180
5.4.2.2 Relation of Rationalization Program Provisions to Policy 181
Harvesters: Allocation to Vessel Limited Entry Permits 181
Processors: Allocation to Buyers (Processors) as Recorded on Fish Tickets 182
Length of Allocation Period and Level of Participation 183
Investment and Dependence of Recent Entrants – Harvesters 183
Investment and Dependence of Recent Entrants – Processors 184
5.4.2.3 Analysis of Effects of Alternatives 185
Relationship between Dependence and Inclusion of More Recent Years' Harvest 185
5.4.3 Harvests and Participants – Current and Historic 186
5.4.3.1 Policy Guidance 186
5.4.3.2 Relation of Rationalization Program Provisions to Policy 187
5.4.3.3 Current Harvest and Current Community Participation 188
Policy Guidance 188
Relation of Rationalization Program Provisions to Policy 189
Analysis of Effects of Alternatives 192
5.4.3.4 Historic Harvests and Historic Community Participation 194
Policy Guidance 194
Relation of Rationalization Program Provisions to Policy 195
Analysis of Effects of Alternatives 195
5.4.3.5 Employment (processing and harvesting) 196
5.4.4 Discrimination between Residents of Different States 197
5.4.5 Stability and Minimizing Disruption – Fairness and Equity Considerations 197
5.4.5.1 Policy Guidance 197
5.4.5.2 Relation of Rationalization Program Provisions to Policy 198
5.4.5.3 Analysis of Effects of the Alternatives 200

5.5 Stability and Minimizing Disruption – Other Considerations 200
5.5.1 Policy Guidance 200
5.5.2 Relation of Rationalization Program Provisions to Policy 201
5.5.3 Analysis of Effects of Alternatives 201
5.6 Sector Health 201
5.7 Labor 202
5.7.1 Policy Guidance 202
5.7.2 Relation of Rationalization Program Provisions to Policy 202
5.7.3 Analysis of Effects of Alternatives 202
5.8 Communities 203
5.8.1 Policy Guidance 203
5.8.2 Relation of Rationalization Program Provisions to Policy 203
5.8.3 Analysis of Effects of the Alternatives 203
CHAPTER 6 Consistency with the National Environmental Policy act 205
6.1 Existing NEPA Analyses: the RAW 1 CE and Amendment 20 EIS 205
6.2 Finding of No Significant Impact (FONSI) 206
6.3 List of Persons and Agencies Consulted 210
CHAPTER 7 Literature Cited 211
CHAPTER 8 Appendix - Amendment 20 EIS Discussion of Rationale for Allocation Periods . 214
Allocation Periods 214
CHAPTER 9 Appendix - Transcript of Public Comment from the September 2012 Council Meeting 218
9.1 List of Those Testifying and Supplemental Written Comment Provided with Testimony 218
9.2 AUDIO FILE:9-17-12pm2Copy.mp3 219
9.3 AUDIO FILE: 9-18-12am1Copy.mp3 241
9.4 AUDIO FILE: 9-18-12am2Copy.mp3 271
9.5 AUDIO FILE: 9-18-12am3Copy.mp3 297
9.6 AUDIO FILE: 9-18-12pm1copy.mp3 312
CHAPTER 10 Appendix - Transcript of Council Discussion on Its Final Recommendation from the September 2012 Council Meeting 328
10.1 AUDIO FILE: 9-18-12pm2copy.mp3 328

LIST OF TABLES

Table 1-1. Description of committees involved in trawl rationalization program development. 15
Table 1-2. Committee and Council meetings related to trawl rationalization program development. 16
Table 2-1. Alternatives adopted for analysis (June 2012)..... 26
Table 3-1. Primary season closure dates and allocations for mothership and shoreside whiting fisheries. a/ 53
Table 3-2. Participation in the shoreside whiting fishery for two periods (1994-2003 and 2004-2010) for catcher vessel permits, also showing participation patterns in all other West Coast fisheries (combined). 63
Table 3-3. Participation in the shoreside whiting fishery for two periods (1994-2003 and 2004-2010) for catcher vessel permits based, also showing participation patterns for all other West Coast fisheries (combined) and Alaska (shaded cells are counts of permits showing no activity after 2003). 64
Table 3-4. Participation in the mothership whiting fishery for two periods (1994-2003) and 2004-2010) for catcher vessel permits, also showing participation patterns for all other West Coast fisheries (combined). 65
Table 3-5. Participation in the mothership whiting fishery for two periods (1994-2003 and 2004-2010) for catcher vessel permits, also showing participation patterns for all other West Coast fisheries (combined) and Alaska (shaded cells are counts of permits showing no activity after 2003). 66
Table 3-6. Participation in the whiting fishery for two periods (1994-2003 and 2004-2010) for catcher vessel permits, showing participation in the mothership whiting fishery and shoreside whiting fishery... 67
Table 3-7. Number of permits associated with [a/] vessels qualifying under the AFA and Amendment 15. 68
Table 3-8. Participation in West Coast fisheries by permits with some whiting history for two periods (1994-2003 and 2004-2010) also showing participation by whether the permit is associated with an AFA vessel (columns) or a vessel with Alaska participation history (rows). 69
Table 3-9. Shoreside whiting permit share of harvest in 2011 relative to permit catch share allocations. 72
Table 3-10. Mothership permit share of harvest in 2011 relative to permit catch share allocations. 74
Table 4-1. Whiting catch shares reallocated by the alternatives, as compared to status quo. 79
Table 4-2. Whiting catch shares reallocated among processors and associated redistribution between ports, as compared to status quo. 79
Table 4-3. Number of tows by fishing zone and year for Westport, WA. (Cells representing less than 3 vessels excluded.) See map below for key to fishing zones. 89
Table 4-4. Changes in the amount of shoreside whiting QS allocated to permits under the alternatives relative to status quo (No Action) based on individual permit history of shoreside whiting trips (table excludes the 0.04 percent that each permit received as its share of the equal allocation and permits' share of the 0.1 percent allocated for nonwhiting trips).[a/] 94
Table 4-5. Differences in allocations of **shoreside** whiting QS to permits under the alternatives relative to 1994-2003 comparison years. [a/] 95

Table 4-6. Differences in allocations of shoreside whiting QS to permits under the alternatives relative to 2004-2006 comparison years. 96
Table 4-7. Differences in allocations of **shoreside** whiting QS to permits under the alternatives relative to 2007-2010 comparison years. 97
Table 4-8. Shoreside whiting QS allocations to permits under the reallocation alternatives. 98
Table 4-9. Number of permits with shoreside whiting history by affiliation with AFA and Amendment 15 vessels. 100
Table 4-10. Shoreside whiting QS allocations to permits by affiliation with AFA and Amendment 15 vessels (including amounts distributed as equal allocations to permits with no whiting history). 100
Table 4-11. Number of shoreside permits by level of dependence on shoreside whiting, 1994-2003 compared to 2007-2010. 101
Table 4-12 Gross revenue dependence indicators (whiting dependency index) for West Coast whiting for vessels that also participated in Alaska fisheries. 101
Table 4-13. Allocation of shoreside whiting QS to limited entry trawl permits with shoreside whiting history under each alternative by level of permits' dependence on shoreside whiting and affiliation with AFA vessels (1994-2003). 102
Table 4-14. Allocation of shoreside whiting QS to limited entry trawl permits with shoreside whiting history under each alternative by level of permits' dependence on shoreside whiting and affiliation with AFA vessels (2007-2010). 103
Table 4-15. Ex-vessel value equivalent of a 0.1 percent share of the shoreside whiting fishery for a range of prices and sector allocation levels ($). 104
Table 4-16. Changes in the amount of mothership whiting CHA allocated to permits under the alternatives relative to status quo (No Action) based on individual permit history of mothership sector whiting trips. 107
Table 4-17. Differences in allocations of at-sea mothership sector whiting CHA to permits under the alternatives relative to 1994-2003 comparison years. 108
Table 4-18. Differences in allocations of at-sea mothership sector whiting CHA to permits under the alternatives relative to 2004-2006 comparison years. 109
Table 4-19. Differences in allocations of at-sea mothership sector whiting CHA to permits under the alternatives relative to 2007-2010 comparison years. 110
Table 4-20. Mothership whiting CV Catch History allocations to permits under the reallocation alternatives. 111
Table 4-21. Number of permits with mothership history and AFA and Amendment 15 vessel affiliation. 112
Table 4-22. Changes in CHA allocations among the permits associated AFA vessels as compared to permits not associated with AFA vessels. 112
Table 4-23. CHA allocation to permits by AFA and Amendment 15 vessel affiliation. 112
Table 4-24. Allocations to permits under each alternative by level of mothership whiting dependence (1994-2003). 114
Table 4-25. Allocations to permits under each alternative by level of mothership whiting dependence (2007-2010). 114
Table 4-26. Exvessel value equivalent of a 0.1 percent share of the mothership whiting fishery for a range of prices and sector allocation levels ($). 115
Table 4-27. Changes in allocations among the permits associated AFA vessels as compared to permits not associated with AFA vessels (shoreside and mothership combined). 119
Table 4-28. Allocations to permits with no post-2003 activity showing geographic area (shading indicates change in geographic location of permit owner), vessel affiliation (U=not affiliated with a vessel) and whether permit is owned by an entity owning other permits. 121
Table 4-29. Changes in the amount of whiting QS allocated to processors under the alternatives relative to status quo (No Action) based on individual processor history of shoreside sector whiting trips. 128

Table 4-30. Processors' dependence on whiting (as measured by purchases), average annual percent involvement, and initial QS allocations. 130
Table 4-31. Export value equivalent per 0.1 percent of whiting QS (assuming the imputed 2011 price of $0.58 per pound and a product recovery rate of 0.65) ($)..... 131
Table 4-32. Change from No Action to mothership coop permits' CHA assignments under the reallocation alternatives based on **2011** coop agreements. 132
Table 4-33. Change from No Action to mothership coop permits' CHA assignments under the reallocation alternatives based on **2012** coop agreements. 133
Table 4-34. Port-county correspondence. 137
Table 4-35. Port dependence on whiting, involvement (port historic share of the whiting deliveries), and estimated geographic distribution of the shoreside whiting QS allocated to processors based on processor delivery patterns in 2007-2010 and 2011 (for processors with more than one landing port for whiting). 141
Table 4-36. Summary of the effects of past, present, and reasonably foreseeable future actions on habitat. 148
Table 4-37. Summary of the effects of past, present, and reasonably foreseeable future actions on biological resources. 150
Table 4-38. Summary of the effects of past, present, and reasonably foreseeable future actions on human communities. 152
Table 4-39. Magnitude and significance of the cumulative effects; the additive and synergistic effects of the proposed action, as well as past, present, and reasonably foreseeable future actions. 153
Table 5-1. Alternatives ordered from least to most emphasis on current investment and dependence. .. 186
Table 5-2. For entities active during comparison periods, the number receiving no allocation and total whiting deliveries or receipts by those entities during the comparison periods..... 193
Table 5-3. Processing entities screened by recent participation requirements, by alternative. 194
Table 5-4. Relative weighting of selected historic periods by allocation alternative for permits. 196
Table 5-5. Relative weighting of selected historic periods by allocation alternative for processors. 196
Table 5-6. Qualifying dates and control dates for rationalization programs announced in the Federal Register. 199

LIST OF FIGURES

Figure 2-1. Steps in the QS allocation calculations for shoreside whiting QS and nonwhiting QS (heavy boundary boxes indicate the steps in the calculations directly affected by a change in the allocation period, shaded boxes indicate the steps for which calculation results would be affected, and rounded boxes are the final steps in the allocation calculations). 28
Figure 3-1. Spatial distribution of acoustic backscatter attributable to Pacific hake from joint US-Canada acoustic surveys 1995-2011. Area of the circles is roughly proportional to observed backscatter. (Stewart, *et al.* 2011). 35
Figure 3-2. The mean spatial location of the hake stock (circles are proportional to biomass) and variance (grey lines) by age group and year based on acoustic survey observations 1995-2007 (Figure courtesy of O'Conner and Haltuch's ongoing Fisheries And The Environment project investigating the links between ocean conditions and Pacific hake distribution) (Stewart, *et al.* 2011). 36
Figure 3-3. Pacific Whiting harvest trends. 43
Figure 3-4. Pacific whiting ex-vessel revenue trends. 44
Figure 3-5. Pacific whiting ex-vessel revenue trends-inflation adjusted. 44
Figure 3-6. Pacific whiting ex-vessel price trends. 45
Figure 3-7. Pacific Whiting head and gut (H&G) export trends. 45
Figure 3-8. Pacific whiting export market trends. 46
Figure 3-9. Pacific whiting export prices. 46
Figure 3-10. World landings of hake, whiting, and pollock (Source: U.N. Food and Agricultural Organization, Fisheries and Aquaculture Information and Statistics Service query system (http://www.fao.org/fishery/statistics/global-capture-production/query/en). 47
Figure 3-11. Trends in West Coast ex-vessel prices for selected species. 48
Figure 3-12. Pacific whiting and Alaska pollock ex-vessel price trends. 49
Figure 3-13. Trends in participation: shoreside processing, shoreside permits, mothership catcher permits. 50
Figure 3-14. Trends in ex-vessel revenues per permit. 51
Figure 3-15. Percent of annual harvest, shoreside sector by week, 2001-2010. 54
Figure 3-16. Percent of annual harvest, mothership sector by week, 2001-2010. 55
Figure 3-17. Maximum weekly fleet and vessel harvests and maximum fleet vessel counts and annual vessel counts in the shoreside whiting sector: 2000-2011. 56
Figure 3-18. Maximum weekly fleet and vessel harvests and maximum fleet vessel counts and annual vessel counts in the mothership whiting sector: 2000-2011. 56
Figure 3-19. Participation Patterns by Limited Entry Permits in the Shoreside Whiting Fishery. 58
Figure 3-20. Participation by limited entry permits in the mothership whiting fishery. 60
Figure 3-21. Participation Patterns by Processors in the Shoreside Whiting Fishery. 61

Figure 3-22. Amounts of shoreside whiting QS permits were allocated in 2011 compared to recent and historic harvests (1994-2003, 2004-2006, and 2007-2010). 70
Figure 3-23. Amounts of shoreside whiting QS permits were allocated in 2011 compared to recent and historic harvests (2007-2010 and 2011). 71
Figure 3-24. Mothership whiting Catch history allocations for 2011 compared to recent and historic harvests (1994-2003, 2004-2006, and 2007-2010). 72
Figure 3-25. Mothership whiting Catch history allocations for 2011 compared to recent and historic harvests (2007-2010 and 2011). 73
Figure 3-26. Amounts of combined shoreside plus mothership whiting quota allocated in 2011 to permit-owning entities compared to recent and historic harvests (1994-2003, 2004-2006, and 2007-2010). 74
Figure 3-27. Amounts of combined shoreside plus mothership whiting quota allocated in 2011 to permit-owning entities compared to recent and historic harvests (2007-2010 and 2011). 75
Figure 3-28. Trends in Whiting Harvest and Landings by Community (PacFIN PCID). 76
Figure 4-1. Key to fishing zones used for tow analysis. 80
Figure 4-2. Westport: tows on trips for vessels departaing from and returning to the same port (one dot per tow, randomly distributed within the region in which the tow occured, blanks indicate confidential areas (arease where fewer than three vessels operated). 82
Figure 4-3. Astoria-Ilwaco: tows on trips for vessels departaing from and returning to the same port (one dot per tow, randomly distributed within the region in which the tow occured, blanks indicate confidential areas (arease where fewer than three vessels operated) 83
Figure 4-4. Newport: tows on trips for vessels departaing from and returning to the same port (one dot per tow, randomly distributed within the region in which the tow occured, blanks indicate confidential areas (arease where fewer than three vessels operated) 86
Figure 4-5. Coos Bay, Crescent City, Eureka: tows on trips for vessels departaing from and returning to the same port (one dot per tow, randomly distributed within the region in which the tow occured, blanks indicate confidential areas (arease where fewer than three vessels operated) 88
Figure 4-6. Shoreside whiting QS allocations to permits, by alternative, compared to each permit's share of shoreside whiting landings in recent and historic periods (permits ordered from lowest initial allocation to highest initial allocation under status quo (No Action) – permit numbers followed by an "N" were not associated with AFA vessel at any time from 1994 through 2011, those with a "Y" were. (Excludes 102 permits that received only equal allocations of 0.04 percent each, for which the allocation does not change among the alternatives. 92
Figure 4-7. Concentration of shoreside whiting QS allocations among entities owning permits by alternative (results ordered from lowest to highest for the No Action alternative).[a/] 99
Figure 4-8. Mothership catcher vessel whiting catch history assignments to permits, by alternative, compared to each permit's share of shoreside whiting landings in recent and historic periods (permits ordered from lowest initial allocation to highest initial allocation under status quo (No Action) – permit numbers followed by an "N" were not associated with AFA vessel at any time from 1994 through 2011, those with a "Y" were. 106
Figure 4-9. Concentration of mothership whiting CHA allocations among entities owning permits, by alternative (results ordered from lowest to highest for the No Action Alternative. 113
Figure 4-10. Combined shoreside and mothership allocations to permits under each alternative (dummy permit numbers are different from other figures). 116
Figure 4-11. Combined mothership and shoreside allocations to permits, except as noted (permits ordered from least to most shoreside allocation under No Action and Alternative 1). 117
Figure 4-12. Combined mothership and shoreside allocations to permits, except as noted (permits ordered from least to most mothership allocation under No Action and Alternative 1). 119
Figure 4-13. 2011 (No Action) QS allocations compared with recent years' deliveries to **shorebased processors** (Note the percentages displayed for historical deliveries have been scaled to 20 percent of actual amounts in order to compare with the QS allocated to processors – processors are allocated 20% of the total shorebased whiting QS). 124

Figure 4-14. Alternative QS allocations compared to historical deliveries to **shorebased processors** during 1998-2004 and 2004-2006. (Note the percentages displayed for historical deliveries have been scaled to 20 percent of actual amounts in order to compare with the QS allocated to processors – processors are allocated 20% of the total shorebased whiting QS)..... 125
Figure 4-15. Magnification of the results for **shorebased processors** for entities displayed toward the left-hand side of Figure 4-14..... 126
Figure 4-16. Magnification of the results for **shorebased processors** for entities displayed toward the right-hand side of Figure 4-14. 127
Figure 4-17. Concentration of shoreside whiting QS allocations among processing entities by alternative, including allocations of QS to processors owning permits (results ordered from lowest to highest processor allocation portion under the No Action alternative, i.e., the same order as in Figure 4-14)..... 132
Figure 4-18. Historic distribution of whiting landings among ports (port involvement in the fishery)... 134
Figure 4-19. Distribution of permits' QS based on principle ports to which permits made deliveries during 2007-2011 (permits not participating during that time are placed in the unknown category)..... 135
Figure 4-20. Distribution of permits' QS allocations among communities based on permit owners' addresses (totals to 80% of all QS). 136
Figure 4-21. Distribution of permits' CHA allocations among communities based on permit owners' addresses. 136
Figure 4-22. Distribution of permits' combined QS and CHA allocations among communities based on permit owners' addresses. 137
Figure 4-23. Whiting QS allocated to processors associated with each port based on the location of processors receiving quota and the distribution of processor's 2011 deliveries among ports. 138
Figure 4-24. Projected whiting quota allocations to processors by port (scaled to 100%) compared with historical involvement in the whiting fishery (**share of round weight**). Quota is distributed based on processor QS allocations and 2011 landings for processors with more than one landing port. 139
Figure 4-25. Projected whiting quota allocations to processors by port (scaled to 100%) compared with historical involvement in the whiting fishery (**share of revenue – exvessel value**). Quota is distributed based on processor QS allocations and 2011 landings for processors with more than one landing port.. 139
Figure 4-26. Port dependence on Pacific whiting landings revenues over historical averages and during recent years. 140
Figure 4-27. Exvessel value equivalent (millions of dollars) of all QP and CHA issued under the trawl rationalization program to permits with some directed whiting catch history. 144
Figure 5-1. Flow chart of steps used to determine the allocation of overfished species (shaded boxes indicate the use of fleet-wide data, unshaded boxes indicate permit-specific data and calculations. 190

CHAPTER 1 INTRODUCTION

1.1 Proposed Action

The proposed action is to reconsider the time period used for determining initial allocations of Pacific whiting made to catcher vessels and shoreside processors participating in the Pacific whiting shoreside and mothership (MS) sectors of the Pacific Coast Groundfish fishery. The allocations were based on each catcher vessel limited entry (LE) permit's historical whiting trips or each shoreside processor's history of whiting deliveries received, as specified in the Amendment 20 trawl rationalization program.

No other regulations will be reconsidered or altered in relation to this proposed action except as necessary to maintain the intent and purpose of other provisions of the program. This includes the intent that QS for bycatch species be allocated for whiting in proportion to the whiting QS allocation.

1.2 Purpose and Need

The purpose of the proposed action is to provide allocations of quota and catch history for Pacific whiting shoreside and MS sectors based on time periods that are consistent with the Magnuson-Stevens Fishery Conservation and Management Act (MSA), other applicable law, and the goals and objectives of the Pacific Coast Groundfish Fishery Management Plan, including Amendment 20 to that plan (the trawl rationalization program).

The need is to reconsider the time period used to determine initial allocations for Pacific whiting shoreside and mothership sectors of the Pacific Coast Groundfish fishery by including in the consideration years after 2003. Reconsideration of the time period is needed because of the court order in *Pacific Dawn v Bryson*, which remanded the regulations addressing the initial allocation of whiting. The court found that the previous decision on this issue failed to adequately consider history beyond 2003 for harvesters and 2004 for processors. Absent this reconsideration, there is a high likelihood that current regulations would be vacated, and there would be a return to the season-based management of whiting harvest that was in place prior to implementation of the trawl rationalization program. Seasonal-based management entails closing the fishery upon attainment of the fishery catch limits. As catch limits decrease, seasons are shortened, and fishermen often begin racing to catch fish before the season closes. When such seasonal management becomes a race, there are numerous adverse biological, social, and

economic consequences, including the potential for higher mortality of overfished and endangered salmon species, decreased safety, higher harvest costs, and lower product quality.

1.3 Background

In January 2011, NMFS implemented the trawl rationalization program for the Pacific coast groundfish fishery's trawl fleet (see 75 FR 78344; Dec. 15, 2010). The program was adopted through Amendment 20 to the Pacific Coast Groundfish Fishery Management Plan (FMP) and consists of an individual fishing quota (IFQ) program for the shoreside trawl fleet (including whiting and non-whiting fisheries) and cooperative (coop) programs for the at-sea mothership (MS) and catcher/processor (C/P) trawl fleets (whiting only). Allocations to the LE trawl fleet for certain species were developed under Amendment 21 to the FMP, also implemented in 2011.

1.3.1 Previous Deliberations

The Council's original deliberations on the trawl rationalization program began with its decision to put the issue on the agenda at its September 2003 meeting. At its November 2003 meeting it took action to announce a control date and initiate development of the rationalization program. After convening five special committees solely for the purpose of working on the trawl rationalization program, and after 52 Council and committee meetings over the course of five years, the Council reached a final decision at its November 2008 meeting. After taking final action there were a few details that needed completion (e.g., setting maximum accumulation limits). The Council determined that the package was ready for submission for approval at its June 2009 meeting.

The following two tables identify the special committees working on this issue (one of which was convened for other issues as well, the Groundfish Allocation Committee) and the meetings held.

Table 1-1. Description of committees involved in trawl rationalization program development.

Committee Name	Composition and Function
Groundfish Allocation Committee (GAC)	Six voting members are drawn from the Council; seven nonvoting members drawn from stakeholders. Provides high level policy guidance and refinement of alternatives for consideration by the full Council.
Ad Hoc Groundfish TIQ Committee (TIQC)	Seventeen members drawn from stakeholders; principally fishing and processing interests. Involved in the initial development of program features; provides stakeholder perspective on program development.
Ad Hoc TIQ Analytical Team	Council and agency staff and consultants conducting NEPA analysis. This group held several public meetings early in the process to discuss how the impact analysis would be done. Composition subsequently changed to include mainly agency and Council staff with most work occurring internally.
Ad Hoc TIQ Enforcement Group	Drawn from the standing Enforcement Consultants committee to review and advise on practicality of program features in terms of enforceability.
Ad Hoc Trawl Rationalization Tracking and Monitoring Committee	Management and enforcement agency staff at the state and Federal level; charged with developing program options for monitoring and enforcement.
Ad Hoc TIQ Independent Experts Panel	Five academic experts with expertise in fishery science, economics. Provides external review of program features.

Table 1-2. Committee and Council meetings related to trawl rationalization program development.

Date	Committee	Subject
September 11, 2003	Council meeting, Agenda Item C.10[a]	Initiated development of a TIQ program, which later became the trawl rationalization program.
October 28-29, 2003	Ad Hoc TIQC	Began development of alternatives for an individual quota program to cover LE trawl landings in the west coast groundfish fishery. Established committee charge, decision rules, and purpose, need, and objectives for an individual quota program.
November 6, 2003	Council meeting, Agenda Item D.12	Provided guidance based on Ad Hoc TIQC report and considered establishing a new control date.
March 18-19, 2004	Ad Hoc TIQC	Continued development of alternatives.
March 24-25, 2004	GAC[b]	Discussed allocations necessary to support trawl sector IFQs.
April 9, 2004	Council meeting, Agenda Item C.16	Provided further guidance on program development and discussed issue of latent permits.
May 25-26, 2004	Ad Hoc Groundfish TIQ Enforcement Group	Conducted preliminary scoping on types of enforcement programs that would be necessary for a groundfish trawl IFQ program, information needs, and landings tracking and monitoring systems.
June 8-9, 2004	Ad Hoc TIQ Analytical Team Ad Hoc Groundfish TIQ Independent Experts Panel	Conducted preliminary scoping on the types of impacts to be considered and analytical methods used in a groundfish trawl DAP EIS. Related data collection issues also discussed.
June 17, 2004	Council meeting, Agenda Item C.9	Heard committee reports, discussed need for programmatic EIS, and approved scoping information document for public distribution.
July 1-2, 2004	Ad Hoc TIQ Analytical Team	Continued work from previous meeting.
September 7-8, 2004	Ad Hoc TIQ Analytical Team	Reviewed results from public scoping plan and progress on analytical tasks; discussed organization and assignments for EIS.
September 17, 2004	Council meeting, Agenda Item C.11	Heard progress report and results of public scoping, provided guidance on committee work and composition, and intersector allocation.
September 22-23, 2004	Ad Hoc Groundfish TIQ Independent Experts Panel	Reviewed scoping information document and comments received during recently completed NEPA public scoping period to determine whether there were significant options and impacts not yet identified that, in the Experts Panel's view, should be considered by the Council.
September 28, 2004	Ad Hoc Groundfish TIQ Enforcement Group	Reviewed enforcement program alternatives developed at its previous meeting in the light of comments received during the recently completed NEPA scoping period and worked on developing a general assessment of the costs for status quo enforcement and levels of enforcement that might be required for different individual quota enforcement programs.

Date	Committee	Subject
October 25-26, 2004	Ad Hoc TIQC	Reviewed results from public scoping and some preliminary analysis and refined recommendations to the Council.
November 3-4, 2004	Council meeting, Agenda Item E.6	Provided guidance for the evaluation of a preliminary range of alternatives.
November 17-18, 2004	Ad Hoc TIQ Analytical Team	Reviewed the Council action from the November 2004 Council meeting; planned the next analytical tasks.
January 27, 2005	GAC*	Discussed allocations necessary to support rationalization.
February 23-24, 2005	Ad Hoc TIQC	Continued review of results from public scoping and some preliminary analysis; refined recommendations to the Council.
May 2-3, 2005	GAC	Discussed rationalization alternatives with attention to intersector allocation.
May 10-11, 2005	Ad Hoc TIQC	Developed recommendations on program design.
June 16, 2005	Council meeting, Agenda Item C.5	Approved range of alternatives for analysis.
October 30, 2005	Ad Hoc TIQC	Provided guidance on measures to mitigate impacts to communities.
November 3, 2005	Council meeting, Agenda Item H.11	Received update on progress of program development, provided guidance on measures to mitigate impacts to communities.
November 14-15, 2005	GAC	Discussed allocations necessary to support rationalization.
March 16, 2006	Ad Hoc Groundfish TIQ Independent Experts Panel	Reviewed and commented on preliminary internal draft document that consultants developed for a public workshop (see below) on approach for analysis of TIQ alternatives.
April 18-20, 2006	Public Workshop on Trawl Individual Quota Analysis	Conducted workshop to review and receive comments from the public and Council advisory bodies on the first stage of the draft analytical package developed by consultants.
June 11, 2006	Ad Hoc TIQC	Developed recommendations on structure of alternatives and program design.
June 15, 2006	Council meeting, Agenda Item F.3	Reviewed draft of the preliminary (Stage 1) analysis and provided recommendations on refinements to analytical approach. Drafting of the EIS was divided into two stages due to budget constraints. Stage 1 was an analytical framework for the EIS.
September 10, 2006	Ad Hoc TIQC	Reviewed stage 1 document (analytical framework). Provided guidance.
September 14, 2006	Council meeting, Agenda Item C.7	Reviewed Stage 1 document (analytical framework). Provided guidance on a process to revise and simplify the alternatives for Stage 2 analysis. Added alternative for cooperatives in Pacific whiting fishery.

Date	Committee	Subject
October 18-19, 2006	GAC	Provided guidance on development of alternatives for allocation between trawl and nontrawl sectors necessary to support rationalization.
November 6-8, 2006	Ad Hoc TIQC	Reviewed and further developed alternatives under analysis, with particular emphasis on co-op alternatives for whiting sectors; reviewed GMT comments from September 2006 Council meeting.
November 16, 2006	Council meeting, Agenda Item D.7	Adopted preliminary alternatives for intersector allocation, which supports trawl rationalization (to be analyzed in a separate NEPA document).
December 12-14, 2006	GAC	Recommended restructuring and narrowing the range of alternatives to be considered for rationalization.
February 20-22, 2007	Ad Hoc TIQC	Reviewed and further developed alternatives under analysis, with particular emphasis on GAC report from GAC's December meeting and GMT comments from GMT's January 2007 meeting.
March 8, 2007	Council meeting, Agenda Item E.4	Modified and simplified alternatives based on GAC and other committees' recommendations. Adopted revised goals and objectives for the program. Added feature to Pacific whiting cooperative alternative to cover shore-based sector.
May 2-4, 2007	Ad Hoc TIQC	Reviewed and further developed alternatives under analysis, particularly with respect to alternatives for whiting sector vessel co-ops.
May 15-17, 2007	GAC	Developed recommendations for further refinement of trawl rationalization alternatives.
June 13, 2007	Ad Hoc TIQC	Further refined the trawl rationalization alternatives.
September 25-27, 2007	GAC	Developed recommendations for further refinement of trawl rationalization alternatives and intersector allocation alternatives.
October 11-12, 2007	Ad Hoc TIQC	Reviewed and further developed trawl rationalization alternatives under analysis.
November 7-9, 2007	Council meeting, Agenda Items D.5 and D.7	Adopted range of intersector allocation alternatives for analysis. Refined and finalized trawl rationalization alternatives for analysis.
November 30, 2007	Ad Hoc Trawl Rationalization Tracking and Monitoring Committee	Provided agency guidance and perspectives on design constraints and scoped likely impacts of alternative configurations of tracking and monitoring systems for trawl rationalization.
February 13, 2008	Ad Hoc Trawl Rationalization Tracking and Monitoring Committee	Provided agency guidance and perspectives on design constraints and scoped likely impacts of alternative configurations of tracking and monitoring systems for trawl rationalization.
February 20-22, 2008	GAC	Considered draft alternatives (and other material for trawl rationalization) and intersector allocation alternatives.

Date	Committee	Subject
April 7-12, 2008	Council meeting, Agenda Item H.3	Deferred selection of preferred alternative for intersector allocation to support trawl rationalization until March 2009.
May 13-15, 2008	GAC	Developed advice a preferred alternative for the Council's June 2008 decision.
May 15-16, 2008	Ad Hoc TIQC	As above for the GAC.
June 8-13, 2008	Council meeting, Agenda Item F.6	Selected preliminary preferred alternative for trawl rationalization program.
October 8-9, 2008	GAC	Developed recommendations to the Council on preferred trawl rationalization alternative, on which the Council was scheduled to take final action at the November 2008 Council meeting.
November 1-7, 2008	Council meeting, Agenda Item F.3	Selected preferred alternative for trawl rationalization program.
January 27-29, 2009	GAC	Developed recommendations on accumulation and control limits for IFQs.
March 7-13, 2009	Council meeting, Agenda Item G.3	Provided guidance on eligible to own provisions and clarified aspects of its November 2008 decision.
April 2-9, 2009	Council meeting, Agenda Items F.4 and F.5	Clarified action on adaptive management program, community fishing associations, and other miscellaneous issues.
May 5-7, 2009	GAC	Considered options for adaptive management program and community fishing associations, vessel and control limits for Pacific halibut and IFQs, FMP amendment language, and other miscellaneous items.
June 11-19, 2009	Council meeting, Agenda Items E.10 – E.12	Took final action on outstanding issues for trawl rationalization program.
October 31-November 5, 2009	Council meeting, Agenda Item G.8	Modified the initial allocation formula for canary rockfish IFQs.
March, April, and June 2010	Council meetings	Council reviews proposed regulations for program implementation and deems them necessary and appropriate.

[a]Briefing materials provided at each Council meeting are available at http://www.pcouncil.org/bb/bbarchives.html. The materials constitute a substantial part of the record of the development of the program. Council meeting minutes, summarizing Council discussion and decisions, are available at http://www.pcouncil.org/minutes/cminutes.html.
[b]The GAC was originality constituted as the Ad Hoc Allocation Committee. It was converted to a standing committee in March 2005.

1.3.2 Recent Developments

The Amendment 20 (trawl rationalization) rules became the subject of litigation, in Pacific Dawn, LLC v. Bryson, No. C10-4829 TEH (N.D. Cal.). The plaintiffs, quota share and fishing vessel owners and fish processers represented by the named party, Pacific Dawn, LLC, challenged several aspects of the rules, but in particular the initial allocation of whiting QS in the shoreside IFQ fishery and catch history assignment (CHA) for the mothership fishery. Following a decision on summary judgment that NMFS

had not considered recent data in setting its initial whiting allocations, on February 21, 2012, Judge Henderson issued an order remanding the regulations setting the initial allocation of whiting for the shoreside IFQ fishery and the at-sea mothership fishery "for further consideration" consistent with the court's December 22, 2011, summary judgment ruling, the MSA, and all other governing law. The Order also requires NMFS to implement revised regulations setting the quota before the 2013 Pacific whiting fishing season begins on April 1, 2013.

1.4 Council and Agency Process for Reaching Final Action

On February 29, 2012, NMFS informed the Pacific Fishery Management Council (Council) of the order issued in Pacific Dawn, LLC v. Bryson (see Section 1.3.2) and requested that the Council initiate the reconsideration of the initial allocations for QS of whiting in the shoreside IFQ fishery and for whiting CHA in the at-sea mothership fishery. NMFS also requested the Council schedule this issue to be discussed at its April, June, and September 2012 meetings. Further, NMFS informed the Council that a rulemaking was needed to delay or revise portions of the existing regulations pertaining to QS and CHA transferability and divestiture requirements while the Council and NMFS reconsidered the initial allocation of whiting. NMFS also informed the Council of its intent to publish an Advance Notice of Proposed Rulemaking (ANPR) on the reconsideration.

At its March 2012 meeting, the Council added reconsideration of the allocation of whiting to the agenda for its April, June, and September 2012 meetings.

NMFS published an ANPR on April 4, 2012 (77 FR 20337) that, among other things, announced the court's order, the Council meetings that would be addressing the whiting reconsideration, and NMFS' plan to publish two rulemakings in response to the court order. These two rulemakings are referred to as Reconsideration of Allocation of Whiting, Rules 1 and 2. The first rulemaking was to delay and revise several portions of the regulations while NMFS and the Council reconsidered the initial allocation of whiting, and until NMFS implements any necessary new regulations in response to the court order. The second rule will implement the regulations which result from the reconsideration process. For the first rulemaking, NMFS used emergency action authority under the MSA 305I(1); the second rule will go through the standard Council process followed by a proposed and final rule.

At its April 2012 meeting, the Council adopted a set of alternatives for analysis.

In June, the Council reviewed analysis and refined alternatives but decided to forgo selection of a preliminary preferred alternative. It also made recommendations that the QS trading moratorium be extended and CHA severability from permits be delayed until this reconsideration is completed. Further, it recommended that a portion of the start of year QP issuance be delayed in 2013, to allow time for the implementation of any recommendations to reallocate QS/CHA pursuant to the outcome of deliberations on the alternatives covered in this EA.

On August 1, 2012, the National Marine Fisheries Service (NMFS) published the first of the two rules announced in the April 4, 2012, ANPR: an emergency rule affecting "the transfer of Quota Share (QS) and Incidental Bycatch Quota (IBQ) between QS accounts in the shoreside individual [individual fishing quota] IFQ fishery, and severability in the mothership fishery, both of which will be delayed until NMFS can implement any necessary new allocation regulations required by the court's order" (FR 77(148): 45508-45512). This rule also provided for the delay of start of year QP issuance recommended by the Council.

At its September meeting, the Council chose the final preferred alternative contained in this document (No Action). The Council also recommended: (1) revisions to the moratorium on quota share trading, (2)

a delay in the beginning of severability for the mothership whiting CHA/whiting endorsements, (3) and lengthening of the divestiture period. The second Reconsideration of Allocation of Whiting rule addressed these recommendations, and a proposed rule published January 2, 2013 (78 FR 72).

On October 30, 2012, NMFS received transmittal of the Council's decision to select the no action alternative for Pacific whiting allocation as its final preferred alternative (FPA), which initiated agency review of the action. NMFS reviewed the Council's action for consistency with the Magnuson-Stevens Act and other applicable law and published a proposed rule in the *Federal Register* on January 2, 2013 (78 FR 72). The proposed rule requested comments on NMFS' preliminary conclusion that the Council's selection of the no action alternative was consistent with the Magnuson-Stevens Act and other applicable law. The comment period closed on February 1, 2013. NMFS received 19 letters of comment on the proposed rule, submitted by individuals or organizations, including a letter of no comment from the Department of Interior. One meeting was held with stakeholders who provided comments similar to those they submitted. Comments were divided between those opposed to NMFS proposal to maintain the original allocation periods and those in support of the agency's proposal. After considering public comment on the proposed rule and the record as a whole, NMFS has made the final decision that the no action/ status quo alternative is consistent with the requirements of the MSA and other applicable law and policy considerations.

CHAPTER 2 DESCRIPTION OF ALTERNATIVES

2.1 Alternatives

There are four action alternatives under consideration in addition to the No Action alternative for this proposed action. *Unless a change is included as part of an alternative, all other aspects of the trawl rationalization program, including the initial allocation provisions would remain in place* (e.g. provisions specifying that the "relative history" will be used in the allocation formula and that a permit's two worst years will be dropped from the calculation). The alternatives are as follows.

2.1.1 No Action Alternative - Preferred

Under the Amendment 20 IFQ program for the shoreside fishery, 80 percent of the whiting QS was allocated among LE permits and 20 percent among processors that met recent participation requirements. Shoreside participants were issued QS permits. For the mothership sector, 100 percent of the catch history assignments went to qualified mothership catcher vessel endorsed LE permits. A portion of the whiting QS allocated among LE permits was allocated based on landings history on whiting trips from 1994 through 2003 (CFR 660.140(d)(8)(iv)I(2)). All of the whiting QS allocated among qualified processors was allocated based on whiting deliveries received from 1998 through 2004 (CFR 660.140(d)(8)(iv)(G)), and all of the mothership catch history assignments made to mothership catcher vessel endorsed LE permits were allocated based on whiting deliveries made from 1994 through 2003 (CFR 660.150(g)(6)(iii)(B)).

Portion of the Shoreside QS Allocated to Catcher Vessels Based on Limited Entry Permit History for Whiting Trips: Of the 80 percent of the whiting QS allocated among LE permits, 99.9 percent was allocated based on landings history in the primary whiting fishery with the remainder (0.1 percent) allocated based on whiting landings outside of the primary whiting fishery. Of the 99.9 percent, 7.2 percent was allocated equally among all permits (an amount equivalent to the share of primary whiting fishery landings history associated with the permits that were retired in the 2003 buyback program), and the remainder (92.8 percent) was allocated among permits based on each permit's landings history of whiting on whiting targeted trips. The period used to allocate the 92.8 percent of whiting QS allocated for landings on whiting trips was 1994 through 2003.

2.1.2 Action Alternatives

The action alternatives (Alternatives 1-4) being considered would change which years are included in the landings history-based portion of the allocation formula applied to whiting trips for LE permits (CFR 660.140(d)(8)(iv)I(2) and CFR 660.150(g)(6)(iii)(B)) and the allocation formula for whiting deliveries for processors (CFR 660.140(d)(8)(iv)(G)). Alternative 1 changes the end year from 2004 to 2003 for the shoreside whiting processors, making it the same as for the other two allocation groups under No Action. Alternatives 2 and 3 change the end year for all three allocation groups to 2007 and 2010, respectively. Alternative 4 changes the initial year to 2000 and the end year to 2010 for all three allocation groups.

The alternatives for the allocation periods, including the No Action alternative, are as follows.

Initial Allocation Group	Years Used for History-based Allocation for Whiting Trips				
	Alternatives				
	No Action	Alt 1: thru '03	Alt 2: thru '07	Alt 3: thru '10	Alt 4: thru '10
Catcher Vessel Permits – Shoreside History	1994-2003	1994-2003	1994-2007	1994-2010	2000-2010
Whiting Processors – Shoreside History	1998-2004	1998-2003	1998-2007	1998-2010	2000-2010
Catcher Vessel Permits – Mothership History	1994-2003	1994-2003	1994-2007	1994-2010	2000-2010

2.1.2.1 Corresponding Adjustments to the Amendment 20 Trawl Rationalization Program

If an action alternative is selected (Alternatives 1 through 4), the following additional adjustments to the quota share distributions and existing regulations would need to be made to implement a change in the whiting trip allocation period and whiting QS distributions, while being consistent with the purposes of the program.

Eligibility for Allocations and Terminology

The original QS allocations for harvesters were made among owners of LE permits for catcher vessels. After a QS allocation for each of the 167 qualified LE permits was calculated, 138 QS permits were issued. If an LE permit owner owned multiple LE permits, they were issued one QS permit which combined the QS allocated to each LE permit. A QS account corresponding to that QS permit was then created and QS and associated quota pounds (QP) deposited to the account. Since the time of the initial allocation, LE permits for vessels have been traded while there has been no trading of QS (due to the prohibition on QS trading[1]). In order to achieve a reallocation among those initially receiving the allocations, QS will be reallocated among the current owners of the QS permits and associated accounts rather than among LE permits for vessels. However, to simplify the discussion in this EA and its correspondence to other documents, throughout this EA the discussion references allocations among LE permits for vessels. Unless specifically noted otherwise, all references to "permits" are references to catcher vessel LE permits; however, any changes in initial allocation will redistribute QS among accounts of QS permit owners based on the application of the allocation formula to the history of the original vessel LE permit(s) that generated the QS in the QS account. The QS percentages listed in QS accounts are always derived from the QS permit. A regulatory adjustment will be needed to achieve this result.

Similar changes are not needed for the whiting QS allocated to processors or the catch history allocations for permits with history delivering whiting to motherships. For processors, QS permits and corresponding QS accounts were established for companies with processing history, and those permits and accounts are still associated with those same companies. For mothership catcher vessels, catch history allocations were assigned to vessel LE permits and are still associated with those same permits. Implementation of provisions which would allow mothership catcher vessel endorsements and associated catch history assignments to be transferred separately from the LE permit has been delayed pending resolution of action on whiting QS reallocation.

Redistribution of Nonwhiting Species QS

In addition to the redistribution of whiting QS, the portion of the non-whiting species QS that is allocated to LE permit holders in proportion to the whiting QS they received for whiting trips would be redistributed among permits to maintain pro-rata proportions, e.g., if a permit is allocated 1 percent of the total whiting QS allocated for whiting trips, then it will also receive 1 percent of the widow rockfish QS that is allocated pro-rata for whiting trips (CFR 660.140(d)(8)(iv)I(2).[2] Allocations of non-whiting species were not made to shoreside processors or to permits in the mothership sector co-op program.[3]

The following portions of the initial allocations would not be affected by this action.

- The portion of the initial QS allocation distributed based on trips that were not targeting on whiting.
- The portion of the initial QS allocation that was distributed equally among all permits.

Permits for which the landings-based portion of the allocation was based entirely on nonwhiting trips would not be affected by this action. For those permits receiving an initial allocation based on both

[1] The moratorium on QS trading was set to expire at the end of 2012 but has been extended to accommodate reallocation of QS for whiting trips.
[2] The amount to be allocated on a prorata basis is 100 percent, minus the amount allocated for nonwhiting permits, minus the amount allocated equally.
[3] The mothership sector as a whole is limited by sector set-asides for nonwhiting species.

whiting and nonwhiting trips, the portion of the allocation based on nonwhiting trips would not be affected, and the portion of the allocation for whiting trips that was allocated equally among all permits would also not be affected.

Processor Recent Participation

If the allocation period is extended, the regulatory language on the "recent participation requirement" for processors would also be adjusted (PFMC 2010). The recent participation requirement in the regulations is: "received deliveries of at least 1 metric ton of whiting from whiting trips in each of any two years from 1998 through 2004" (CFR 660.140(d)(8)(iv)(G)(1)). Given that this recent participation requirement covered seven years, for each of the above alternatives the recent participation periods would be adjusted to cover the last seven years of the allocation period, with one exception. For the purpose of analysis, the Council is looking at one option that would start the recent participation period seven years before the end of the allocation window but end it just prior to the Council final action on trawl rationalization (a 2004-2007 recent participation period). This option is paired with Alternative 3s 1998-2010 allocation period. Thus under Alternative 3, processors entering after 2006 would not qualify for an allocation (entry by 2006 would be required in order to meet the criteria requiring two years of deliveries during the recent participation period), but qualifying processors would receive credit for additional years of deliveries up through 2010. The recent participation requirement period for processors with each option would be as follows.

Whiting Processors	Adjusted **Recent Participation Requirement** for Each Alternative				
	Alternatives – receive deliveries of at least 1 mt of whiting from whiting trips in any of two years from				
	No Action	Alt 1: thru '03	Alt 2: thru '07	Alt 3: thru '10	Alt 4: thru '10
Allocation Period	1998-2004	1998-2003	1998-2007	1998-2010	2000-2010
Recent Participation Period	1998-2004	1998-2003	2001-2007	2004-2007	2004-2010

Note that because under No Action (1998-2004) the allocation period and the recent participation period for processors are identical, the recent participation period became more of a minimum threshold than a true recent participation requirement. A similar situation applies for Alternative 1, except the recent participation requirement is shortened to six years because the allocation period is only six years.

Mothership Catcher Vessel Whiting Endorsement

Regulatory language would be adjusted so that the 500 mt minimum qualification level would be applied to the final allocation qualification periods. Mothership catcher vessels were required to qualify for a whiting endorsement in order to be allocated a mothership catch history assignment. Qualification for such an endorsement required delivery of a total of 500 mt of whiting to motherships from 1994 through 2003. Whichever allocation period is selected, a vessel would be required to have delivered at least 500 mt in that period to qualify for a mothership catcher vessel endorsement and catch history assignment.

Equal Allocation

Regulatory language would be adjusted such that the amount of shoreside QS allocated equally among permits will not change. Currently, the equal allocation element is specified as: "the buyback permit history as a percent of the total fleet history for the allocation period" (CFR 660.140(d)(8)(iv)(B)(2)(i)). The status quo allocation period and, consequently, the period used for determining the equal allocation portion of the QS allocation, is 1994-2003. The buyback program was completed in 2003; therefore, for each year after 2003, the share accounted for by the buyback permits would be zero. Inclusion of years

after the buyback period would substantially reduce the portion of QS allocated equally, altering that aspect of the equity balance of the allocation formula. The purpose here is to reconsider only that portion of the allocation on which the allocations specific to individual permit history are based. For this reason, if there is a change from status quo, in order to stay consistent with the original program, the regulations on the amount of QS to be allocated equally would be adjusted to reference the 1994-2003 period instead of "the allocation period." There is no equal allocation component in the allocation formulas for shoreside processors or mothership catcher vessels.

2.1.3 Summary of Alternatives Adopted for Analysis and Allocations Affected

Table 2-1 summarizes the alternatives adopted by the Council for analysis. The Council also decided that the allocation periods for the mothership catcher vessel history should match the allocation period used for the shoreside history.

Table 2-1. Alternatives adopted for analysis (June 2012).

Initial Allocation Group	Years Used for History Based Allocation for Whiting Trips				
	Alternatives				
	No Action	Alt 1: thru '03	Alt 2: thru '07	Alt 3: thru '10	Alt 4: thru '10
Catcher Vessel Permits – Shoreside History	1994-2003	1994-2003	1994-2007	1994-2010	2000-2010
Whiting Processors – Shoreside History	1998-2004	1998-2003	1998-2007	1998-2010	2000-2010
– Corresponding Processor Recent Participation Period[a/]	1998-2004	1998-2003	2001-2007	2004-2007	2004-2010
Catcher Vessel Permits – Mothership History b/	1994-2003	1994-2003	1994-2007	1994-2010	2000-2010

a/ Processor Recent Participation Requirement: 1 mt of deliveries required in each of two years during the recent participation period.
b/ Permits are required to land at least 500 mt in total during the indicated allocation period in order to qualify for an whiting endorsement and catch history allocation.

With respect to the whiting quota shares (QS), changing the allocation period would only affect certain parts of the initial whiting QS allocation, that portion allocated based on catch history of whiting targeted trips. As a consequence of the change in the whiting QS allocations, the portion of the nonwhiting QS distributed to cover bycatch on whiting trips would be reallocated as well. Nonwhiting QS to cover bycatch on whiting trips was allocated proportionally to the whiting QS. Processors were not provided with an initial allocation of nonwhiting species.

The following figure provides a flow chart showing the steps by which QS is distributed to groups and allocated among initial recipients. The steps affected by a change in the allocation period for whiting are identified with shading. The steps in which the allocation period directly affects the calculation are shown with a bold border. The end result for each group of recipients, and species group, is indicated by a round-edged box.

The 20 percent whiting QS allocated to processors (Box 1 in the figure) may be reallocated among shoreside processors (potentially including some processors that did not previously qualify) with a change in the processor allocation period. Of the 80 percent whiting QS allocated among permits, 0.01 percent goes to cover whiting bycatch on non-whiting trips and 99.9 percent goes to cover whiting on whiting-

directed trips. Taking 99.9 percent of that 80 percent yields the 79.92 percent of the total whiting QS to be allocated for whiting-directed trips (Box 2.2). Of this 79.92 percent, 7.2 percent is allocated equally among all permits and 92.8 percent allocated based on a permit's whiting history. Taking 92.8 percent of that 79.92 percent yields the 74.17 percent of the total whiting QS, which may be subject to reallocation with a change in the initial allocation period for permits (Box 2.2.2).

2.1.3.1 Terminology Note

With respect to the allocations to vessel limited entry permits, the catch history and reallocations discussed in this document are those related to whiting targeted trips, unless otherwise noted (Boxes 2.2 and 2.2.2 in Figure 2-1).

As a consequence of the reallocations of whiting, the nonwhiting QS allocated proportionally to whiting would change (Box 4.1.1). This amount varies by species. The figure uses as an example the 1.8 percent of the sablefish north QS which is allocated to cover sablefish bycatch on whiting trips.

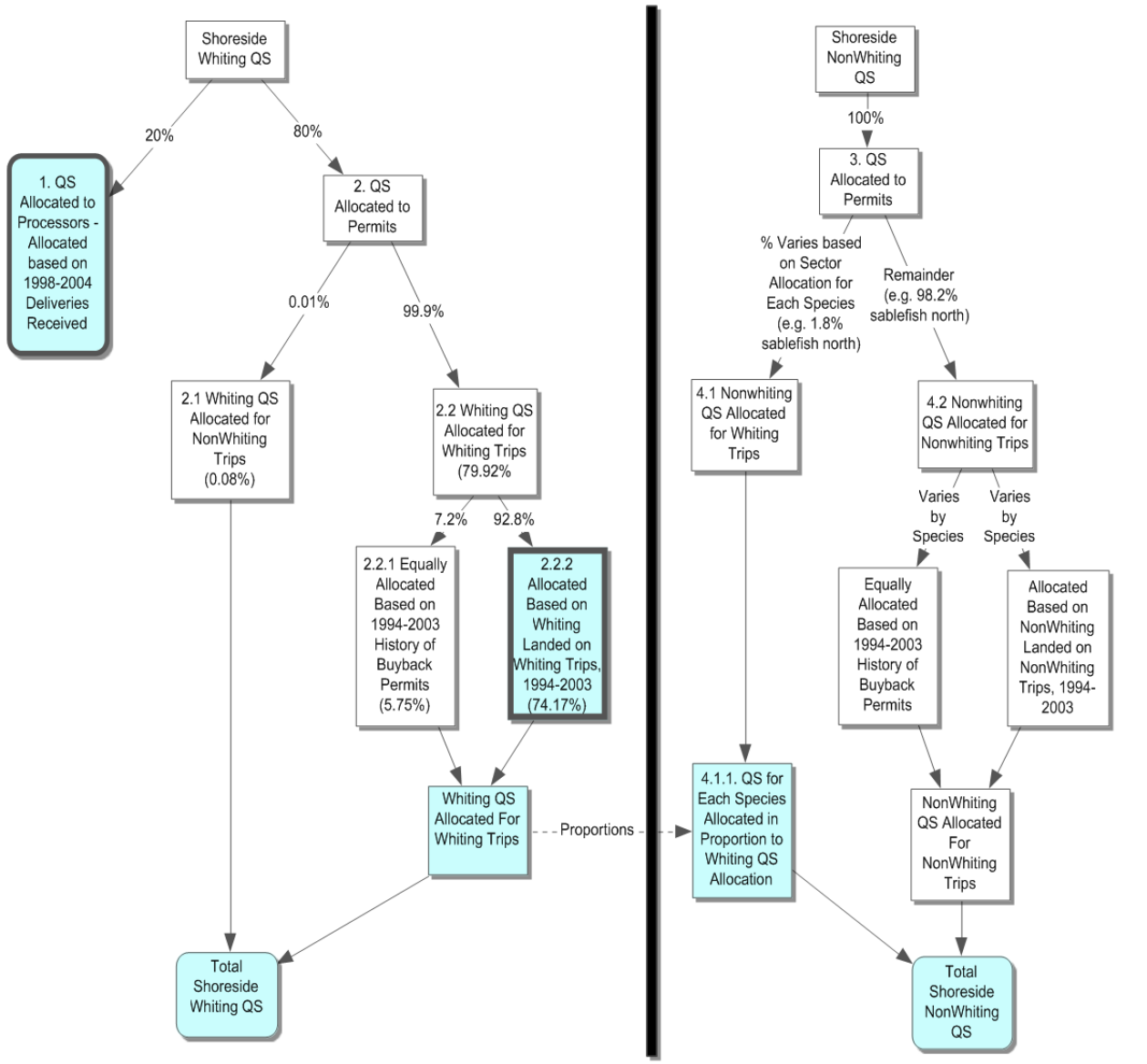


Figure 2-1. Steps in the QS allocation calculations for shoreside whiting QS and nonwhiting QS (heavy boundary boxes indicate the steps in the calculations directly affected by a change in the allocation period, shaded boxes indicate the steps for which calculation results would be affected, and rounded boxes are the final steps in the allocation calculations).

2.1.4 Alternatives Considered But Rejected From Further Analysis

The following alternatives were considered but rejected from further analysis because, in the case of increasing the number of drop years, any increase would unfairly disadvantage those with the longest history in the fishery. Modifications to the other alternatives analyzed were rejected for the reasons described below. In written comment received at the April 2012 Council meeting, it was suggested that in

conjunction with the extension of the ten-year allocation period from five to seven years under certain alternatives, the number of worst years a permit would be allowed to drop from its catch history calculation should be increased from two to four. The drop year provision was provided to account for mechanical breakdowns, major illnesses, or other hardships that might temporarily affect a vessel's ability to participate in the fishery. In part, the provision was viewed as an alternative to creating a cumbersome and costly review and appeal process. The provision also provided an opportunity for more recent entrants to accumulate catch history approaching that of longer-term participants. The Council felt that not extending the number of drop years would be appropriate because it would accommodate more breakdowns, health problems, or other hardships than would be expected for a truly fishery-dependent vessel. The Council further noted that dropping years hurts those participants that showed consistent dependence on the fishery by fishing every year during the allocation period. Additionally, landings history would be attached to the permit rather than to a vessel. Thus, disablement of a vessel would not have prevented the owner from transferring the permit onto another vessel to maintain involvement in the fishery while repairs or refitting were being completed.

Initially (June 2012), Council staff suggested that the Alternative 3 allocation period for processors (1998-2010) be matched with a 2004-2010 period for the recent participation period requirement. Because Alternative 4 already included a 2004-2010 recent participation period, to broaden the analysis, the Council asked for analysis of a 2004-2007 recent participation period under Alternative 3.

In written comment received at the April 2012 Council meeting, the following alternative base periods were suggested for consideration: 2001-2010, 2000-2009, and 1999-2008. The Council adopted for consideration a 2000-2010 base period. This alternative split the difference among the alternatives with respect to the initial year for the allocation period, and selected 2010 (the most recent year) for the end year of the allocation period. Narrowing the number of alternatives while covering a reasonable range of years was intended to focus the analysis and public discussion. Data in the analysis will show annual participation by permits moving into and out of the fishery, providing a sense of how performance of the alternatives might vary depending on whether the bookend years of the allocation period are changed slightly.

CHAPTER 3 DESCRIPTION OF THE AFFECTED ENVIRONMENT

To allow the Pacific whiting industry to have the opportunity to harvest the full Pacific whiting OY, the nontribal commercial fishery is managed with whiting sector specific bycatch limits for certain overfished species. To date, bycatch limits have been established for darkblotched, canary, and widow rockfish. Regulations provide for the automatic closure of the commercial (nontribal) portion of the Pacific whiting fishery upon attainment of a bycatch limit.

Incidental take of endangered or threatened salmon runs is another concern for the Pacific whiting fishery. Chinook is the salmon species most likely to be affected, because of the spatial/temporal overlap between the Pacific whiting fishery and the distribution of Chinook salmon that could result in incidental take of listed salmon. The discussion below is taken from: *Final EA on Trailing Actions for Pacific Coast Groundfish Trawl Rationalization Program* ((PFMC 2010)) and from the 2013-2014 Biennial Spex FEIS (PFMC and NMFS 2012).

3.1 Physical Environment, including Habitat and Ecosystem

3.1.1 West Coast Marine Ecosystems

The California Current Ecosystem (CCE) is loosely defined as encompassing most of the U.S. and Canada west coasts, from the northern end of Vancouver Island, British Columbia, to Point Conception, California. The trophic interactions in the CCE are extremely complex, with tremendous fluctuations over years and decades (Mann and Lazier 1996; Parrish, *et al.* 1981). To some degree, food webs are structured around coastal pelagic species (CPS) that exhibit boom-bust cycles over decadal time scales in response to low frequency climate variability (Bakun 1996) (Schwartzlose, *et al.* 1999), although this is a broad generalization of the trophic dynamics. Similarly, the top trophic levels of such ecosystems are often dominated by highly migratory species such as salmon, albacore tuna, sooty shearwaters, fur seals and baleen whales, whose dynamics may be partially or wholly driven by processes in entirely different ecosystems, even different hemispheres. For this description of the affected environment, the ecosystem is considered in terms of physical and biological oceanography, climate, biogeography, and essential fish habitat (EFH). A more detailed description of these elements of the environment is found in the FEIS for the final harvest specifications for 2009-2010 (PFMC 2008a).

3.1.2 Physical and Biological Oceanography

A divergence in prevailing wind patterns causes the west wind drift (North Pacific Current), when it reaches the North American Continent, to split into two broad coastal currents, the California Current to the south and the Alaska Current to the north. As there are really several dominant currents in the California Current region, all of which vary in geographical location, intensity, and direction with the seasons, this region is often referred to as the California Current System (Hickey 1979). A more detailed description of the physical and biological oceanography of west coast marine ecosystems can be found in Volume 1 of the 2008 SAFE document (PFMC 2008b).

3.1.3 Interannual and Interdecadal Climate Forcing

The effects of climate on the biota of the California Current ecosystem have been recognized for some time (Hubbs 1948). The El Niño/Southern Oscillation (ENSO) is widely recognized to be the dominant mode of interannual variability in the equatorial Pacific, with impacts throughout the rest of the Pacific basin and the globe (Mann and Lazier 1996). During the negative (El Niño) phase of the ENSO cycle, jet stream winds are typically diverted northward, often resulting in increased exposure of the west coast of the U.S. to subtropical weather systems. The impacts of these events to the coastal ocean generally include reduced upwelling winds, deepening of the thermocline, intrusion of offshore (subtropical) waters, dramatic declines in primary and secondary production, poor recruitment, reduced growth and survival of many resident species (such as salmon and groundfish), and northward extensions in the range of many tropical species (McGowan, *et al.* 1998; Pearcy 2002; Pearcy and Schoener 1987; Wooster, *et al.* 1985). There is reduced availability of many forage species, particularly market squid, and juvenile survival of most rockfish is extremely low. Concurrently, top predators such as seabirds and pinnipeds often exhibit reproductive failure. In addition to interannual variability in ocean conditions, the North Pacific seems to exhibit substantial interdecadal variability, which is referred to as the Pacific (inter) Decadal Oscillation (PDO).

Within the California Current itself, (Mendelssohn, *et al.* 2003) described long-term warming trends in the upper 50 to 75 m of the water column. Recent paleoecological studies from marine sediments have indicated that 20th century warming trend in the California Current have exceeded natural variability in ocean temperatures over the last 1,400 years. Statistical analyses of past climate data have improved our understanding of how climate has affected North Pacific ecosystems and associated marine species productivities. Our ability to predict future impacts on the ecosystem stemming from climate forcing events remains poor at best.

3.1.4 Biogeography

Along the U.S. west coast within the California Current system, spatial patterns of biological distribution (Biogeography) have been observed to be influenced by various factors including depth, ocean conditions, and latitude. Each is discussed in Volume 1 of the 2008 groundfish SAFE document (PFMC 2008b), and is hereby incorporated by reference. The purpose of the 2008 Stock Assessment and Fishery Evaluation (SAFE) Volume 1 document was to publish a common set of data, tables, and descriptive text for use in future Council decision documents. The 2008 SAFE document was intended to provide a general understanding of Pacific Coast groundfish fishery management, including the status of stocks using the most current information available. Species assessed using full stock assessments or updated stock assessments in 2007 and 2008 included bocaccio, canary rockfish, cowcod, darkblotched rockfish, Pacific ocean perch (POP), widow rockfish, yelloweye rockfish, sablefish, arrowtooth flounder, black

rockfish, chilipepper rockfish, English sole, Pacific whiting, shortbelly rockfish, blue rockfish, and longnose skate. Rebuilding progress for all then currently overfished species (i.e., bocaccio, canary rockfish, cowcod, darkblotched rockfish, POP, widow rockfish, and yelloweye rockfish) was evaluated in 2007 rebuilding analyses.

3.1.5 Essential Fish Habitat

EFH has been described within the project area for highly migratory species, CPS, salmon, and groundfish. The MSA defines EFH to mean "those waters and substrate necessary to fish for spawning, breeding, feeding or growth to maturity" (16 U.S.C. 1802 sec. 3(10)). Regulatory guidelines elaborate that the words "essential" and "necessary" mean EFH should be sufficient to "support a population adequate to maintain a sustainable fishery and the managed species' contributions to a healthy ecosystem." The regulatory guidelines also establish authority for Councils to designate Habitat Areas of Particular Concern (HAPC) based on the vulnerability and ecological value of specific habitat types. Councils are required to minimize, to the extent practicable, the potentially adverse effects of fishing on EFH and HAPCs. EFH for highly migratory species, CPS, and salmon are discussed in detail in Volume 1 of the 2008 groundfish SAFE document (PFMC 2008b), which is incorporated herein by reference and summarized in Section 3.1.4 above.

3.1.6 Marine Protected Areas

There are numerous Federal and state-managed MPAs distributed throughout the project area. The EIS for Pacific Coast Groundfish EFH contains a complete analysis of these sites and is incorporated herein by reference. This environmental impact statement (EIS) evaluated the effects of a comprehensive strategy to conserve and enhance essential fish habitat (EFH) for fish managed under the Pacific Coast Groundfish Fishery Management Plan (FMP). The comprehensive strategy to conserve EFH, including its identification and the implementation of measures to minimize, to the extent practicable, adverse impacts to EFH from fishing, was consistent with provisions in the Magnuson-Stevens Fishery Conservation and Management Act and implementing regulations. The final EIS (FEIS) included an analysis of a reasonable range of alternatives, identification of the final preferred alternative, responses to comments, and appropriate revisions to the draft document. The proposed action ensured compliance with section 303(a)(7) of the Magnuson-Stevens Act by amending the Pacific Coast Groundfish FMP to (1) describe and identify essential fish habitat (EFH) for the fishery, (2) designate Habitat Areas of Particular Concern, (3) minimize to the extent practicable the adverse effects of fishing on EFH, and (4) identify other actions to encourage the conservation and enhancement of EFH.

3.1.7 Ecosystem considerations

Pacific whiting are an important contributor to ecosystem dynamics in the Eastern Pacific due to their relatively large total biomass and potentially large role as both prey and predator. The role of hake predation in the population dynamics of other groundfish species is likely to be important (Harvey, *et al.* 2008), although difficult to quantify. Hake migrate farther north during the summer during relatively warm water years and therefore, their local ecosystem role differs year-to-year depending on environmental conditions. Recent research indicates that hake distributions may be growing more responsive to temperature, and that spawning and juvenile hake may be occurring farther north (Phillips, *et al.* 2007) (Ressler, *et al.* 2007). Given long-term climate-change projections and changing distributional patterns, uncertainty exists in any forward projections of stationary stock productivity and dynamics.

3.2 Biological Resources

The life history of Pacific whiting affects the degree to which they overlap and interact with other marine resources. The coastal stock of these fish is highly migratory in nature, spawning off southern California and northern Baja California during winter months and migrating north as adult fish during spring and summer months to feeding grounds primarily off of Oregon, Washington, and Vancouver Island, Canada (Bailey, *et al.* 1982). The larger, older fish tend to migrate farther north. The fish return to their spawning grounds primarily during fall and winter months.

The biological resources covered in this subsection include those species that share the same marine environment both temporally and spatially with Pacific whiting (coastal stock), the species under consideration in this assessment. At-sea whiting vessels incidentally catch a variety of species in addition to whiting. By weight, yellowtail rockfish, widow rockfish, dogfish, squid, and mackerel are the species encountered most frequently in the at-sea sectors outside of whiting. When measured as a percentage of the amount of whiting taken, the amount is small. In many years, the bycatch rate is less than 1 percent, while in other years it is between 1 and 2 percent. The fish species of special conservation or allocation concern in this report include canary, darkblotched and widow rockfish, Pacific Ocean perch, Pacific salmon, green sturgeon, eulachon, and Pacific halibut. While the weight of these fish is small in comparison to the whiting catch, the impact is important in terms of species protection and recovery and/or fishery allocation objectives.

3.2.1 Groundfish

Section 3.1.1 in the Groundfish Harvest Specifications FEISs (PFMC and NMFS 2012), describes the species and stocks managed under the Groundfish FMP. This information is incorporated by reference. More than 90 fish species are managed under the Groundfish FMP: The remaining discussion on Biological Resources is also taken from the Council FEIS (PFMC and NMFS 2012). Presented below are only those species specifically associated with the whiting fishery.

3.2.1.1 Overfished Groundfish

The most recent stock assessments for overfished groundfish species that are impacted in the Pacific whiting fishery have shown improving recovery trends (measured as a percent of unfished stock) for canary and darkblotched rockfish (from 10 percent for both species to 24 percent and 30.2 percent, respectively) and that widow rockfish has successfully rebuilt (51.1 percent of unfished)). The status trend for POP continues to show very low recovery rate (19.1 percent of unfished), which is substantially below the status objective for all rockfish stocks of 50 percent of unfished population size (PFMC and NMFS 2012).

3.2.1.2 Pacific Whiting (Hake)

Pacific hake displays the highest degree of recruitment variability of any west coast groundfish stock, resulting in large and rapid changes in stock biomass. This volatility, coupled with a dynamic fishery, which potentially targets strong cohorts, and a biennial rather than annual fishery-independent acoustic survey, will continue to result in highly uncertain estimates of current stock status and even less certain projections of stock trajectory in future stock assessments. The Joint U.S. and Canadian Hake Technical Working Group (JTWG) prepared a new stock assessment for Pacific whiting in 2011 (Stewart, *et al.* 2011). The spawning biomass at the beginning of 2011 was estimated at 1.87 million mt by the SS model and 2.18 million mt in the TINSS model. The 2011 spawning biomass in both the SS and TINSS

models was estimated to be rebounding rapidly based on the strength of the 2005, 2006, and particularly the 2008 year classes.

Pacific hake are seasonally migratory

> ranging from offshore and generally southern waters during the winter spawning season to coastal areas between northern California and northern British Columbia during the spring, summer and fall when the fishery is conducted. In years with warmer water temperatures the stock tends to move farther North during the summer and older hake tend to migrate farther than younger fish in all years. (Stewart, *et al.* 2011) p. 5
>
> The distribution of Pacific hake can vary greatly between years. It appears that northward migration patterns are related to the strength of subsurface flow of the California Current (Agostini, *et al.* 2006) and upwelling conditions (Benson, *et al.* 2002). Distributions of hake backscatter plotted for each acoustic survey since 1995 illustrate the variable spatial patterns among years (Figure [3-]1). The 1998 acoustic survey is notable because it shows an extremely northward occurrence that is thought to be related to the strong 1997-1998 El Nino (Figure [3-]2). In contrast, the distribution of hake during the 2001 survey was compressed into the lower latitudes off the coast of Oregon and Northern California. In 2003, 2005 and 2007 the distributions generally followed the "normal" coast-wide pattern, but in 2009 and 2011, the majority of the hake distribution was again found in U.S. waters. Pacific hake also tend to migrate farther north as they age. Figure [3-]2 shows the mean location of Pacific hake observed in the acoustic survey by age and year. Age-2 hake are located in the southern portion of their distribution, while older age classes are found in more northerly locations within the same year. The mean locations of Pacific hake age-6 and older tend to be more similar among years than those for the younger ages. With the aging of the strong 1999 year class causing a reduction in the number of older fish, a more southerly distribution has been observed in recent surveys (Stewart, *et al.* 2011) p. 33).

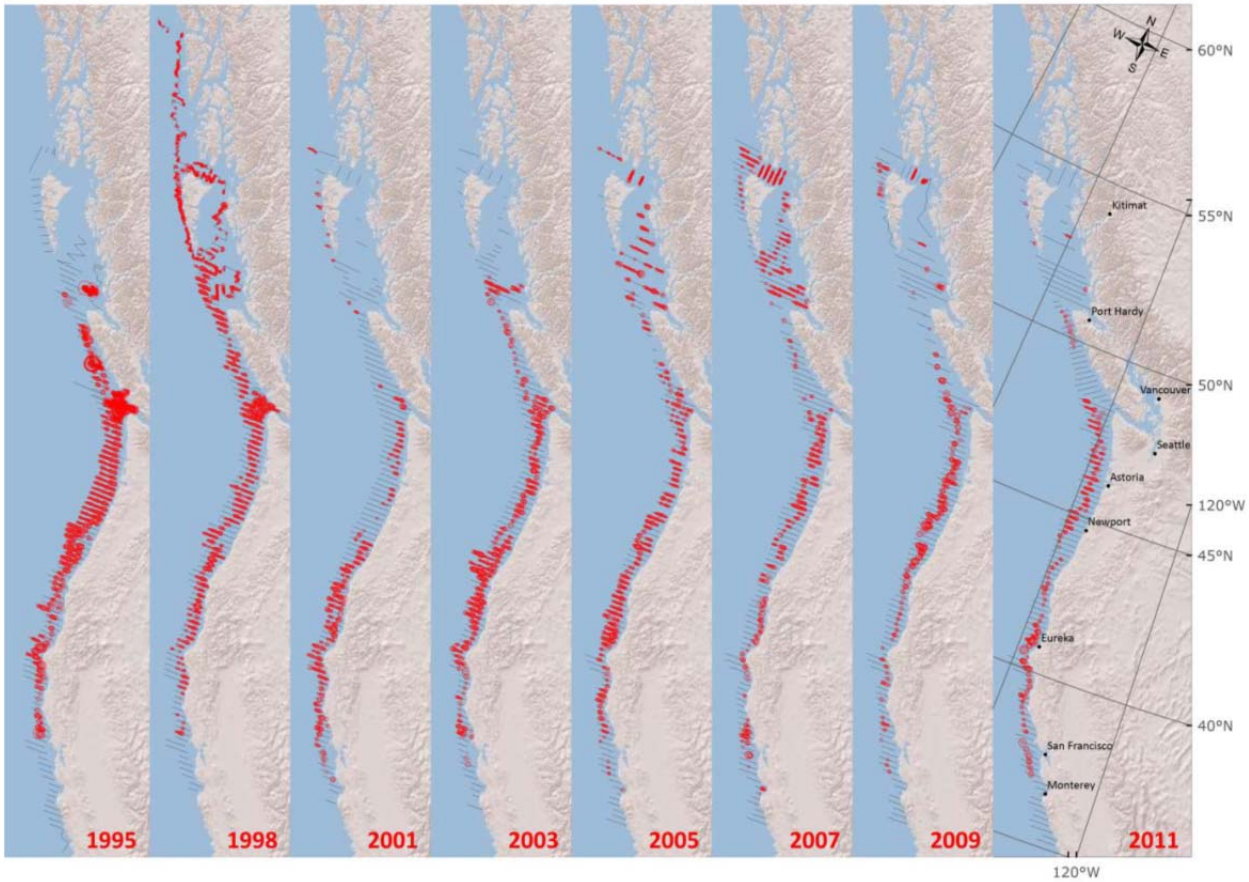


Figure 3-1. Spatial distribution of acoustic backscatter attributable to Pacific hake from joint US-Canada acoustic surveys 1995-2011. Area of the circles is roughly proportional to observed backscatter. (Stewart*, et al.* 2011).

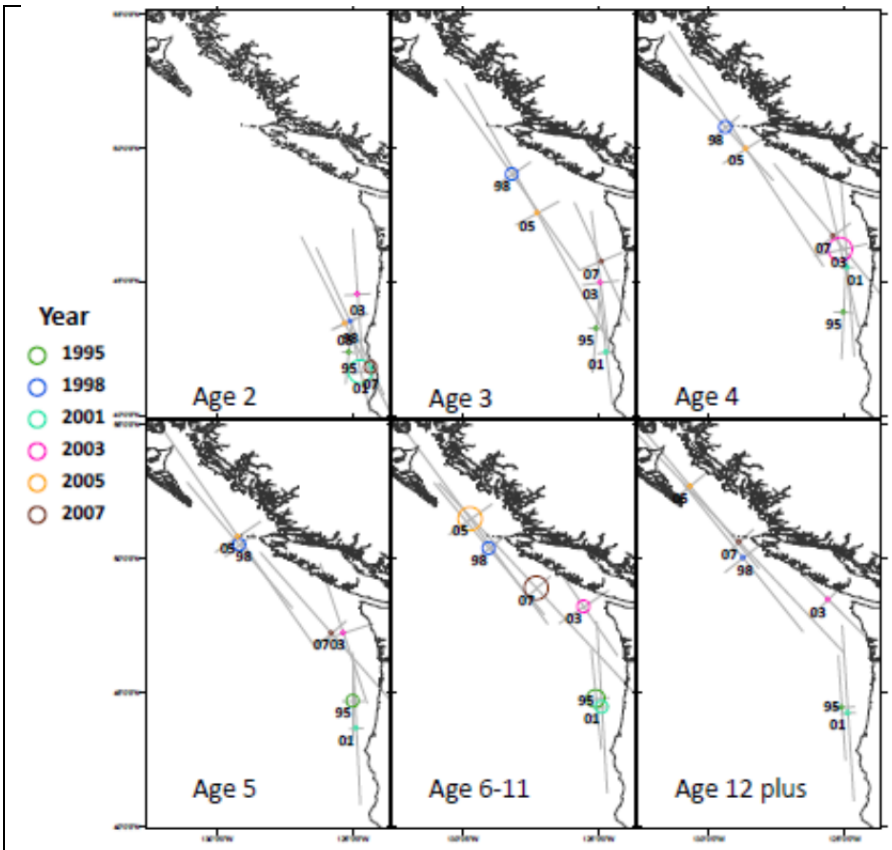


Figure 3-2. The mean spatial location of the hake stock (circles are proportional to biomass) and variance (grey lines) by age group and year based on acoustic survey observations 1995-2007 (Figure courtesy of O'Conner and Haltuch's ongoing Fisheries And The Environment project investigating the links between ocean conditions and Pacific hake distribution) (Stewart, *et al.* 2011).

3.2.1.3 Other Groundfish

Other groundfish species not discussed above are occasionally caught in the at-sea whiting fisheries including yellowtail rockfish, dogfish, lingcod, sablefish, and thornyheads. Except for yellowtail rockfish and dogfish, their numbers are typically very small, but their occurrences are not unusual.

3.2.2 Pacific Halibut

Pacific halibut (*Hippoglossus stenolepis*) belong to a family of flounders called *Pleuronectidae*. Pacific halibut are managed by the bilateral (U.S./Canada) International IPHC with implementing regulations set by Canada and the U.S. in their own waters. The Pacific Halibut Catch Sharing Plan for waters off Washington, Oregon, and California (Area 2A) specifies IPHC management measures for Pacific halibut on the west coast. Pacific halibut are occasionally caught in the whiting fishery.

3.2.3 Coastal Pelagic Species (CPS)

CPS are taken incidentally in the groundfish fishery and are believed to be most vulnerable to midwater trawl gear compared to other groundfish gear types. Estimates of total catch in the mothership,

catcher/processor, shoreside, and tribal whiting fisheries from 2007-2010 ranged from no bycatch for Pacific mackerel in 2009 to 1,226 mt for squid (unidentified) in 2008.

3.2.4 Highly Migratory Species and Salmon

Highly migratory species, such as albacore, are rarely encountered in the at-sea whiting fishery while salmon are not unusual in the catch, especially when trawling during May and June shoreward of the continental slope (PFMC 2008b). The major concern with salmon interception has to do with listed species impacts, which are discussed below.

3.2.5 Protected Species, including ESA, MMPA, and MBTA

A variety of species are protected by applicable law (other than the MSA) with the objective of sustaining or rebuilding their populations from critically depleted levels. The applicability of these laws to the action area is described in Chapter 5. Section 3.3 of the 2011-2012 Groundfish Harvest Specifications FEIS and Sections 3.18 and 3.19 (PFMC and NMFS 2011) of the *Rationalization of the Pacific Coast Groundfish Limited Entry Trawl Fishery* FEIS (PFMC 2010) describe protected species in the action area that interact with groundfish fisheries. This information is incorporated by reference.

3.2.5.1 ESA-listed Salmon and Steelhead

Salmon caught in West Coast groundfish fisheries originate in fresh water streams and rivers from Central California to Alaska. NMFS has identified seven ESUs that are mostly likely to be more affected by the groundfish fisheries ranging geographically from the Sacramento River (winter-run) to Puget Sound. (NMFS 2006))

Salmonids caught in the whiting fishery during 2005-2010 ranged from 2,740 in 2009 to 11,916 in 2005. Chinook were by far those most common salmonid in the whiting fishery catch ranging from 82 percent in 2007 to 99 percent in 2010. (PFMC and NMFS 2012). Salmon bycatch rates tend to be higher closer to shore and earlier in the season. This may explain the higher bycatch rate for the tribal mothership sector since these vessels fish within the tribal usual and accustomed areas, and have less flexibility to make spatial adjustments in response to salmon bycatch. The shoreside sector, for cost and operational reasons, tends to fish closer to shore. However, no such factors adequately account for inter-annual variation in bycatch. Previous work found no “obvious or consistent correlation” between annual Chinook abundance and bycatch (page 19 in NMFS 2006). Ocean conditions may play a role, but specific causative factors, at least any that can be used predicatively, cannot be identified.

3.2.5.2 Green Sturgeon

The southern distinct population segment (DPS) of North American green sturgeon was listed as threatened under the ESA in 2006 (71 FR 17757), and critical habitat was designated in 2009 (74 FR 52300). Green sturgeon bycatch in the at-sea hake fishery was very low, as the At-Sea Hake Observer Program only recorded a total of 3 green sturgeon from 2002-2010.

3.2.5.3 Eulachon

Eulachon are found in the eastern North Pacific Ocean from northern California to southwest Alaska and into the southeastern Bering Sea. The southern DPS of eulachon was listed as threatened under the ESA in 2010 (75 FR 13012). The eulachon southern DPS is defined from the Mad River in northern California, north to the Skeena River in British Columbia. Eulachon are incidentally caught in the groundfish trawl

fisheries. Eulachon appear to be encountered more in the catcher-processor sector of the whiting fishery. The highest eulachon bycatch observed in the whiting fishery was in the summer of 2006 with 145 individuals being caught.

3.2.6 Marine Mammals and Seabirds

3.2.6.1 Marine Mammals

U.S. West Coast waters support a variety of marine mammals. Approximately 30 species, including seals, sea lions, sea otters, whales, dolphins, and porpoise, occur within the EEZ. Many species seasonally migrate through west coast waters, while others are year-round residents. Two of nine listed marine mammal species that occur in the Council area have a higher probability of encounter in groundfish fisheries: sperm whales (Endangered) and Stellar sea lions (Threatened) (PFMC and NMFS 2012).

Among the marine mammals catches estimated in groundfish trawl fisheries, bycatch estimates have been highest for California sea lions, which were caught primarily in trawl nets in the limited entry trawl fishery (bottom and whiting) (PFMC and NMFS 2012). Stellar sea lions were the next highest, which were also caught in trawl nets in the at-sea whiting sectors, and the limited entry trawl (bottom trawl and whiting) and California halibut trawl fisheries. Stellar sea lions taken on the west coast are believed to be primarily from the eastern stock (east of 140° west longitude). The majority of elephant seals were taken in the at-sea whiting fisheries (PFMC and NMFS 2012).

3.2.6.2 Seabirds

The California current system supports a diverse array of seabird species. Species found on the west coast include resident species and transitory species (migrating or foraging). All of the California Current system seabirds are highly mobile and require an abundant food source to support their high metabolic rates (Ainley, *et al.* 2005). A total of 10 species or species groups of seabirds were documented to interact with the groundfish fishery during 2002-2009. The at-sea whiting fishery interactions were with blackfooted albatross (0-3 per year), common murre (0-3 per year), northern fulmar (0-to about 50 per year), sooty shearwater (0-8 per year), unspecified tubenose species (0-6 per year), and unspecified alcid species (0-3 per year) (PFMC and NMFS 2012).

3.3 The Socioeconomic Environment

Section 3.2 in the 2013-14 Groundfish Harvest Specifications DEIS describes commercial fisheries targeting groundfish. Associated with that description are a series of tables summarizing landings and ex-vessel revenues in the groundfish fisheries, landings, and revenue by port, and indicators of fishery participation (http://www.pcouncil.org/groundfish/current-season-management/upcoming-harvest-specifications-regulations-and-seasons/). The DEIS, and these associated tables, and data developed by Council staff using PacFIN and NorPac data are the primary sources of information for this Section. The two directly affected sectors by this rule making are the shoreside and mothership sectors so these sectors are discussed in more detail with emphasis on trends in participation. Finally Pacific whiting communities are described.

3.3.1 The Fishery

3.3.1.1 Management of Pacific Hake

The Pacific whiting fishery almost exclusively catches that species, using midwater trawl gear, although co-occurring overfished species are also caught. The whiting fishery is further subdivided into three components. The shore-based fishery delivers its catch to processing facilities on land, and the vessels are similar in size and configuration (with the exception of the type of net used) to the nonwhiting fishery. In the mothership sector, catcher vessels deliver to floating processors called motherships. The catcher-processor sector comprises vessels that both catch Pacific whiting and process it on board.

The Pacific whiting fishery is managed within the Groundfish Limited Entry Program. This program restricts the number of vessels that may use specified gear types to catch allocated groundfish. Limited entry permits define the groundfish trawl sector (further subdivided between vessels delivering catch shoreside, catcher vessels delivering Pacific whiting to at-sea mothership processors, and at-sea Pacific whiting catcher-processors) and the limited entry fixed gear sector, which uses longline and pot gear, mainly to catch sablefish.

Each sector of the Pacific whiting fishery receives an annual allocation, and the fishery is managed under a primary season structure where vessels harvest Pacific whiting until the sector allocation is reached, and the fishery is closed. Incidental catch of nonwhiting groundfish species in the Pacific whiting fishery, however, is managed under the trip limit structure. Season start dates for each whiting sector are set by regulation, and each sector's fishery proceeds until the whiting quota is reached or the fishery is closed.

To allow the Pacific whiting industry to have the opportunity to harvest the full Pacific whiting OY, the nontribal commercial fishery is managed with whiting sector specific bycatch limits for certain overfished species. To date, bycatch limits have been established for darkblotched rockfish, canary rockfish, and widow rockfish. Regulations provide for the automatic closure of the commercial (nontribal) portion of the Pacific whiting fishery upon attainment of a bycatch limit.

Incidental take of endangered or threatened salmon runs is another concern for the Pacific whiting fishery. Chinook is the salmon species most likely to be affected because of the spatial/temporal overlap between the Pacific whiting fishery and the distribution of Chinook salmon that could result in incidental take of listed salmon. The season start dates are, in part, meant to prohibit fishing when listed Chinook salmon are most likely to be taken incidentally. National Marine Fisheries Service (NMFS) also has the option of closing inshore areas to fishing if too many salmon are caught.

Prior to 2011, the primary control rules used were sector allocations of whiting and key bycatch species, season start dates, and limited entry permits. The catcher-processor fishery was managed via an industry sponsored co-op. Under the Trawl Rationalization Program, the catch control rules now include whiting IFQs for the shoreside whiting sector (allocated to both processors and limited entry permit holders), co-ops for the at-sea sectors, catch history endorsements for mothership catcher-vessels, and limited entry permits for the mothership processors. Prior to 2011, the major monitoring methods were video cameras for shoreside sector, and observers on board the mothership processors and catcher-processors. There was no direct monitoring of mothership catcher vessels either by camera or observer. Shoreside processors or landing stations that wish to receive whiting from shoreside whiting trawlers now have to meet certain monitoring requirements including the use of catch monitors who observe the offload of the vessels and double check the accuracy of the fish tickets associated with the offload.

Whiting and bycatch species are allocated to the tribes and commercial sectors. For example, the 2012 fishery harvest guideline (HG) for Pacific whiting is 135,481 mt. This amount was determined by

deducting from the total U.S. TAC of 186,037 mt, the 48,556 mt tribal allocation, along with 2,000 mt for research catch and bycatch in non-groundfish fisheries. Regulations at 50 CFR 660.55 (i)(2) allocate the fishery HG among the non-tribal catcher/processor, mothership, and shoreside sectors of the Pacific whiting fishery. The catcher/processor sector is allocated 34 percent (46,064 mt for 2012), the mothership sector is allocated 24 percent (32,515 mt for 2012), and the shoreside sector is allocated 42 percent (56,902 mt for 2012). The 2012 allocations of Pacific Ocean perch, canary rockfish, darkblotched rockfish, and widow rockfish to the whiting fishery were published in a final rule on December 13, 2011 (76 FR 77415).

3.3.1.2 Overview of Major Events Affecting the Whiting Fishery

Major Events Affecting the Whiting Fishery

1976 Passage of the Magnuson-Stevens Act
1982 Pacific Groundfish FMP established
1988 Foreign fishing for Pacific whiting ends
1990 Joint venture fishing for Pacific whiting ends
1992 Limited entry implemented
1994 Tribal treaty rights to groundfish formally recognized.
1997 First year Pacific whiting specifically allocated between sectors
1998 American Fisheries Act passed into legislation
1999 Pacific Ocean Perch declared overfished
2000 Pacific Fishery Management Council Groundfish Fishery Strategic Plan "Transition to Sustainability."; Economic Subcommittee-Scientific and Statistical Committee-Report on Overcapitalization in the West Coast Groundfish Fishery
2000 Canary rockfish declared overfished
2000 Pacific Groundfish Disaster declared
2001 Darkblotched rockfish and widow rockfish declared overfished
2002 Yelloweye rockfish declared overfished
2002 Pacific whiting declared overfished
2003 U.S.–Canada Whiting Agreement signed
2003 Pacific Groundfish Trawl Buyback Program implemented (December)
2004 Advance notice of proposed rulemaking for TIQ program and notice of control date (November 6, 2003) for the Pacific coast groundfish fishery
2004 Pacific whiting no longer considered overfished
2004 Market conditions for Pacific whiting start changing, ex-vessel prices, export prices, and exports of H&G whiting start rising substantially
2006 Reauthorized MSA required that the Pacific Council submit to Congress a proposal and related analysis on a trawl rationalization program no later than 24 months after the date of enactment (signed by the President January 2007).
2007 Shoreside and mothership whiting fisheries closed because of bycatch
2007 Temporary rules prohibiting any vessel from participating in either the mothership, catcher-processor or shoreside delivery sector of the directed Pacific whiting (whiting) fishery off the West Coast in 2007 if it does not have a history of sector-specific participation in the whiting fishery between January 1, 1997, and January 1, 2007. (Effective May 2007 to May 2008)
2008 Shoreside and mothership whiting fisheries closed because of bycatch
2009 Amendment 15 Pacific Whiting Vessel License Limitation implemented
2011 Trawl Rationalization Program implemented
2012 U.S.-Canada Whiting Agreement implemented
2012 Widow rockfish declared rebuilt

This timeline shows the Pacific Fishery Management Council actions to address full utilization, over capacity, and efforts to control capacity. In the 2000 "Strategic Plan", the following capacity reduction recommendations were made:

> For the limited entry trawl fleet, immediately develop and implement a voluntary permit-stacking program that links each permit with a cumulative period landing limit with the intent to transition to an IFQ program. The first, or base permit should be entitled to a full period landing limit, while each stacked permit should entitle the vessel to additional landing limits on a discounted basis as one alternative. Another alternative is to have the full period landing limit the same for all permits. If Congress continues to prohibit IFQ programs, consider making the permit-stacking program mandatory.
>
> To prevent future overcapacity in the whiting fishery, consider developing and implementing a whiting species endorsement that restricts future participation in the whiting fishery to vessels registered to a permit with a whiting endorsement. Qualification for a whiting endorsement should be based on a permit's landings since 1994 when the limited entry program began. Consider setting a threshold quantity of whiting above which a whiting endorsement is required for landing. Individual landings below the threshold would not require an endorsement.

The Amendment 15 "Purpose and Need for Action" provides the following perspectives:-

> In 2006, vessels with no previous participation in the Pacific whiting fishery entered the fishery. Additionally, participation shifts between the whiting sectors occurred in 2006. The increased participation resulted in concern by fishers and managers that more vessels may want to enter the fishery or shift between sectors of the fishery. New entry into the Pacific whiting fishery is likely given the increased whiting ex-vessel prices, increased prices for headed and gutted whiting as well as for fillet products, declining West Coast trawl opportunities due to overfished species rebuilding measures, and declining pollock quotas off of Alaska. Action is needed to restrict new vessels from entering into the fully capitalized Pacific whiting fishery. If fishing capacity increases (becomes further overcapitalized) the intensity of fishing may increase such that fishers strive to catch as much Pacific whiting as possible as quickly as possible (also referred to as a derby fishery or the race for fish). This race constrains the available time for vessels to search for whiting, which can cause fishers to neglect safety and bycatch concerns to which they would otherwise be more attentive. This accelerated race for fish would likely increase the incidental catch of non-whiting species, increase management costs, and decrease the economic returns to historical participants and communities. This action is about prohibiting additional capacity from entering the Pacific whiting fishery in part as result of high quotas, prices, and rationalization of the Alaska fisheries under the AFA and from recent North Pacific Fishery Management Council decisions. In 2004, 217,000 tons of Pacific whiting worth $22 million ex-vessel ($0.046/lb) were harvested and processed through the activities of 26 shoreside catcher vessels, 10 mothership-catcher vessels, 4 motherships, 9 shoreside processors and 6 catcher-processors. In sharp contrast, during 2006, 265,000 tons of whiting worth $36 million ($0.62 per lb) involved 37 catcher-vessels, 20 motherships catcher vessels, 14 shoreside processors, 6 motherships, and 9 catcher processors.
>
> Action is needed to restrict new vessels from entering into the fully capitalized Pacific whiting fishery. If fishing capacity increases (becomes further overcapitalized,) the intensity of fishing may increase such that fishers strive to catch as much Pacific whiting as possible as quickly as possible (also referred to a derby fishery or the race for fish). This race constrains the available time for vessels to search for whiting, which can cause fishers to neglect safety and bycatch concerns they would otherwise be more attentive to. An accelerated race for fish would likely

increase the incidental catch of non-whiting species, increase management costs, and decrease the economic returns to historical participants and communities. In an accelerated race for fish, there also would be higher risk of reaching the bycatch limits for the established fisheries earlier in the season before a sector's Pacific whiting allocation were reached. Because all sectors of the commercial fishery are closed when a bycatch limit is reached, without other fishing opportunities there could be short periods in which vessels would be forced to sit idle; at worst, the idle periods would be long, with serious disruption of processing facilities that are already under great economic pressure because of the severe cutbacks in groundfish fisheries over the past 10 years. Most recently, on July 26, 2007, the whiting fishery was closed because of attainment of the 220 mt widow bycatch limit for the fishery. At that time, 76 percent of the 208,000 mt available whiting was harvested.

New entry into the whiting fishery is occurring despite the fishery being already greatly overcapitalized, having a limited entry groundfish program in place, being heavily regulated in order to protect overfished species, and undergoing planning efforts to rationalize the fishery either through ITQs, and/or co-ops. In recent years, including 2007, fishing seasons have been shortened or otherwise constrained in order to prevent excess incidental catch of protected salmon and overfished groundfish species. With respect to overfished species, the Council is extremely sensitive to any increased probability of a "disaster" tow—one that could lead to closure of a fishery. For example, in 2004, the bycatch cap on canary was 4.7 mt, but the majority of this catch, 3.9 mt, occurred in a single tow of fish. In the summer of 2007, the fishery was closed before the whiting allocation had been taken because the widow bycatch cap had been reached. In part as a response to these inseason closures, and based on a review of past and recent participation in the fishery, the Council has recommended limiting participation to those 64 shore-based vessels that have sector specific participation between January 1, 1994 and January 1, 2007 and to those 10 catcher/processors that have sector participation in the catcher processor sector between January 1, 1997 and January 1, 2007, 39 mothership-catcher-vessels and the 7 mothership vessels have sector specific participation in the mothership sector- between January 1, 1997 and January 1, 2007. The differences in qualifying periods relate to initial definition of fishing sectors—1997 is the first year that the catcher-processor and mothership sectors were explicitly designed.

3.3.2 Harvest, Processing, and Economic Trends

3.3.2.1 Pacific Whiting Harvests, Revenues, Prices

The following figures and notes on the figures describe current and historic Pacific whiting harvests, revenues and prices.

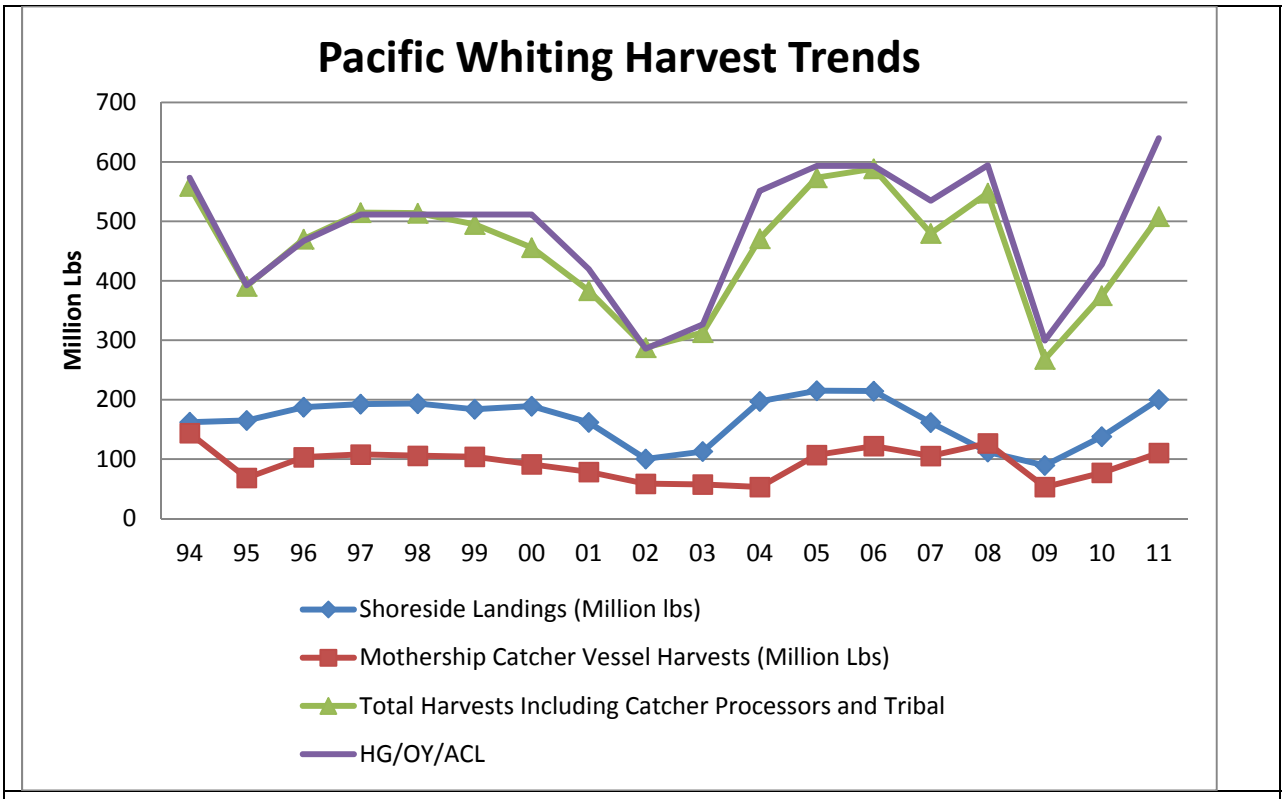


Figure 3-3. Pacific Whiting harvest trends.

Notes and Observations on Whiting Harvests:

- Total whiting harvests have varied over the years.
- Harvests track closely with HG/OY/ACL levels.
- Highest harvests (2006 – 589 million lbs) and lowest harvests (2009 – 268 million lbs) both occurred after 2003.

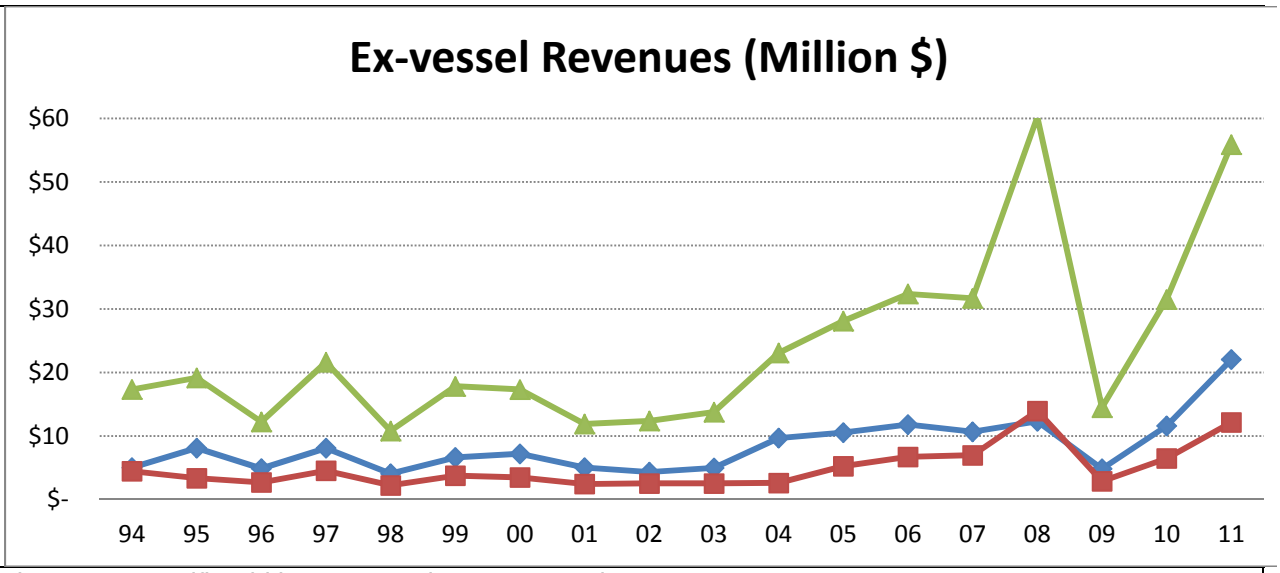


Figure 3-4. Pacific whiting ex-vessel revenue trends.

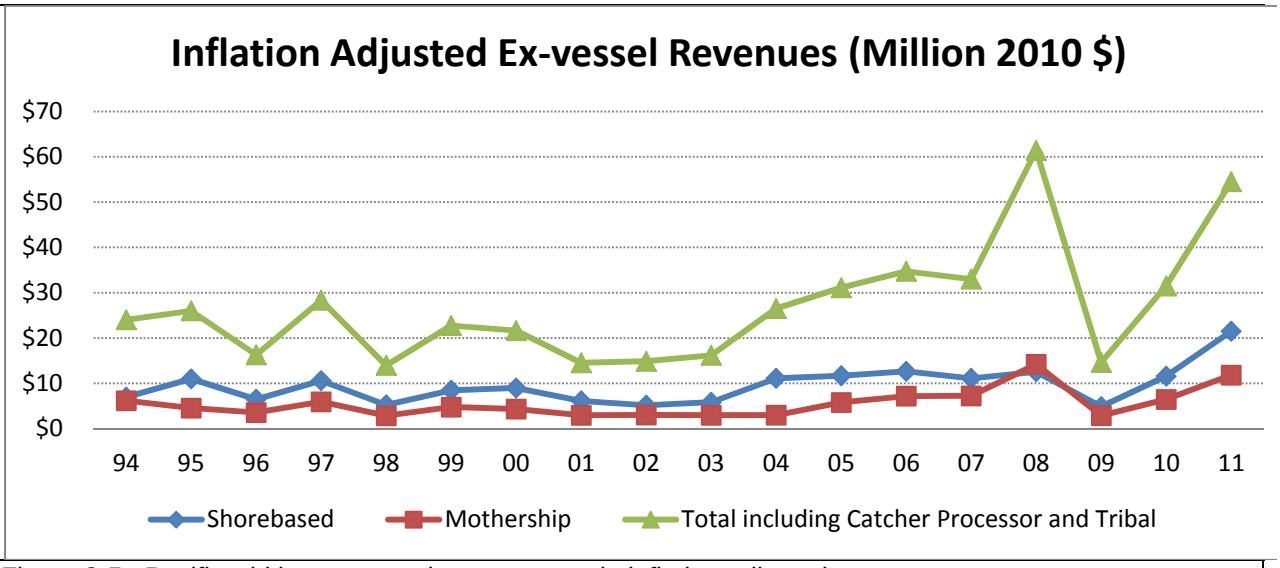


Figure 3-5. Pacific whiting ex-vessel revenue trends-inflation adjusted.

Notes and Observations on Pacific Whiting Ex-vessel Revenues

- Whiting ex-vessel revenues (including imputed exvessel revenues for CP sector) have ranged from a low of $12 million in 1996 to a peak of $60 million in 2008.

- Ex-vessel revenues began an increasing trend in 2003. It is presumed that the declines in 2009 and 2010 are due to the status of world economy and with OY/ACL levels. (See ex-vessel price and export trend below)

- When adjusted for inflation trends are similar trends.

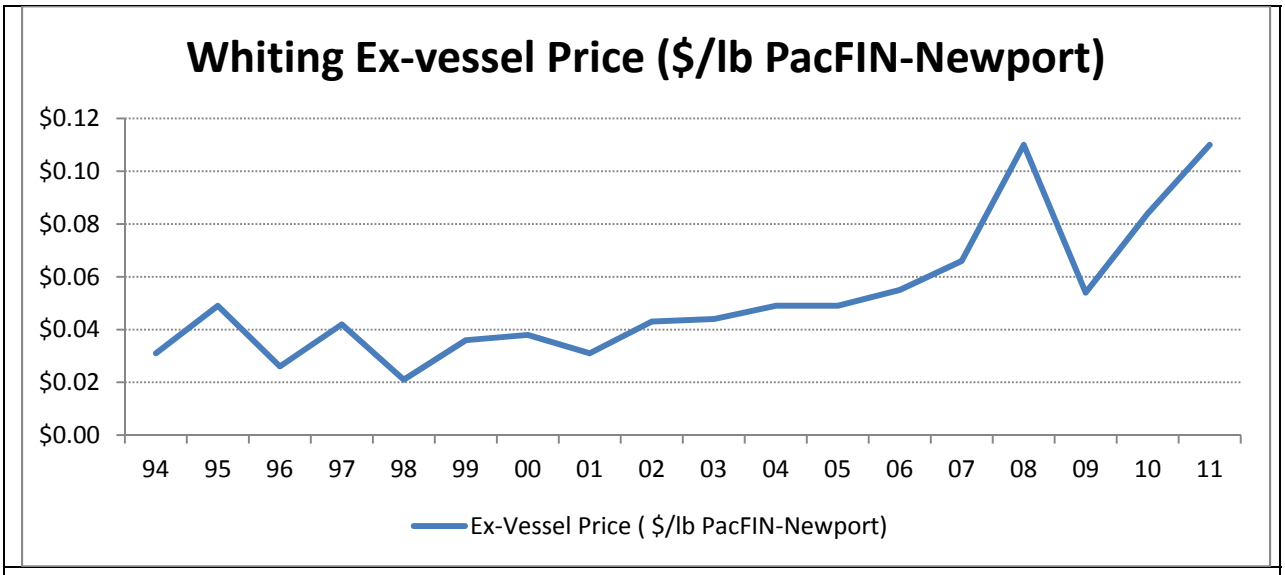


Figure 3-6. Pacific whiting ex-vessel price trends.

Notes and Observations on Whiting Ex-vessel Prices

- Ex-Vessel price trends are similar to revenue trends.
- After taking into account the world recession in 2008- 2011, ex-vessel prices have been increasing since 2003, even as total harvests also increased.

3.3.2.2 World Whiting Markets

The following figures and notes on the figures describe current and historic world whiting markets.

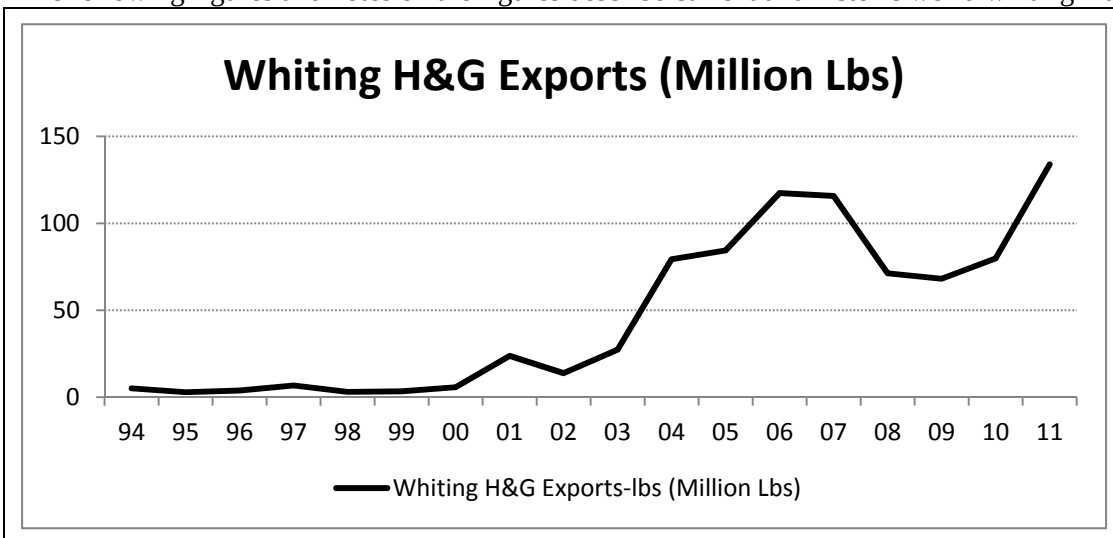


Figure 3-7. Pacific Whiting head and gut (H&G) export trends.

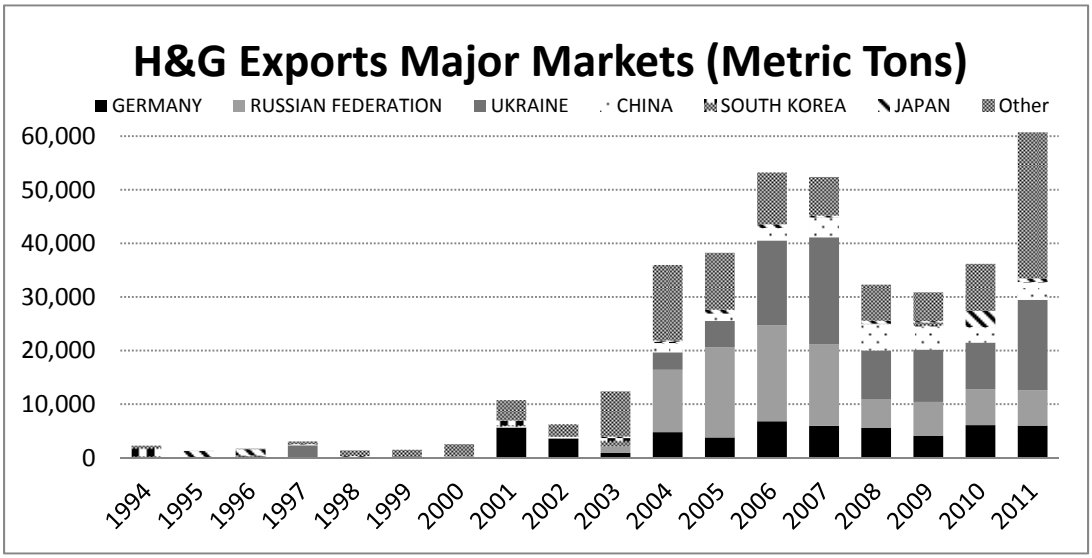


Figure 3-8. Pacific whiting export market trends.

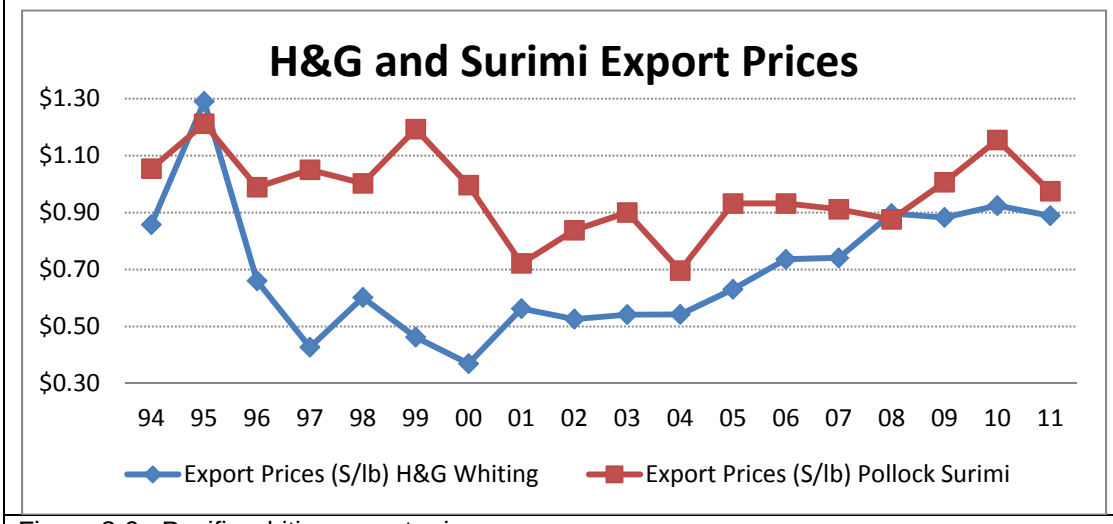


Figure 3-9. Pacific whiting export prices.

Notes and Observations on Export Markets

- Exports of H&G Whiting started an increasing trend in 2001.
- Export market growth increases significantly after 2003, especially exports to Germany, Russian Federation and Ukraine.

- Number of countries receiving H&G whiting exports has grown significantly:

Years	Number of Countries
1994-1996	3-6
1997-2000	9-12
2001-2003	15-18
2004-2009	23-26
2010-2011	30-39

- The relative difference between H&G exports prices and Pollock surimi prices start to narrow in 2001 and become equivalent in 2008.

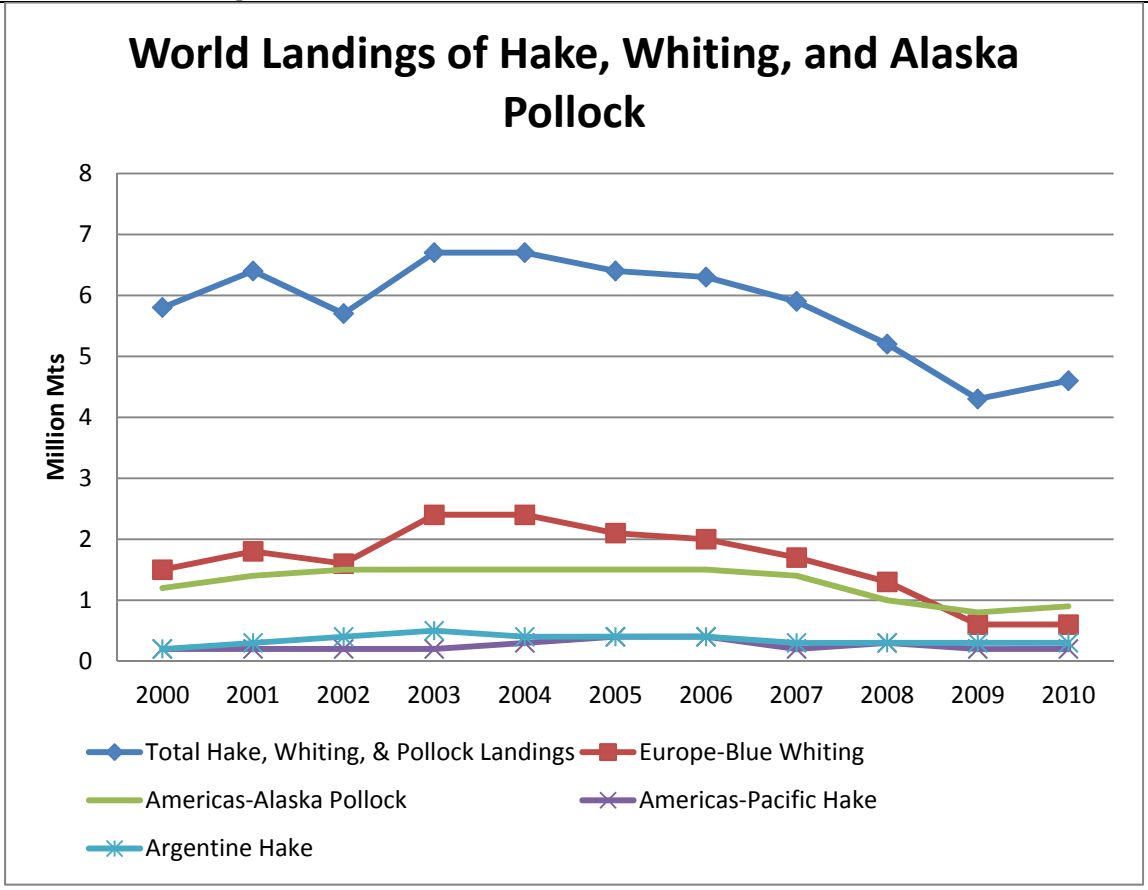


Figure 3-10. World landings of hake, whiting, and pollock (Source: U.N. Food and Agricultural Organization, Fisheries and Aquaculture Information and Statistics Service query system (http://www.fao.org/fishery/statistics/global-capture-production/query/en)5.

Notes and Observations on World Landings Trends

- The two area-species combinations that appear to driving the change in the total landings of hake, whiting, and Pollock are: European Blue whiting and American-Alaska Pollock.

[4] This data system provides landings by species and year for major areas (Africa, Americas, Asia, Europe, and Oceania).
[5] This data system provides landings by species and year for major areas (Africa, Americas, Asia, Europe, and Oceania).

- Blue whiting is used mainly for fish meal and oil but increasingly for human consumption. Alaska Pollock is used mainly for human consumption but also for fish meal and oil.
- Argentine Hake is often mentioned by representatives of the Pacific whiting industry as a competing species to Pacific whiting.
- In comparing trends and accounting for the recent state of the world economy, there appears to be some correlation between ex-vessel prices for Pacific hake and trends in world landings.

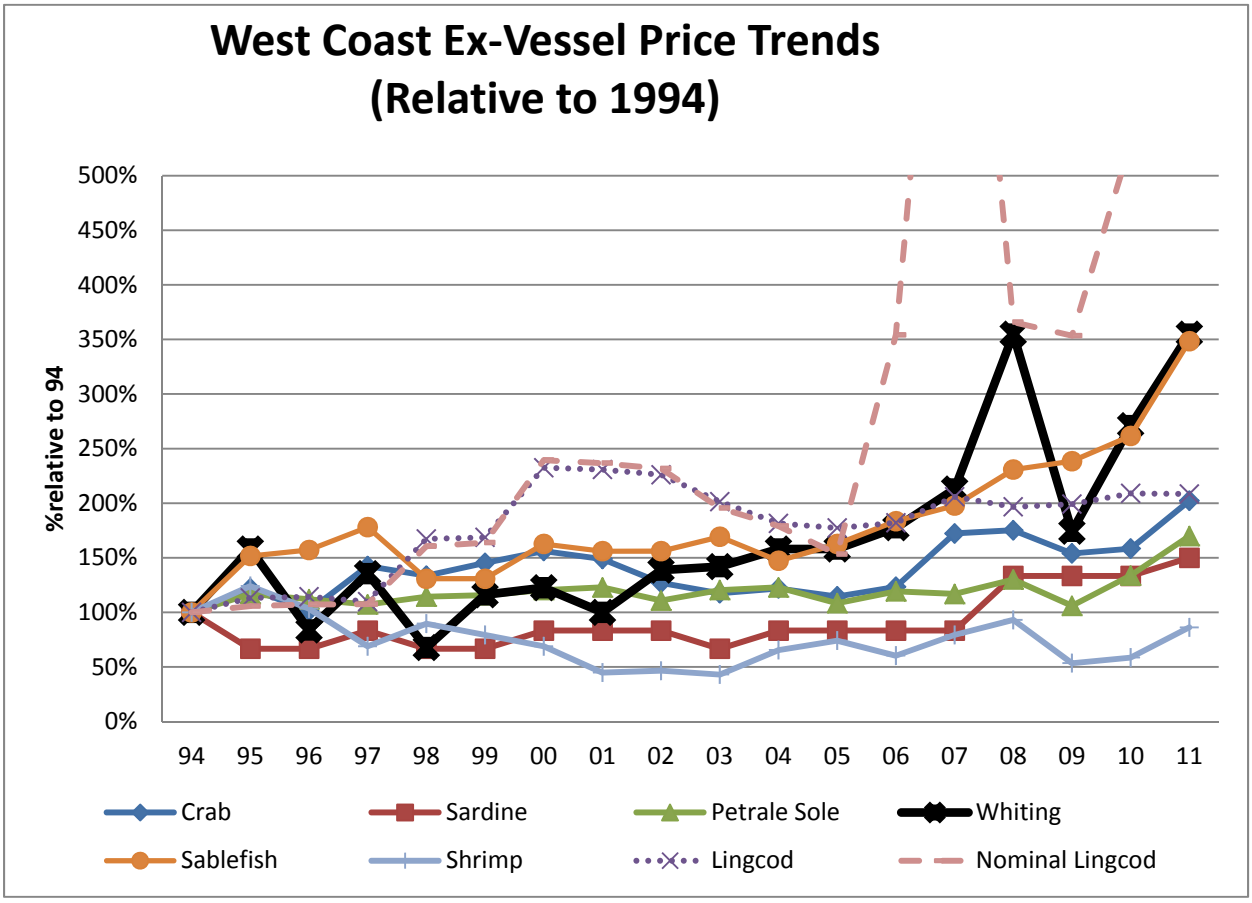


Figure 3-11. Trends in West Coast ex-vessel prices for selected species.

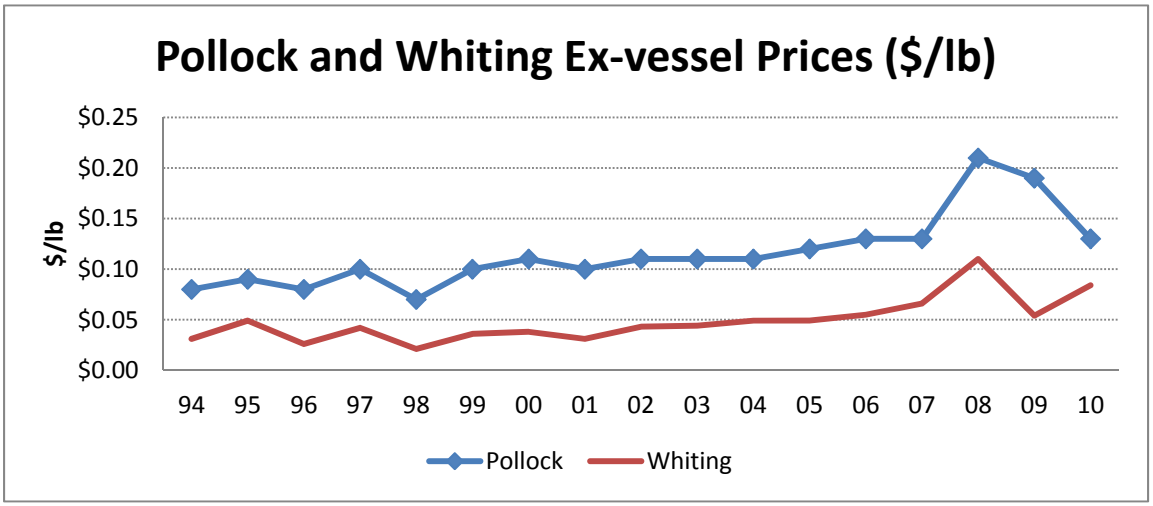


Figure 3-12. Pacific whiting and Alaska pollock ex-vessel price trends.

Notes and Observations on Other Related Species Ex-vessel Price Trends

- Price levels of the species shown are very different. For example, 2011 ex-vessel prices for Dungeness Crab ($2.77), and Sablefish ($3.17) are much higher than for Petrale Sole ($1.41), Shrimp ($0.50), Sardines ($0.09), and whiting ($0.11).
- Because of these differences, it is hard to discern trends by plotting prices on a common scale. Therefore in Figure 3-12 prices are scaled using 1994 price levels as the basis. For example, the 2008 ex-vessel price for whiting ($0.11) is approximately 350 percent of its 1994 price level ($0.031).
- Except for shrimp, species generally show rising trends relative to 1994 levels. However, both whiting and sablefish show the most significant rising trends, especially since 2003.
- The price trend for whiting mirrors that of pollock caught off Alaska, except for 2010 when the whiting price increased while pollock prices decreased.

3.3.2.3 Number of Active Permits, Processors, and Ex-vessel Revenues by Permit

The following table, figures, and notes describe current and historic permit activity and average ex-vessel revenues per permit.

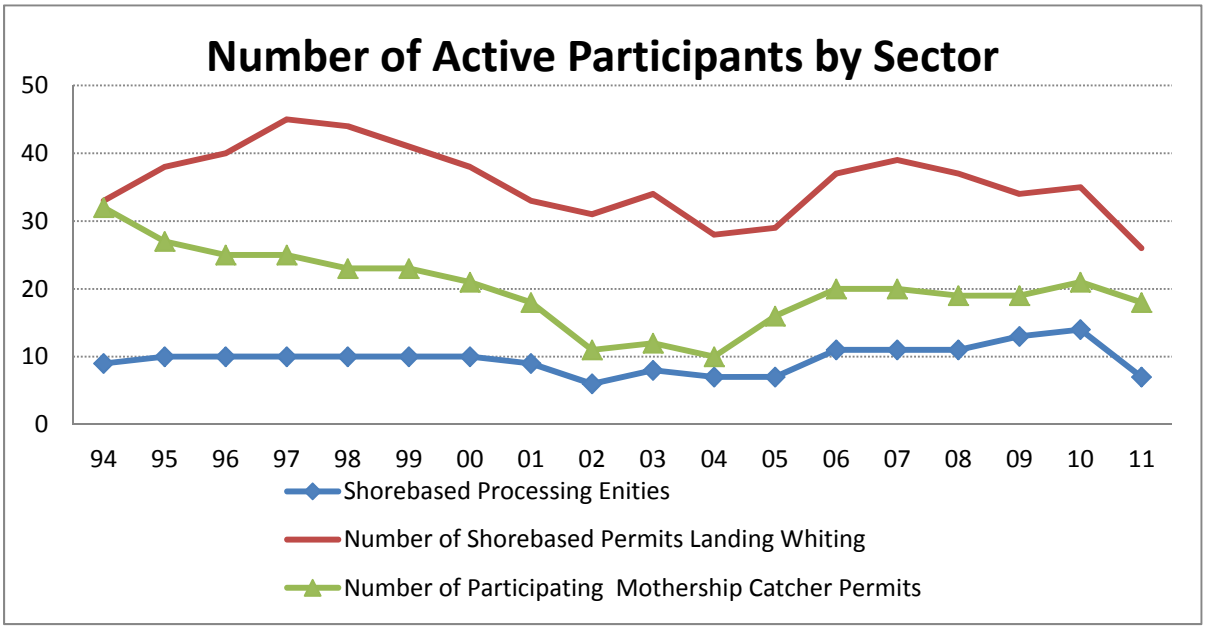


Figure 3-13. Trends in participation: shoreside processing, shoreside permits, mothership catcher permits.

Notes and Observations on Participation

- "Active" means that the permit fished or entity received fish that year.
- Whiting is landed either at buying stations or directly at processing sites. Analysts have related landings to processors based on buying station linkages, where known. For companies that process whiting at multiple sites, landings have been summed to reflect a single processing entity.
- The number of permits fished includes buyback permits in years prior to 2004 (Buyback occurred in December 2003). Twenty two buyback permits were involved in the Pacific whiting fishery (See Entry and Exit Analysis below).
- The number of active shoreside processing entities increased from 7 in 2005 to 14 in 2010.
- All sectors had lower numbers of active participants in 2011 than in 2010.

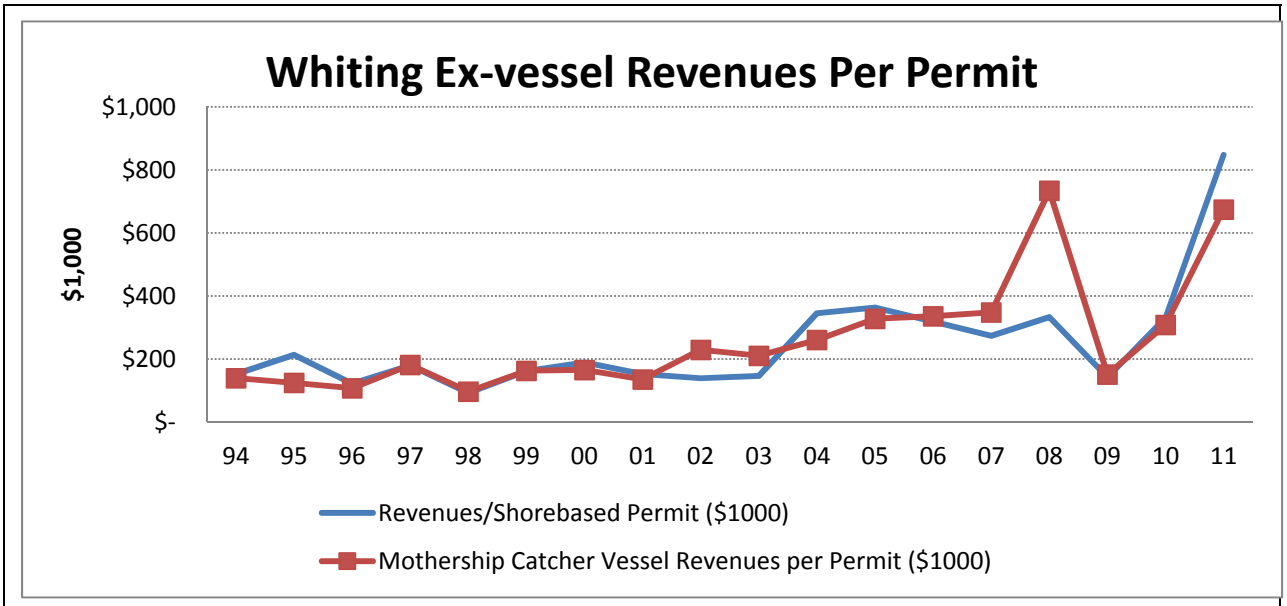


Figure 3-14. Trends in ex-vessel revenues per permit.

Notes and Observations on Ex-Vessel Revenues per Permit

- Revenues per mothership catcher vessel permit generally increased after 2003 and in line with sector allocation.
- Revenues per shoreside permit were similar to the mothership trend except for 2008.
- In 2008, the whiting fishery was closed early because the best available information on August 18, 2008 indicated that the 4.7 metric tons (mt) bycatch limit of canary rockfish for the non-tribal whiting fisheries was projected to be reached. The shoreside fishery was not re-opened, but unused shoreside allocations were distributed to the mothership and catcher processor sectors during the fall and winter.
- Relatively high revenues per permit in 2011 reflect increases in OY/ACL, high ex-vessel prices, and decreases in the number of active permits. Permit revenue were also likely high due to the Trawl Rationalization Program. While a moratorium prevented QS trading QP trading allowed for consolidation among permits, and mothership catcher-vessel permits were able to fish the catch history assignments of other permits through agreements made within a co-op.

3.3.2.4 Effort and Capacity Utilization

In the absence of excess capacity, the duration of the fishing season would run through December 31. The pattern of weekly harvests is a function of regulations, other constraints such as limits on bycatch or salmon, when fish are available to harvest, the economics of the whiting fishery, the economics of alternative fisheries. Seasons shortened by regulation are generally an indicator of excess harvest capacity in the fishery (Table 3-1). Excess harvesting capacity is likely matched by excess processing capacity, except to the extent that processing facilities can be switched to other activities (e.g. motherships move to other fisheries, shoreside cold storage used for other purposes). Whether or not there is excess harvest capacity in a fishery is not just a function of the physical and human capital in place, but also a function of the amount of fish available to harvest. In general the 2004-2010 allowable harvests were up: up 14 percent relative to 1994-2003 and up 33 percent relative to 2000-2003. Despite

this increase, seasons were shorter in the shoreside fishery. Comparing 2000-2003 to 2004-2009[6], season lengths in the shoreside fishery declined from an average of 55 days to an average of 50 days. The weekly harvest pattern for the shoreside fishery is displayed in Figure 3-15. For the mothership fishery, season lengths increased substantially after 2003 (for years in which there was a closure, the average increased from 24 days to 69 days, comparing 2000-2003 to 2004-2010). In some years, the mothership fishery does not close but tails off due to situational factors not directly related to the level of capacity (Figure 3-16). For example, vessels often fish the whiting opening then leave for the Alaskan pollock B season that starts in June. Decisions to return to finish the mothership sector quota will depend on factors such as whether there is sufficient allocation left for a mothership to commit to a trip, weather conditions, fish dispersal and depth of the fish. The weekly harvest in the fishery demonstrates substantial excess capacity. In Figure 3-16 it can be seen that the participation in the spring is very high and generally drops off rapidly after the first few weeks. For the four years in which the mothership sector was never closed through regulations (2001, 2003, 2004, and 2005) only in 2005 was there adequate incentive for vessels to return to the fishery after the initial spring/early-summer harvest. Similarly, it can be seen in this graph that the longer seasons of 2006, 2007, and 2008 occurred primarily through a low level of effort that remained active in the fishery to finish off the allocation that was left over after the initial period of high harvests.

Other indicators also show that there is over-capacity in the fishery. This analysis uses fleet weekly harvests as a proxy for effort and capacity in order to assess whether excess capacity exists in the sectors. The analysis is based on the actual capacity applied, not the potential capacity that could be applied—maximum number of vessels, each vessel fishing at peak capacity, processors and motherships operating at peak capacity. Maximum fleet harvest per week, together with the allocation levels, are an indicator of capacity. Maximum fleet harvest information is displayed in Figure 3-17 and Figure 3-18. First it should be noted that after 2003 the maximum fleet harvest per week increased by 26 percent in the shoreside sector and decreased by 11 percent in the mothership sector (2004-2010 compared to the 2000-2003 average). Looking at 2000-2010 data and selecting the largest allocations (about 98,000 mt for the shoreside sector and about 56,000 mt for the mothership sector) and then dividing by the lowest of the maximum fleet harvests per week (about 8,000 mt/week for the shoreside fleet and about 10,000 mt/week for the mothership fleet) yields hypothetical season lengths of 12.25 weeks for the shoreside sector and 5.6 weeks for the mothership sector. Even if the fleets were capable of sustained fishing at only one half their lowest annual maximum weekly rate, the amount of time required to take the maximum allocation available in recent years would be far less than the potential number of season days available. Despite a situation of excess capacity, after 2004 the number of vessels participating was generally on an upward trend in both the shoreside and mothership sectors, that increase possibly checked to some degree by implementation of Amendment 15, first on an emergency rule basis in 2007.

[6] 2010 is excluded from this average because it was a year in which the industry voluntarily stood down from harvest for a few months due to bycatch concerns and because of small fish. There was a concern that if bycatch rates were too high the fishery might close due to bycatch constraints before reaching its whiting allocation (as occurred in 2007 and 2008, (). After the sector resumed fishing in mid-August it finished harvesting its initial allocations and began fishing on a late season release of tribal allocation. It had not finished fishing on this release when the fish disappeared from the grounds, in October (Personal Communication, D. Jincks, 9/5/2012).

Table 3-1. Primary season closure dates and allocations for mothership and shoreside whiting fisheries. a/

	Primary Pacific whiting season closure dates and total season days (north of 42° N. Lat)				Initial Whiting Allocations (mt)	
	Shoreside	Shoreside Season Days	Mothership	Mothership Season Days	Shoreside	Mothership
1994 b/	12/31	260	9/6	33	97,000	156,000 (shared w/catcher processors & shoreside)
1995	7/24	100	5/5	19	75,776	107,000 (shared w/catcher processors & shoreside)
1996 c/ d/	9/10	118	5/5	17	87,001	118,200 (shared w/catcher processors & shoreside)
1997 b/	8/22	68	5/13	17	86,900	49,700
1998	10/13	120	5/4	16	86,900	49,700
1999	9/13	90	6/2	18	83,800	47,900
2000	9/15	92	6/9	25	83,790	47,880
2001	8/21	67	N/A	-	68,418	39,096
2002	7/17	32	6/6	22	44,906	25,661
2003	7/14	29	N/A	-	50,904	29,088
2004	8/14	60	N/A	-	90,510	51,720
2005	8/18	64	N/A	-	97,469	55,696
2006	8/2	48	9/29	137	97,469	55,696
2007	7/26	41	7/26	72	87,398	49,942
2008	8/19	65	8/19	96	97,669	55,811
2009	7/7	22	6/1	17	42,063	24,034
2010	N/A	–	6/5	21	59,218	33,839

a/ These are the season dates through the first closure of the fishery and reflect how long it took each fleet to harvest its initial allocation. In some years, a surplus of whiting from the tribal sector or of bycatch species from another sector may have been used to provide a reopening later in the fishery.

b/ Mothership fishery reopened for 5 days in October.

c/ Shoreside fishery opening moved from April 15 to May 15 in 1996 and to June 15 in 1997.

d/ Mothership fishery opening moved from April 15 to May 15 in 1996.

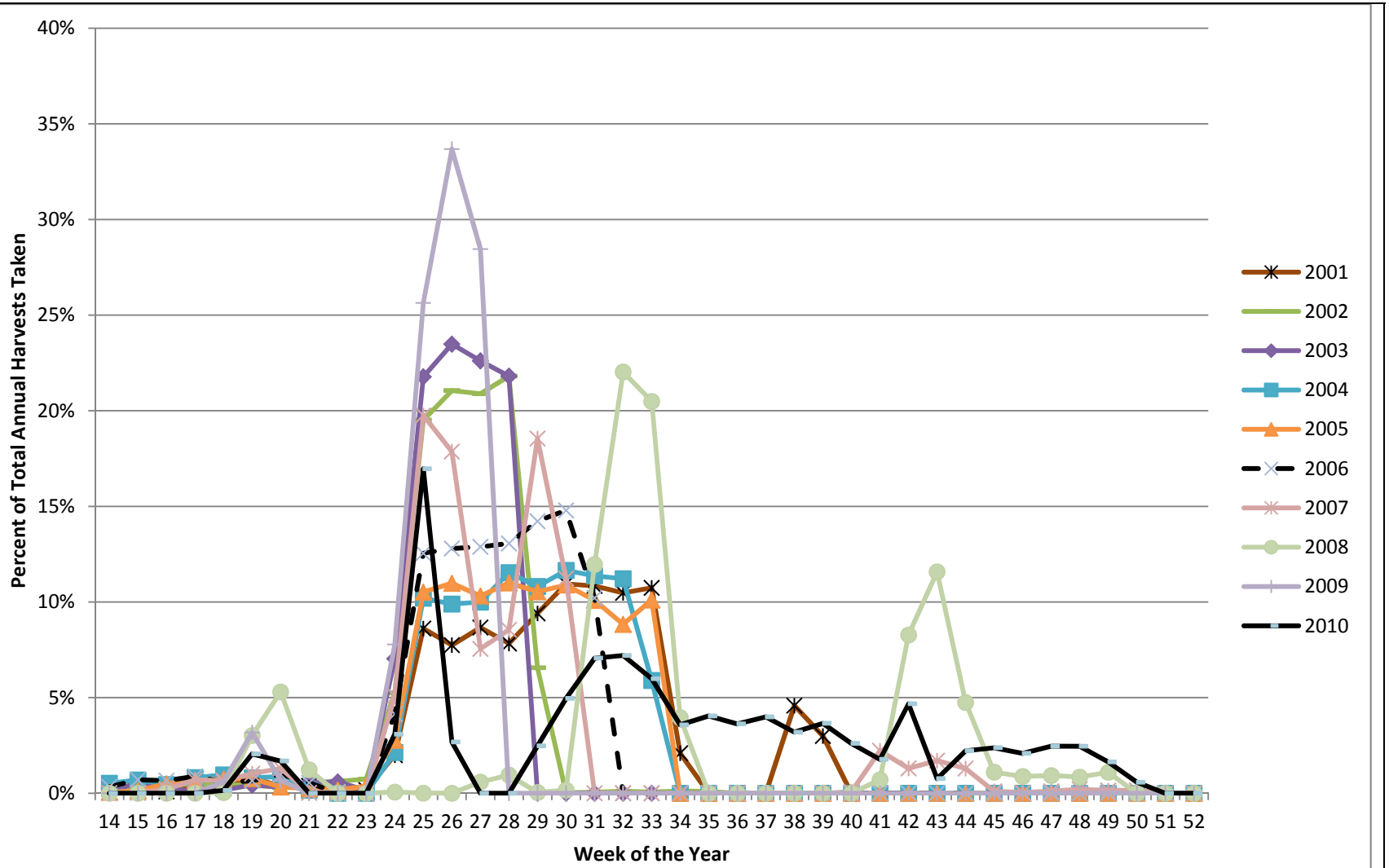


Figure 3-15. Percent of annual harvest, shoreside sector by week, 2001-2010.

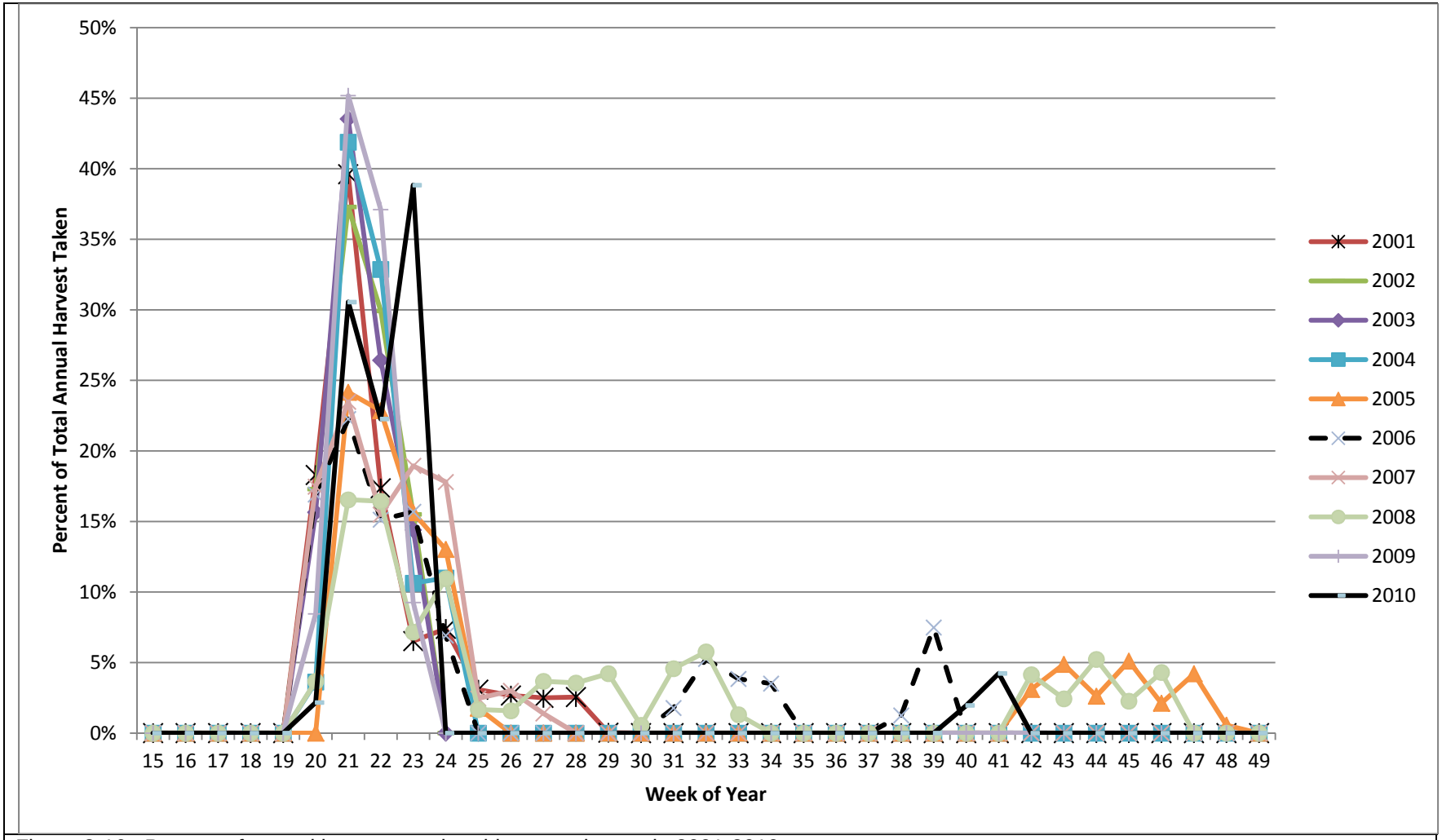


Figure 3-16. Percent of annual harvest, mothership sector by week, 2001-2010.

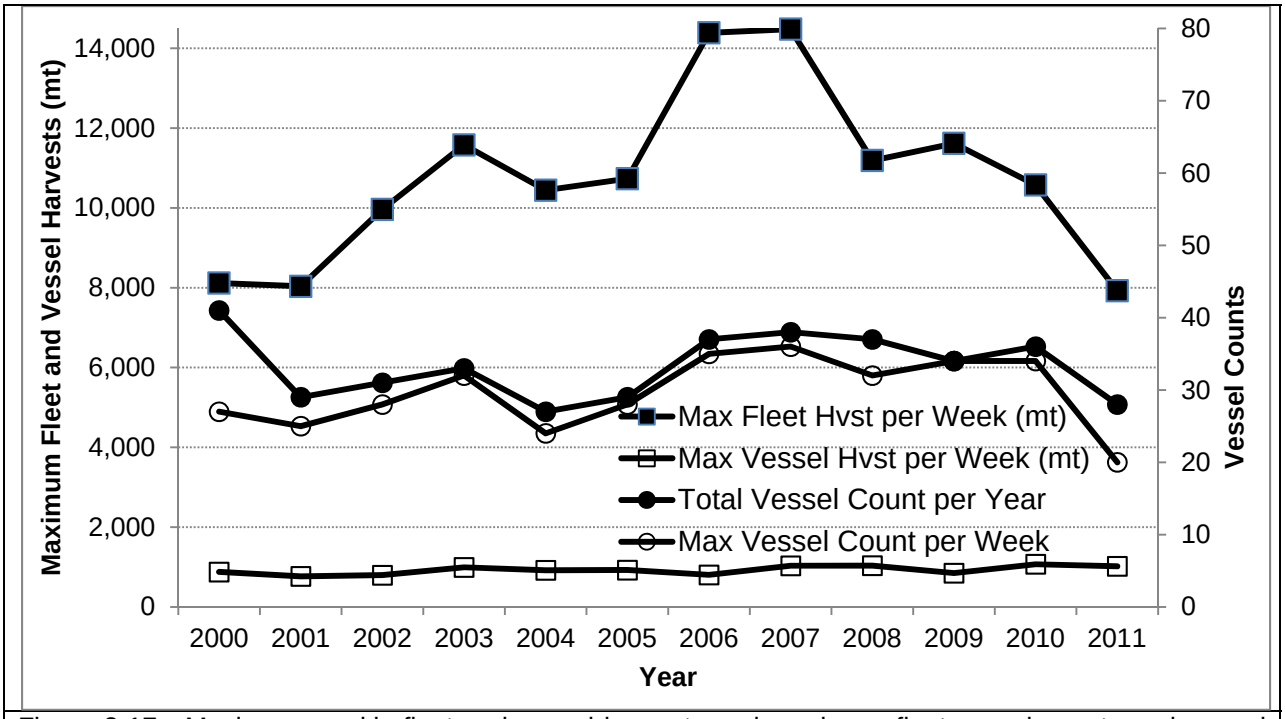


Figure 3-17. Maximum weekly fleet and vessel harvests and maximum fleet vessel counts and annual vessel counts in the shoreside whiting sector: 2000-2011.

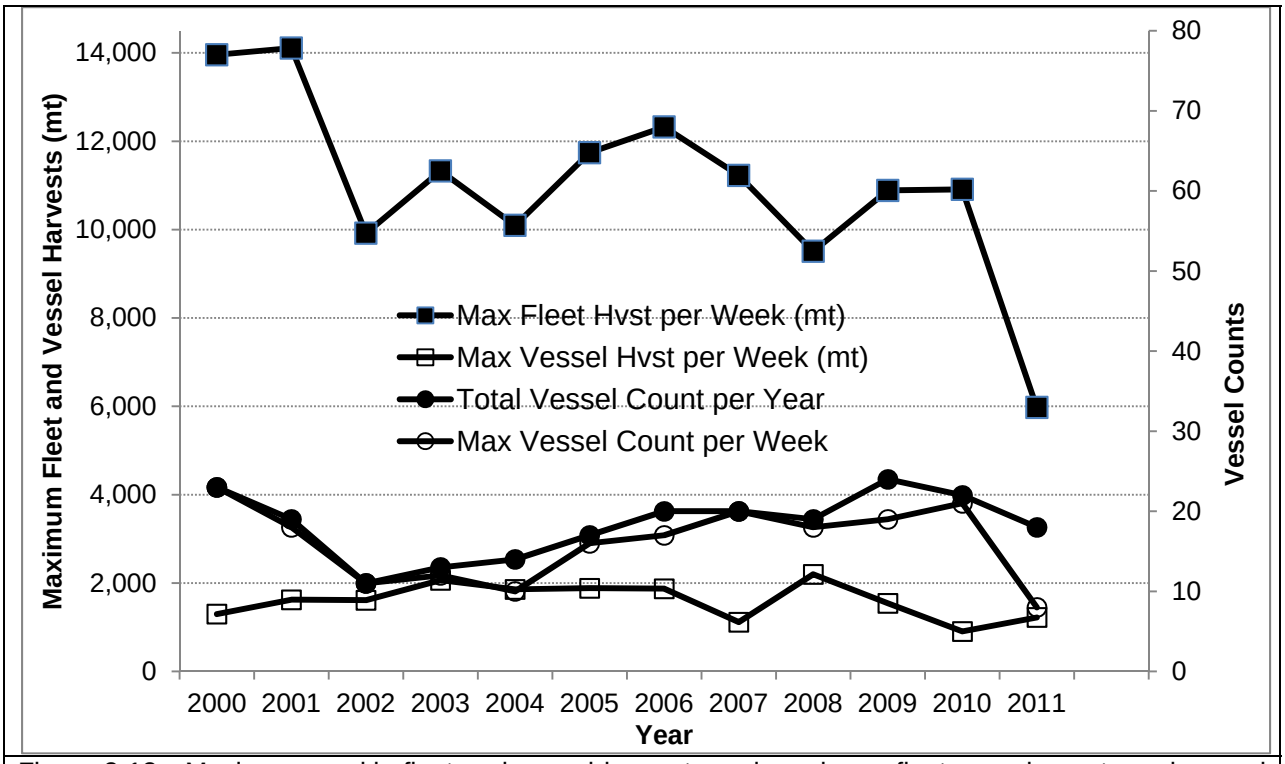


Figure 3-18. Maximum weekly fleet and vessel harvests and maximum fleet vessel counts and annual vessel counts in the mothership whiting sector: 2000-2011.

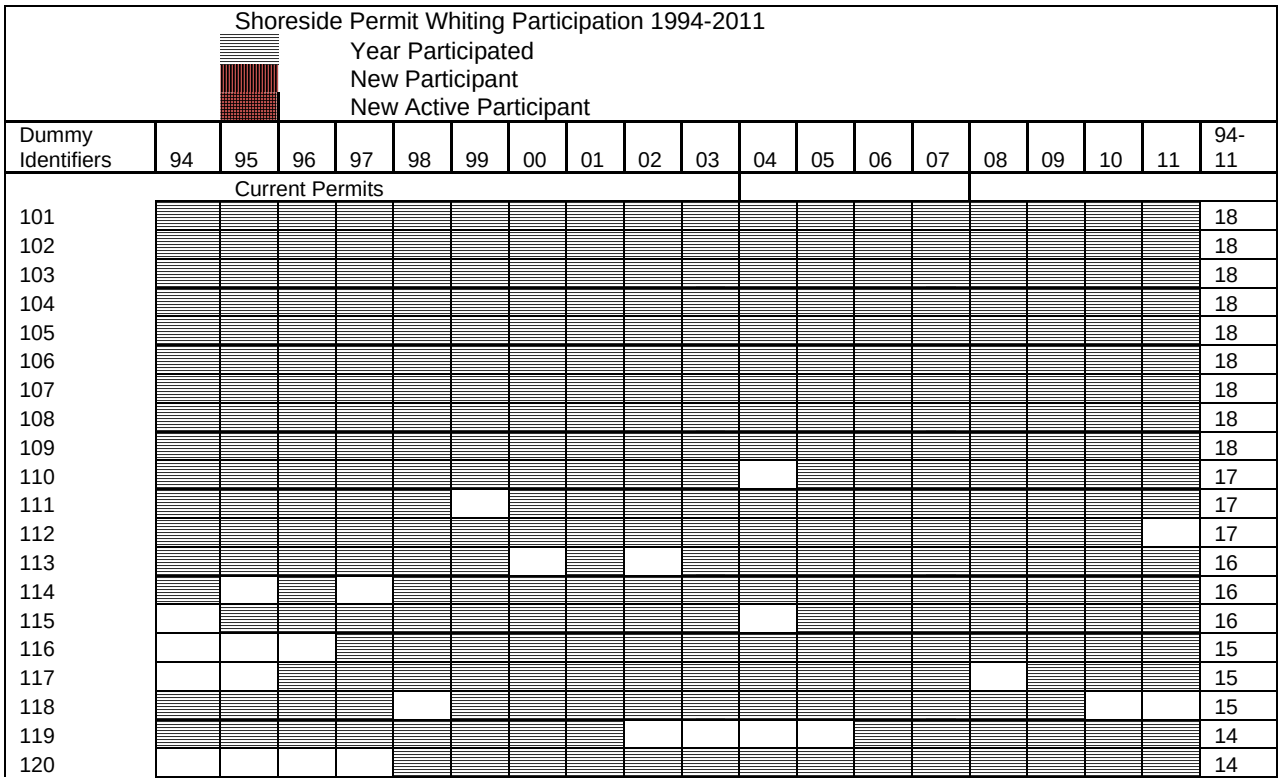
Notes and Observations on Primary Season Closure Dates

- Table 3-1shows the initial allocations for mothership and shoreside fisheries.
- It also shows the dates where fisheries have been closed. Entries marked "N/A" are years when NMFS did not issue a closure notice.
- Except for 2009 these allocations do not include reapportionments. Reapportionments typically occur after September. In 2009 the initial allocations also included amounts reapportioned from the tribal fisheries.
- The mothership and shoreside season opening dates have remained unchanged over the 1997-2010 period.
- Beginning in 1997, the shoreside fishery has staged geographic opening dates: April 1 for south of 42°00 to 42°30 N; April 15 for south of 40°30 N; and June 15 coastwide.
- Sub-quotas for the April 1 and April 15 openers have been small and there have been closures of these fisheries prior to June 15.
- When these closures occur the geographic fisheries are closed until June 15.
- Beginning in 1997, on June 15 the shoreside whiting fishery is opened coastwide.
- Since 1997, the Mothership sector has had a May 15th start date.
- Except for 2007 and 2008 closures have been due to the sector reaching its initial allocation.
- Closures in 2007 and 2008 were because of reaching a bycatch allocation.

3.3.2.5 Entry and Exit Patterns of Permits and Processors

Entry and Exit of Permits from the Shoreside Whiting Fishery

The following figure displays entry and exit patterns for permits landing shoreside whiting. Observations follow the figure.



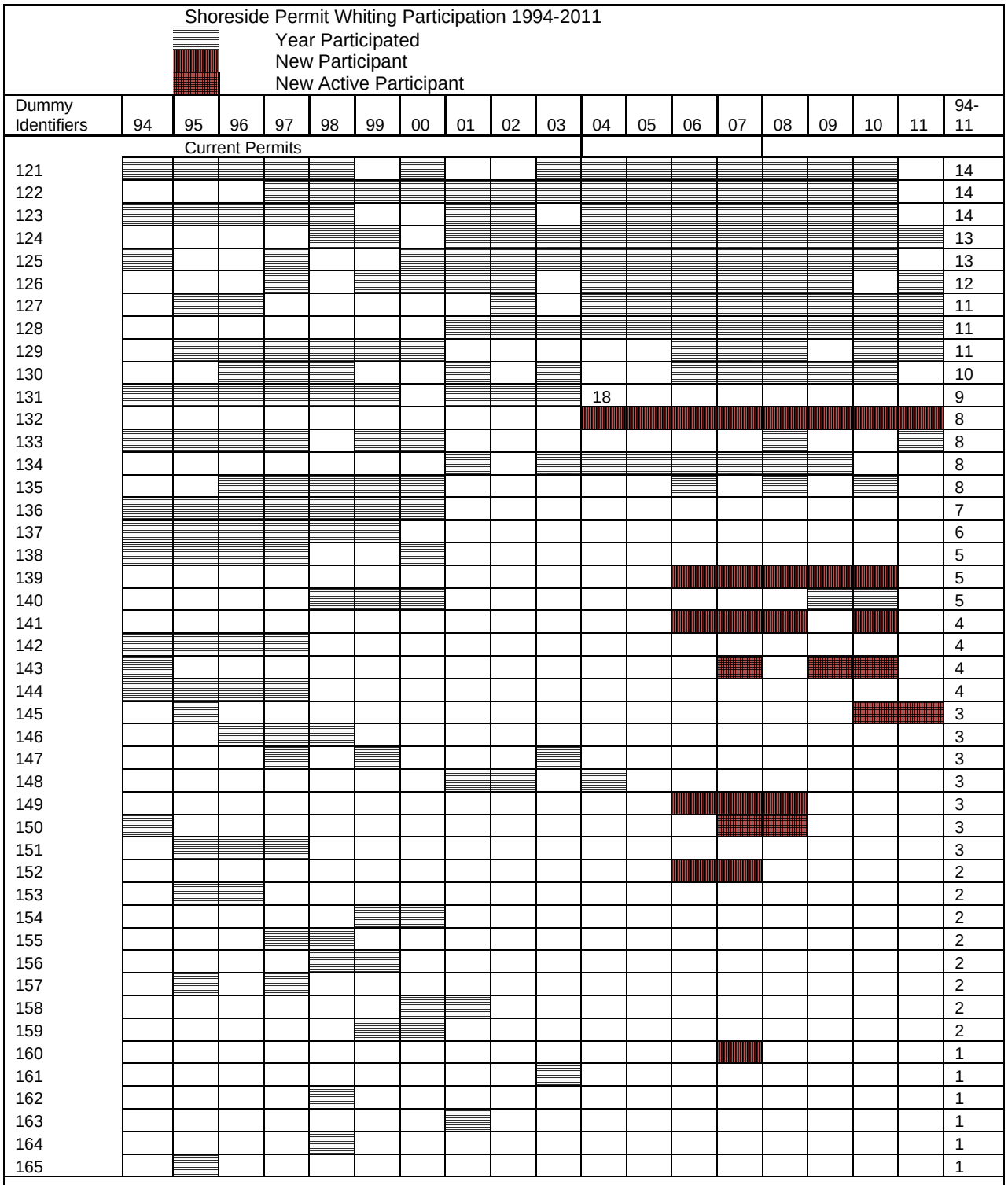


Figure 3-19. Participation Patterns by Limited Entry Permits in the Shoreside Whiting Fishery.

Notes and Observations on Shoreside Whiting Participation by Permits

- Nine permits fished the maximum number of years (18).
- 30 permits fished 10 or more years.

- 20 permits did not fish after 2003.
- Six permits entered after 2003.
- Three permits are "New Active Participants"—these permits left the shoreside fishery in either 1994 or 1995 and did not return until 2007 or later.
- Not shown are 23 permits retired via the Buyback Program. These permits accounted for 7 percent of the1994-2003 shoreside landings.

Entry and Exit of Catcher Vessel Permits from the Mothership Whiting Fishery

The following figure displays entry and exit patterns of vessels active in the mothership whiting fishery. Observations follow the figure.

Mothership Catcher Vessel Limited Entry Permit Participation 1994-2011

Year Participated
New Participant
New Active Participant

Dummy Identifiers	94	95	96	97	98	99	00	01	02	03	04	05	06	07	08	09	10	11	94-11
Current Permits																			
301																			18
302																			18
303																			18
304																			18
305																			17
306																			17
307																			17
308																			16
309																			15
310																			15
311																			14
312																			14
313																			13
314																			12
315																			11
316																			11
317																			10
318																			10
319																			10
320																			9
321																			8
322																			8
323																			6
324																			6
325																			5
326																			4
327																			4
328																			3
329																			3
330																			3
331																			2
332																			2
333																			3
334																			2
335																			1
336																			1
337																			1
338																			1

Figure 3-20. Participation by limited entry permits in the mothership whiting fishery.

Notes and Observations on Mothership Sector Participation by Permits

- Four permits fished the maximum number of years (18).
- 20 permits fished 10 years or more.
- 13 permits did not fish after 2003.
- No new entrants after 2003.
- Two current permits entered after 2003 after leaving in 1994 or 1995.
- Not shown are six buyback, lapsed, or combined permits.

Entry and Exit of Shoreside Whiting Processors

The following figure displays entry and exit patterns- of processors active in the shoreside whiting fishery. Observations follow the figure.

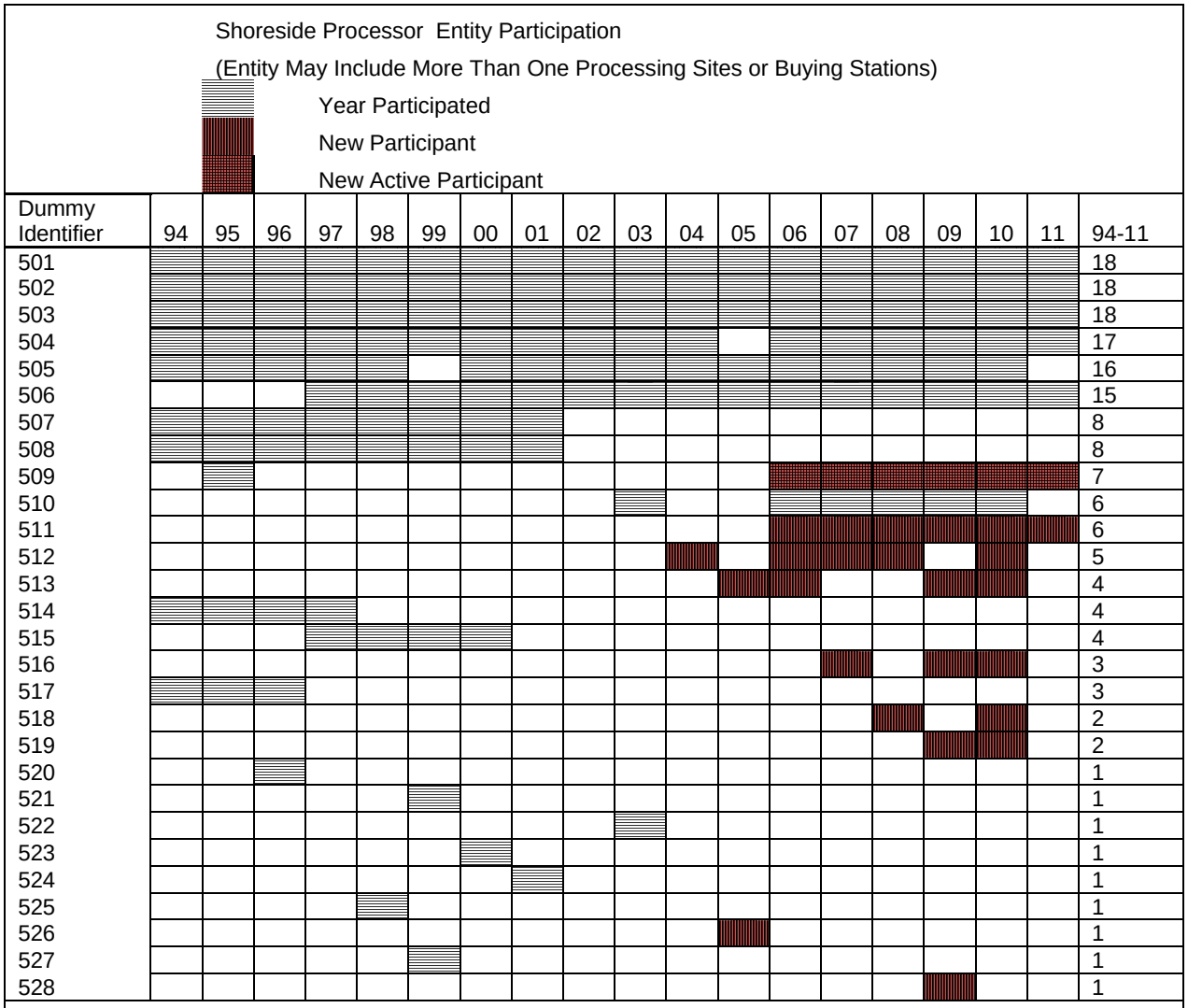


Figure 3-21. Participation Patterns by Processors in the Shoreside Whiting Fishery.

Notes and Observations on Processor Participation in the Shoreside Whiting Fishery

- Whiting is landed either at buying stations or directly at processing sites. Where known, landings at buying stations have been linked with processors. Companies processing whiting at multiple sites have been summed up to reflect a single processing entity.
- Three shoreside entities processed whiting the maximum number of years (18).
- Six shoreside entities processed whiting 15 years or more.
- 11 shoreside entities did not process whiting after 2003.
- Eight shoreside entities entered the fishery after 2003.
- One shoreside entity re-entered the fishery after leaving in 1995.

Permit Transfers and Investment

Entry and exit into the fishery can also be measured as permit transfers. Permits are generally held as part of fishing enterprise investments (as opposed to exercising the opportunity to lease a permit). Changes in the ownership of limited entry trawl permits with whiting history (mothership or shoreside) were reviewed for the years 2004-2010. Changes in ownership do not include changes associated with company restructuring (adding or subtracting a partner or co-owner) or family changes (divorce, death, or adding or subtracting a family member). Changes in ownership do reflect new investments. After 2003, it is reported that permit prices varied substantially based on the history associated with the permit, in anticipation of the trawl rationalization program.

- Eighteen permits changed hands after 2003 (changed at least once sometime between the start of 2004 and the end of 2010).
- Seven permits changed hands after 2007 (changed at least once sometime between the start of 2008 and the end of 2010).
- Three permits changed hands after 2008 (changed at least once sometime between the start of 2009 and the end of 2010).

3.3.2.6 Participation and Other Fisheries

A number of permits exited particular segments of the whiting fishery after 2003. The following tables show how those permits moved among West Coast fisheries and between Alaska and the West Coast.

Table 3-2 shows that of the permits exiting the shoreside whiting fishery after 2003 (a total of 21) 5 remained active in other West Coast fisheries, 16 also exited all other West Coast fisheries. Table 3-3 shows the same information with one additional layer, participation in Alaskan fisheries. This table shows that of the 16 permits that were inactive in West Coast fisheries after 2003, one permit was associated with vessels that continued to be active in Alaska, one was associated with a vessel that also left Alaskan fisheries after 2003 and 14 were associated with vessels that did not have any activity in West Coast or Alaskan fisheries after 2003 (i.e. a total of 15 show not activity after 2003).

Table 3-2. Participation in the shoreside whiting fishery for two periods (1994-2003 and 2004-2010) for catcher vessel permits, also showing participation patterns in all other West Coast fisheries (combined).

	Activity in All Other West Coast Fisheries (combined, including mothership whiting)				
	Active in Both Periods	Entering After 2003 (Not Active in Earlier Period)	Exiting After 2003 (Active Only in Earlier Period)	Not Active	Total
	Number of Catcher Vessel Permits				
Shoreside Whiting Participation	-	-	-		-
Active in Both Periods	38	-		-	38
Entering After 2003	1	5		-	6
Exiting After 2003	5	-	16	-	21
Total	44	5	16	0	65

Table 3-3. Participation in the shoreside whiting fishery for two periods (1994-2003 and 2004-2010) for catcher vessel permits based, also showing participation patterns for all other West Coast fisheries (combined) and Alaska (shaded cells are counts of permits showing no activity after 2003).

		Activity in All Other West Coast Fisheries (combined, including mothership whiting)				
		Active in Both Periods	Entering After 2003 (Not Active in Earlier Period)	Exiting After 2003 (Active Only in Earlier Period)	Not Active	Total
		Number of Catcher Vessel Permits				
Shoreside Whiting Participation	**Alaska Participation**					
Active in Both Periods ('94-'03 & '04-'10)						
	Active in Both Periods	25	-	-	-	25
	Entering After 2003	-	-	-	-	-
	Exiting After 2003	-	-	-	-	-
	Not Active	13	-	-	-	13
Entering After 2003						
	Active in Both Periods	1	-	-	-	1
	Entering After 2003	-	1	-	-	1
	Exiting After 2003	-	-	-	-	-
	Not Active	-	4	-	-	4
Exiting After 2003						
	Active in Both Periods	5	-	1	-	6
	Entering After 2003	-	-	-	-	-
	Exiting After 2003	-	-	1	-	1
	Not Active	-	-	14	-	14
Total Shoreside Whiting Participants		44	5	16	0	65
Those that also participated in Alaska		31	-	2	-	33

Notes: Based on annual PacFIN summary file data and participation records from AKFIN. Alaska participation was evaluated for the vessel associated with the permit in each year.

Table 3-4 shows that of the permits exiting the mothership fishery after 2003 (a total of 14) 10 remained active in other West Coast fisheries, 3 also exited all other West Coast fisheries, and one had no participation in any other West Coast fishery. Table 3-5 shows the same information with one additional layer, participation in Alaskan fisheries. This table shows that of the three permits that were not active in West Coast fisheries after 2003, one permit was associated with vessels that continued to be active in Alaska after 2003 and the other two were not associated with vessels active in Alaska after 2003 (one having never been active in Alaska).

Table 3-4. Participation in the mothership whiting fishery for two periods (1994-2003) and 2004-2010) for catcher vessel permits, also showing participation patterns for all other West Coast fisheries (combined).

	Activity in All Other West Coast Fisheries (combined, including the shoreside whiting fishery)				
	Active in Both Periods	Entering After 2003 (Not Active in Earlier Period)	Exiting After 2003 (Active Only in Earlier Period)	Not Active	Total
	Number of Catcher Vessel Permits				
Mothership Whiting Participation					
Active in Both Periods	18	1	4	1	24
Entering After 2003	1	-	-	-	1
Exiting After 2003	10	-	3	1	14
Total	29	1	7	2	39

Notes: Based on annual PacFIN summary file data and participation records from AKFIN. Alaska participation was evaluated for the vessel associated with the permit in each year. Includes two permits with some mothership participation that did not qualify for an allocation.

Table 3-5. Participation in the mothership whiting fishery for two periods (1994-2003 and 2004-2010) for catcher vessel permits, also showing participation patterns for all other West Coast fisheries (combined) and Alaska (shaded cells are counts of permits showing no activity after 2003).

		Activity in All Other West Coast Fisheries (combined, including the shoreside whiting fishery)				
		Active in Both Periods	Entering After 2003 (Not Active in Earlier Period)	Exiting After 2003 (Active Only in Earlier Period)	Not Active	Total
		Number of Catcher Vessel Permits				
Mothership Whiting Participation	**Alaska Participation**					
Active in Both Periods ('94-'03 & '04-'10)						
	Active in Both Periods	19	1	4	1	25
	Entering After 2003	-	-	-	-	-
	Exiting After 2003	-	-	-	-	-
	Not Active	-	-	-	-	-
Entering After 2003						
	Active in Both Periods	-	-	-	-	-
	Entering After 2003	-	-	-	-	-
	Exiting After 2003	-	-	-	-	-
	Not Active	-	-	-	-	-
Exiting After 2003						
	Active in Both Periods	6		1	1	8
	Entering After 2003	-	-	-	-	-
	Exiting After 2003	-	-	1	-	1
	Not Active	4		1	-	5
Total Mothership Whiting Participants		29	1	7	2	39
Those that also participated in Alaska		25	1	6	2	34

Notes: Based on annual PacFIN summary file data and participation records from AKFIN. Alaska participation was evaluated for the vessel associated with the permit in each year.

Of the 68 permits with some directed whiting history, 6 permits entered the shoreside whiting fishery for the first time after 2003, only one of which was associated with a vessel also active in the mothership fishery. No permits entered the mothership whiting fishery for the first time after 2003. Of the 21 permits associated with shoreside whiting vessels leaving the shoreside whiting fishery after 2003, 4 remained active in the mothership fishery and 4 exited the mothership fishery. Of the 14 permits associated with mothership whiting vessels leaving the mothership whiting fishery after 2003, 9 remained active in the shoreside fishery and 4 also exited the shoreside fishery.

Table 3-6. Participation in the whiting fishery for two periods (1994-2003 and 2004-2010) for catcher vessel permits, showing participation in the mothership whiting fishery and shoreside whiting fishery.

	Shoreside Whiting Participation				
	Active in Both Periods	Not Active in Earlier Period (Entering After 2003)	Active Only in Earlier Period (Exiting After 2003)	Not Active (mothership whiting only)	Total
	Number of Catcher Vessel Permits				
Mothership Whiting Participation	-	-	-	-	
Active in Both Periods	18	1	4	2	25
Entering After 2003	-	-	-	-	-
Exiting After 2003	9	-	4	1	14
Not Active (shoreside whiting only)	11	5	13	-	29
Total	38	6	21	3	68

Of the permits associated with AFA vessels, only one is was associated with a vessel that entered a West Coast fishery for the first time after 2003 and three were associated with vessels that exited West Coast fisheries after 2003 (Table 3-8). Fourteen non-AFA affiliated permits exited West Coast fisheries after 2003.

The permits associated permits that qualified for participation under Amendment 15 were relatively evenly divided between AFA affiliated and non AFA affiliated permits (Table 3-7). Those permits that didn't qualify under Amendment 15 tended to also not qualify as AFA vessels.

Table 3-7. Number of permits associated with [a/] vessels qualifying under the AFA and Amendment 15.

	Permits Associated with Amendment 15 Vessels	Permits Not Associated with Amendment 15 Vessels	Total
Permits Associated with AFA Vessels	29	1	30
Permits **Not** Associated with AFA Vessels	24	14	38
Total	53	15	68

a/ A permit is counted as being associated with an AFA vessel if such an association occurs in any single year.

Table 3-8. Participation in West Coast fisheries by permits with some whiting history for two periods (1994-2003 and 2004-2010) also showing participation by whether the permit is associated with an AFA vessel (columns) or a vessel with Alaska participation history (rows).

	West Coast Participation (All Fisheries)								
	Permits Not Associated With AFA Vessels				Permits Associated With AFA Vessels				
	Active in Both Periods	Not Active in Earlier Period (Entering After 2003)	Active Only in Earlier Period (Exiting After 2003)	Total	Active in Both Periods	Not Active in Earlier Period (Entering After 2003)	Active Only in Earlier Period (Exiting After 2003)	Total	Grand Total
	Number of Catcher Vessel Permits				Number of Catcher Vessel Permits				
Alaska Participation									
Active in Both Periods	7		-	7	26		2	28	35
Entering After 2003	-	-	-	0	-	1	-	1	1
Exiting After 2003	-	-	-	0	-	-	1	1	1
Not Active	13	4	14	31	-	-	-	0	31
	20	4	14	38	26	1	3	30	68

Note: If a permit was ever associated with an AFA vessel then a permit is counted as an AFA permit.

3.3.2.7 Historic Distributions and the 2011 Fishery

The following graphs and tables provide information on the historic distribution of harvest among permits and the distribution of allocations and harvest among permits in the 2011 shoreside whiting and mothership fisheries.

In each figure, the permits have been ordered along the horizontal axis from those receiving the least to those receiving the largest allocations. The allocations are based on 1994-2003 history so the allocations track that history fairly closely for the shoreside fishery (Figure 3-22) and mothership fishery (Figure 3-24). However, the shoreside allocations are generally about 23.5 percent below the landing history because 20 percent of the allocation went to processors and 3.5 percent went to nonwhiting permits (not included in the graph) as part of the equal allocation. Other variations are due to the provision which drops the two worst years of history from the calculation of each permits allocation.

In some cases, the share of each permit's harvest in 2011 varied substantially from 2011 allocations, running either substantially higher or lower (Figure 3-23 and Figure 3-25, for the shoreside and mothership fisheries, respectively).

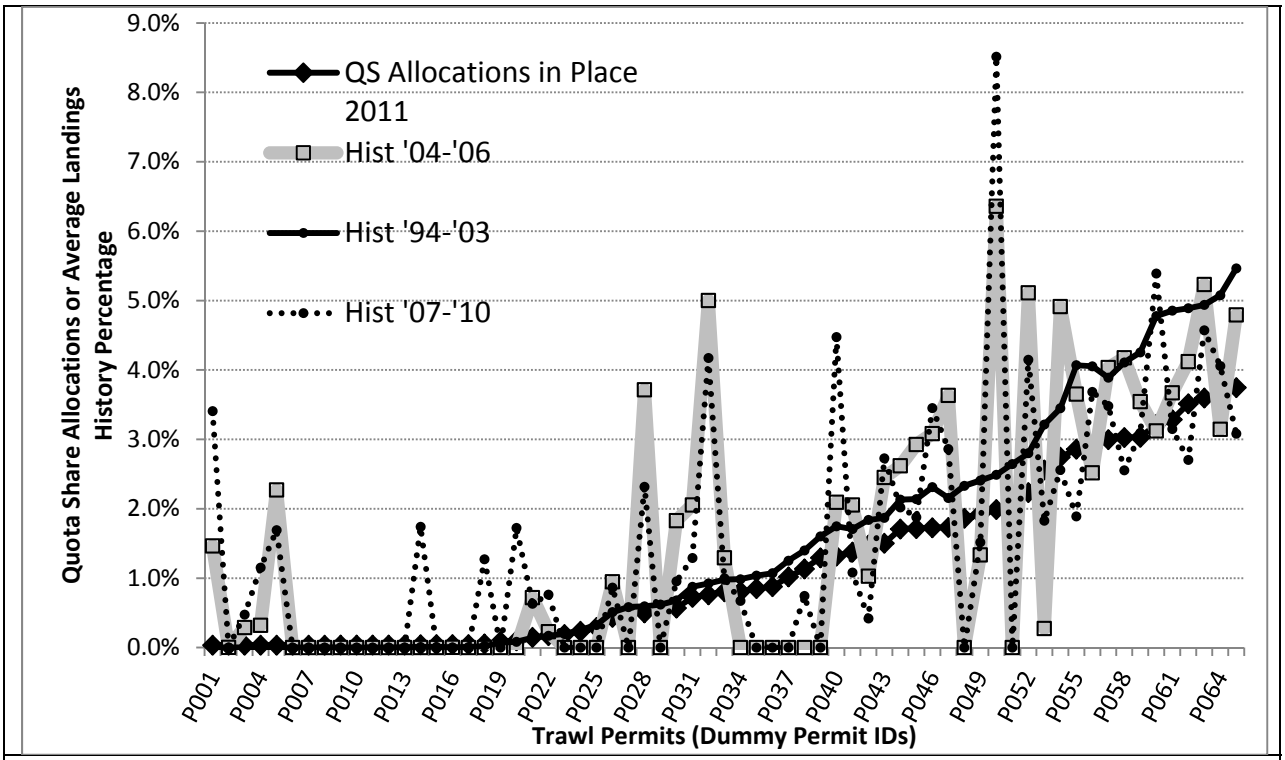


Figure 3-22. Amounts of shoreside whiting QS permits were allocated in 2011 compared to recent and historic harvests (1994-2003, 2004-2006, and 2007-2010).

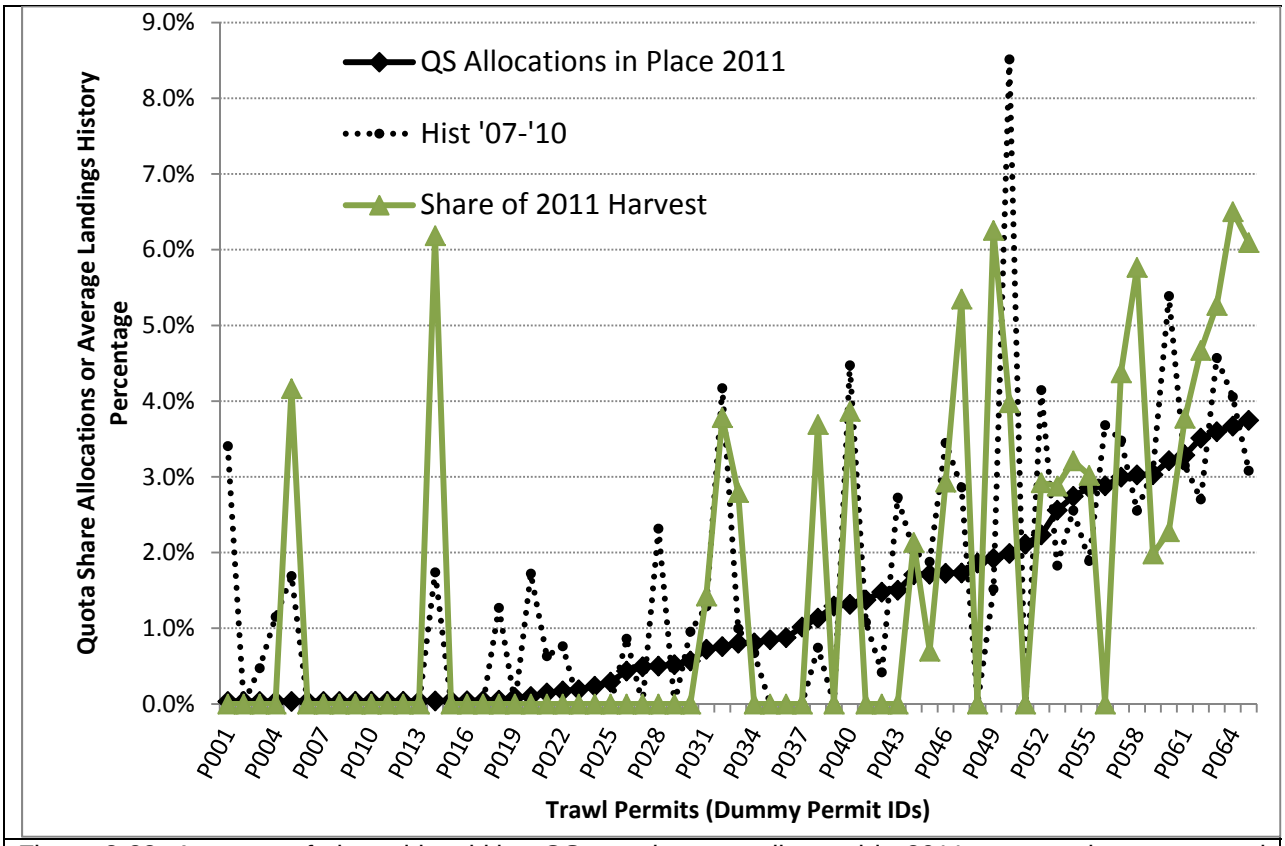


Figure 3-23. Amounts of shoreside whiting QS permits were allocated in 2011 compared to recent and historic harvests (2007-2010 and 2011).

Data from Figure 3-23 are summarized in the following table. A total of 39 permits with landings history in the shoreside whiting fishery did not participate in the 2011 fishery. Most permits that remained active landed substantially more fish than they received in their initial allocation (23 permits). This was partially because 20 percent of the QS was allocated to processors, and the resulting QP were transferred to vessels. Only 3 permits remained active and landed less than their initial allocations. Note that the increases relative to allocations (46.9 percent) are greater than the reductions (23.4 percent) because the initial allocations to permits with whiting fishery participation were reduced by 20 percent due to the allocation to processors and 3.5 percent was equally allocated among all permits Only those permits with whiting directed trips are included in the table and the associated figure.

Table 3-9. Shoreside whiting permit share of harvest in 2011 relative to permit catch share allocations.

Permits not fishing (received allocations but did not participate in 2011)	39
Shares for those dropping out.	-20.4%
Maximum reduction for those not fishing.	-2.9%
Permits landing less than their allocations.	3
Shares unfished by those permits	-3.0%
Maximum reduction for any one permit	-1.0%
Max reduction as a % of original allocation	-34.5%
Permits landing more than their allocations.	23
Additional shares fished by those permits	46.9%
Maximum increase for any one permit	6.1%
Max increase as a % of original allocation	15,000%

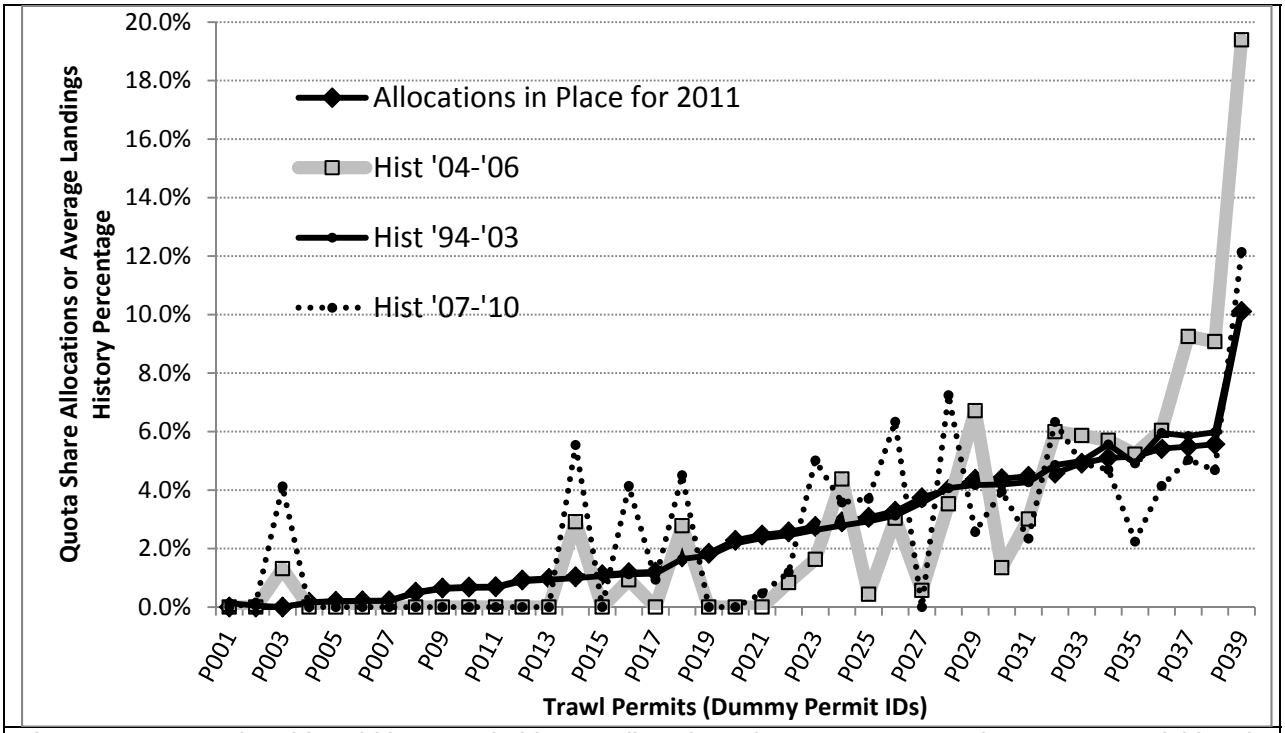


Figure 3-24. Mothership whiting Catch history allocations for 2011 compared to recent and historic harvests (1994-2003, 2004-2006, and 2007-2010).

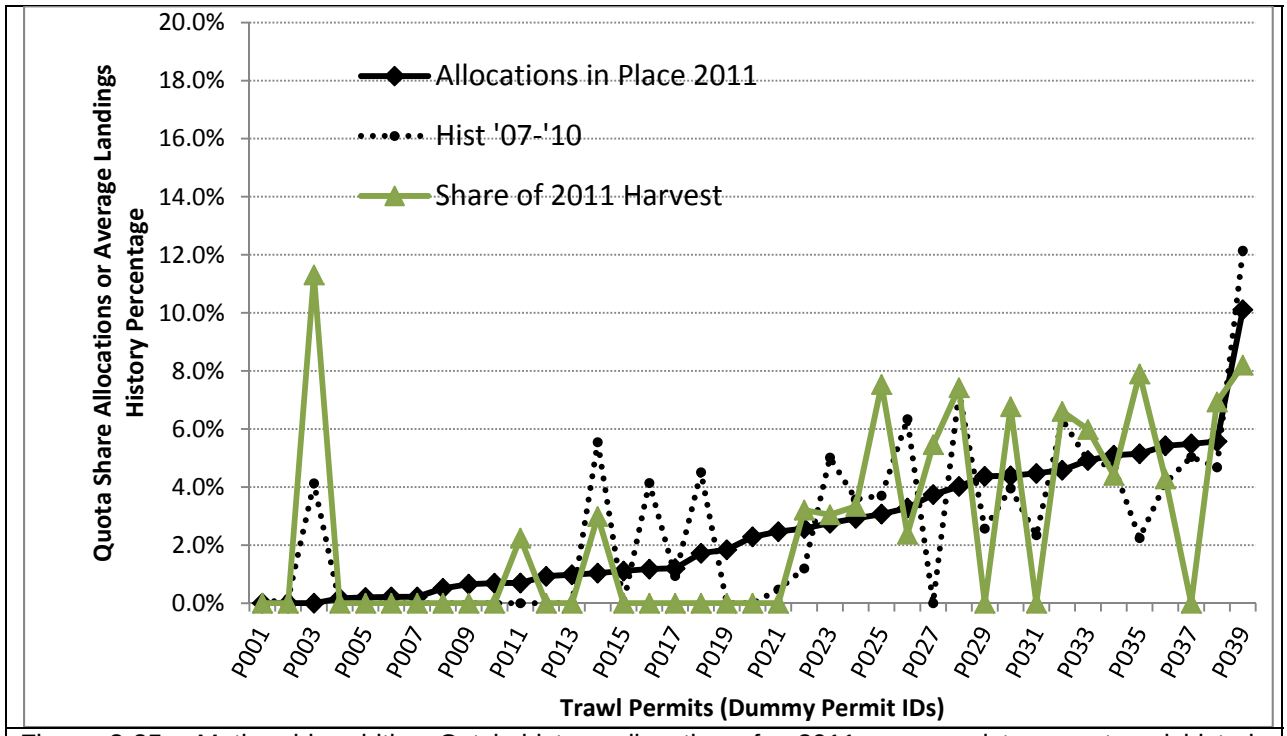


Figure 3-25. Mothership whiting Catch history allocations for 2011 compared to recent and historic harvests (2007-2010 and 2011).

Data from Figure 3-25 are summarized in the following table. A total of 19 permits with deliveries history in the mothership whiting fishery did not participate in the 2011 fishery. Most permits that remained active delivered substantially more fish than they received in their initial allocation (14 permits). Only 4 permits remained active and delivered less than their initial allocations.

Table 3-10. Mothership permit share of harvest in 2011 relative to permit catch share allocations.

Permits not fishing (received allocations but did not participate in 2011)	19
Shares for those dropping out.	-30.7%
Maximum reduction for those not fishing.	-5.5%
Permits landing less than their allocations.	4
Shares unfished by those permits	-4.6%
Maximum reduction for any one permit	-1.9%
Max reduction as a % of original allocation	-18.9%
Permits landing more than their allocations.	14
Additional shares fished by those permits	35.3%
Maximum increase for any one permit	11.3%
Max increase as a % of original allocation	Original allocation was zero

Figure 3-26 and Figure 3-27 illustrate the distribution of combined (weighted) shoreside and mothership sector status quo whiting quota allocations to permit-owning entities compared with historical average harvest levels for those entities.

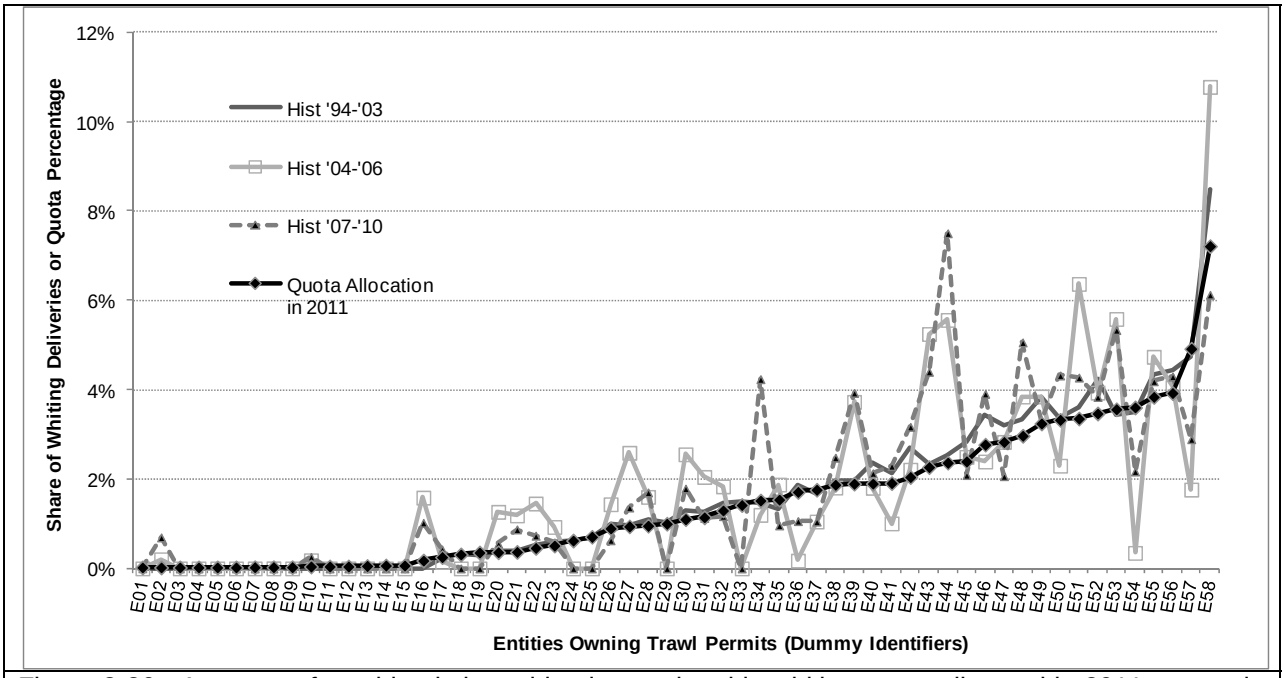


Figure 3-26. Amounts of combined shoreside plus mothership whiting quota allocated in 2011 to permit-owning entities compared to recent and historic harvests (1994-2003, 2004-2006, and 2007-2010).

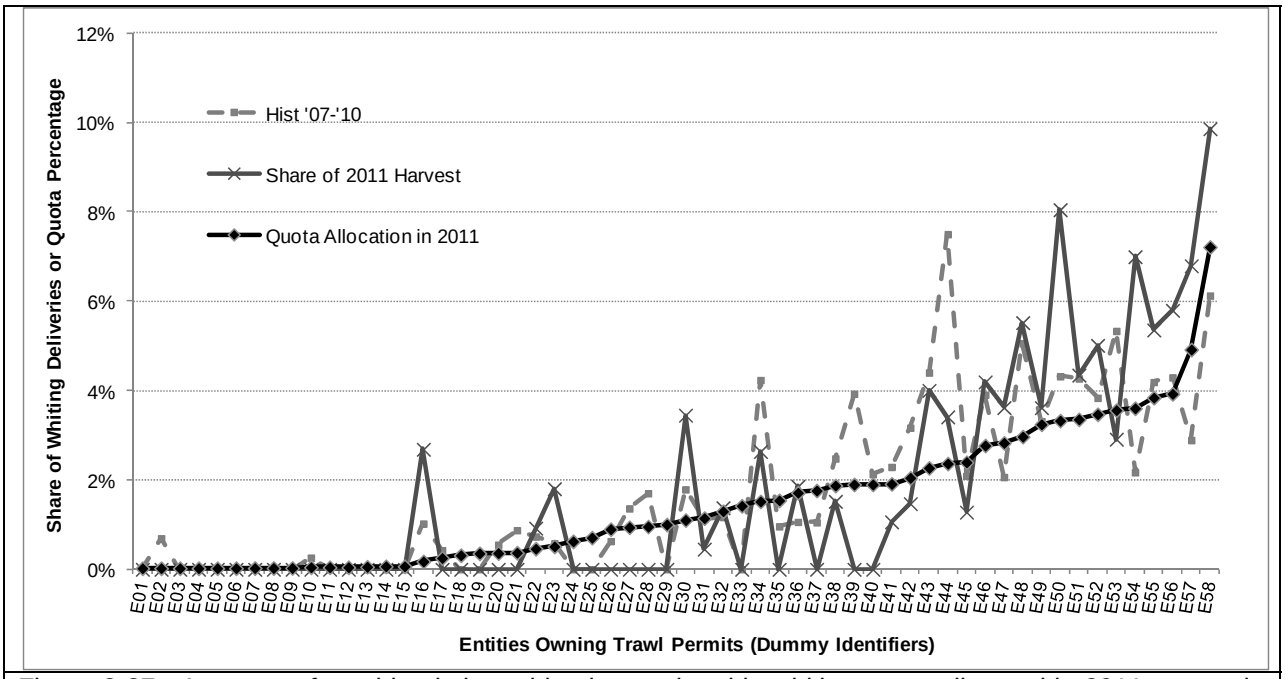
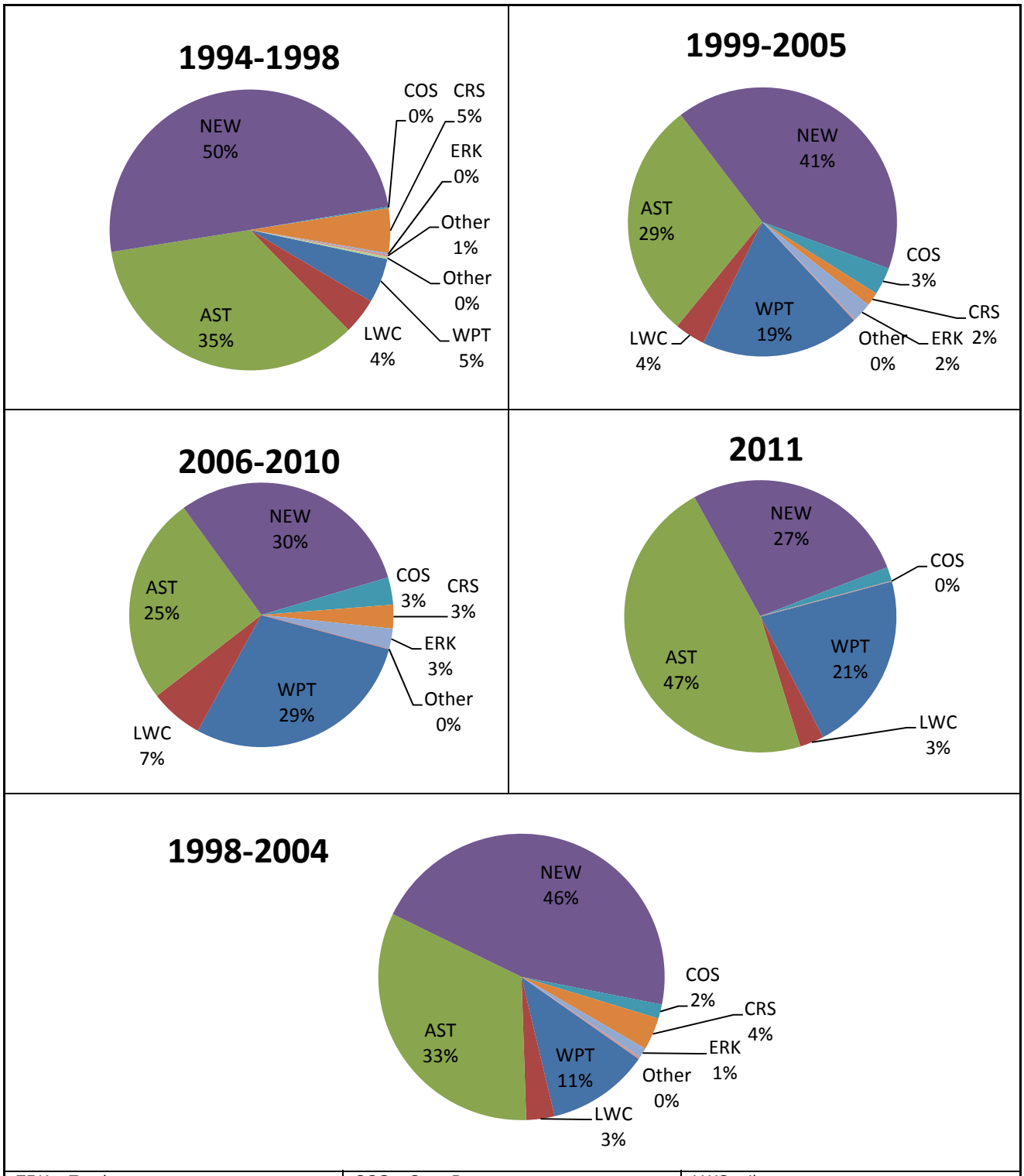


Figure 3-27. Amounts of combined shoreside plus mothership whiting quota allocated in 2011 to permit-owning entities compared to recent and historic harvests (2007-2010 and 2011).

3.3.3 Community Harvest Trends

The following figures and notes describe current and historic permit activity and average ex-vessel revenues per permit.



ERK = Eureka CRS = Crescent City	COS = Coos Bay NEW = Newport AST = Astoria	LWC = Ilwaco WPT = Westport OTH = Other

Figure 3-28. Trends in Whiting Harvest and Landings by Community (PacFIN PCID).

Notes and Observations on Community Whiting Harvest Trends

- Over the years the following ports have been the major communities receiving whiting:, Westport (WPT), Ilwaco (LWC), Astoria (AST), Newport (NEW), Coos Bay (COS), Crescent City (CRS) and Eureka (ERK). "Other" includes Blaine, and Brookings.
- Newport, Astoria and Westport are the major centers of shoreside whiting processing.
- The share of whiting landed in communities has varied over several periods: 1994-1998; 1999-2005; 2006-2010 and 2011 (Note that these estimates do not include tribal whiting).
- In the early years Newport was the lead port, but Westport has been steadily increasing. In 2011 Astoria was the lead port.
- The 1998-2004 chart covers the years used to allocate whiting to processors.

None of the California ports received whiting landings in 2011

CHAPTER 4 IMPACTS ON THE AFFECTED ENVIRONMENT

The direct and indirect impacts of the actions being considered are addressed under each topic covered in Sections 4.1, 4.2, and 4.3. Cumulative impacts are discussed in Section 4.4.

4.1 Direct and Indirect Impacts to the Physical Environment, Including Habitat and Ecosystem

No change in impacts to the physical environment is expected. The alternatives covered by this EA are entirely allocative in nature, changing the allocation among individuals within the shoreside whiting sector and within the at-sea mothership sector but not changing the overall allocations to each sector. Impacts on the physical environment are primarily a function of the areas fished, gear types used, and level of effort. The areas fished are more a function of the location of efficiently harvestable populations of this migratory stock (see Section 3.2.1 for a description of whiting biology) and the shoreside receiving and processing locations than it is the distribution of initial allocations, particularly after QS trading starts. The fleet is highly mobile, particularly the mothership sector, in which the processors can follow the catcher vessels to the areas of best fishing opportunity. Mobility of the shoreside fleet is discussed in the following sections. The primary type of gear used in the fishery (midwater trawl); therefore, changing the allocations will have minor changes on the gear type used. Finally, changing the distribution of fishing opportunities among individuals within a sector is not expected to affect total fishing effort using that gear type. In summary, resources of the physical environment, including habitat and ecosystem, are minimally affected by the reconsideration of allocations to the Pacific whiting fisheries. Hence, the biological impacts analysis does not address these resources any further.

4.2 Direct and Indirect Impacts to the Biological Environment

Coastal pelagic species, highly migratory species, steelhead, green sturgeon, eulachon, marine mammals, and seabirds also use the waters where the at-sea whiting fishery is prosecuted. These species, however, are minimally affected by the reconsideration of allocations to the Pacific whiting fisheries. Hence, the biological impacts analysis does not address these species. For further discussion on these species, please refer to Chapter 3.2. The reallocation of whiting QS and mothership catcher vessel catch history

assignments (CHA) is expected to have minimal, if any, impacts on the biological environment, including but not limited to the following categories of potentially impacted resources:

- Groundfish, Including Overfished Species
- ESA Listed Salmon
- Other Protected Species
- Other Fish Resources

As with the impacts to the physical environment, impacts on these resources are primarily a function of the areas fished, gear types used, and level of effort; and, of these, area fished is the only factor that might be affected as a result of the reallocation of quota (see Section 4.1 for additional discussion). Whether this action will affect area fished depends on:

- the degree to which the reallocation shifts the geographic distribution among quota recipients,
- the degree to which the geographic allocation of quota is linked to the geographic distribution of fishing effort, and
- the nature of the effects of a geographic shift on the fishery resources.

The total amount of quota reallocated by the alternatives would range from less than 1 percent to around 20 percent, depending on the alternative and sector (Table 4-1). These reallocation amounts form an upper bound on the amounts by which quota may shift geographically, i.e. some of the reallocation is likely to occur among permits and processors in the same communities and while some allocation might shift from south to north, other allocations may shift from north to south. Table 4-2 shows the amounts of QS allocated to processors that are expected to be reallocated among processors and the amount of QS ownership that is expected to be shifted among communities as a result. Of the amounts that would be reallocated under each action alternative, around 30 to 40 percent of the QS is expected to initially stay within the same community, except for Alternative 1 for which only 20 percent of the amount reallocated is projected to initially stay within the same community. Whether the QP associated with the QS ends up benefiting that community will depend on inseason conditions and transfers. Additionally, any potential impacts of the geographic distribution of the initial allocation will diminish once QS trading starts. Reallocation through QS trading is expected to be driven by factors affecting profits in the use of QS.

Table 4-1. Whiting catch shares reallocated by the alternatives, as compared to status quo.

	Alt 1	Alt 2	Alt 3	Alt 4
QS Reallocated (permits and processors combined)	<1%	8.2%	11.5%	20.5%
Total CHA Reallocated	0%	8.2%	10.8%	19.2%

Table 4-2. Whiting catch shares reallocated among processors and associated redistribution between ports, as compared to status quo.

	Alt 1	Alt 2	Alt 3	Alt 4
QS Reallocated (permits processors)	0.5%	1.9%	2.5%	3.1%
QS Reallocated Among Ports (estimated based on 2011 delivery patterns)	0.4%	1.3%	1.5%	1.8%

Whether the potential geographic distribution has an effect on the environment also depends on the degree to which fishing area is affected by the distribution of quota among communities. As mentioned previously, the geographic distribution of effort by the at-sea fleets, which harvest 58 percent of the non-

tribal commercial allocation (24 percent for the mothership sector and 34 percent for the catcher-processors), would likely be unaffected by a reallocation of mothership sector CHA. The potential geographic effect is then most likely limited to the reallocation of shoreside QS (a maximum of 20 percent of the 42 percent allocated to the shoreside fishery, 8.4 percent of the nontribal commercial whiting allocation). Again, given that some of the reallocation is likely to occur among members of the same community or move in opposite directions, 8.4 percent is an upper bound on the amount of the whiting allocation that may be geographically redistributed over the short-term. Further, any effect on fishing areas occurring as a result of the geographic distribution of QS among communities on fishing areas will be tempered by the fact that vessels travel relatively long distances to fishing grounds. For example, vessels fishing out of Columbia River ports often fish off the northern Olympic Peninsula. Additionally, vessels sometimes shift ports in response to a more northerly distribution of optimal fishery conditions.

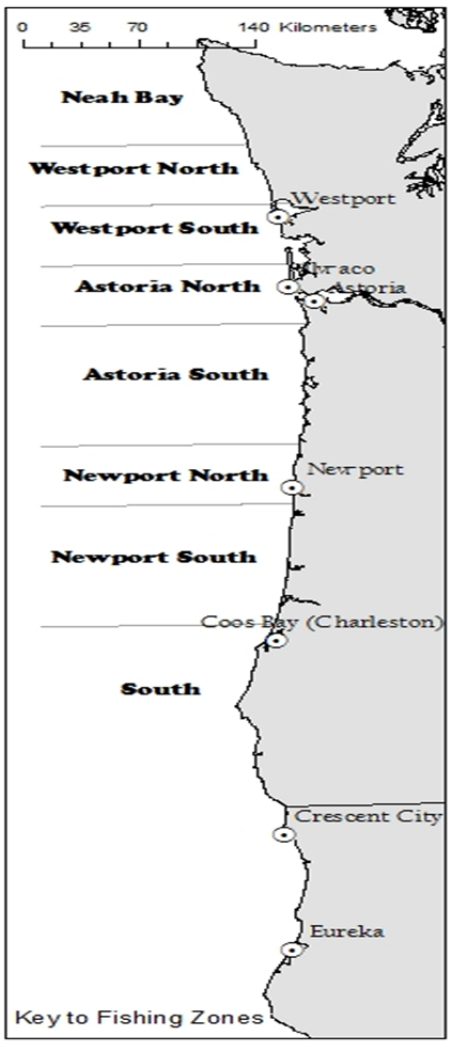
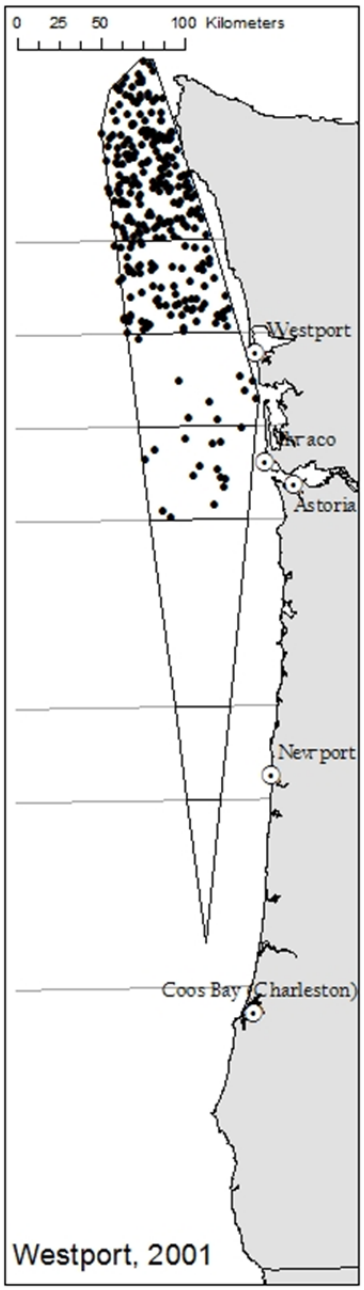
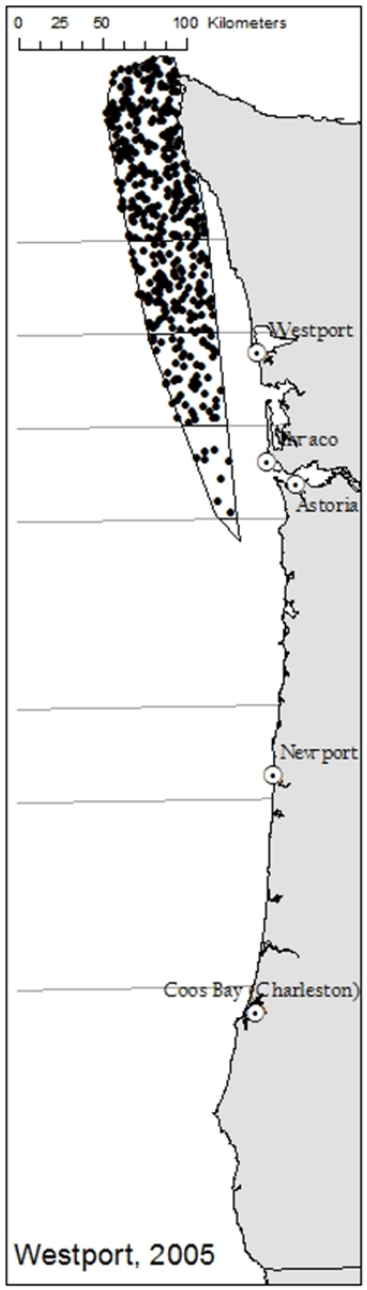
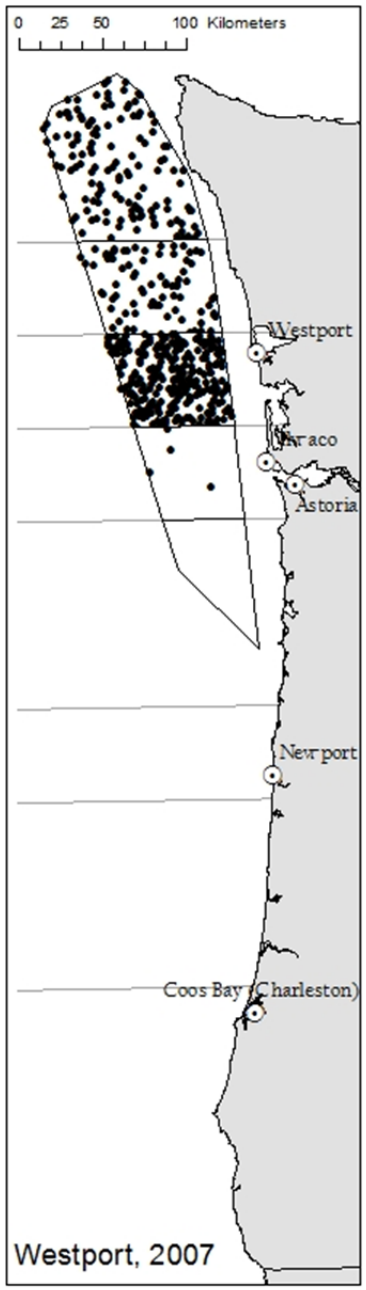


Figure 4-1. Key to fishing zones used for tow analysis.

The following analysis indicates the degree to which vessels range along the coast on a given trip. For purpose of analysis and maintaining confidentiality, the coast was divided up into eight geographic regions (Figure 4-1) and tows were assigned to each region based on the starting point of the tow. Figures 4-2 through 4-5 show the geographic distribution of whiting tows out of each port for trips on which the vessel departed from and returned to the same port. Each dot represents one tow within the respective regional polygon shown in the figures, but the dots are randomly distributed within each polygon. (The polygons bound all tow locations within the given year.) In general, polygons with no dots indicate areas where data was excluded for confidentiality (less than 3 vessels fishing in those areas). Table 4-3 provides counts of tows by region, categorized by port for the trip. In these figures and table it can be seen that in some years vessels fishing out of Astoria range as far north as vessels fishing out of Westport but that vessels fishing out of Newport on a particular trip often do not go that far north. Also notable is the variation in distribution among years and the increased fishing range of vessels in 2011, likely due to the reduction in time pressure under the rationalized fishery. The exception is ports from Coos Bay south, for which trips substantially diminished.


0 25 50 100 Kilometers
Westport
Astoria
Newport
Coos Bay (Charleston)
Westport, 2001


0 25 50 100 Kilometers
Westport
Astoria
Newport
Coos Bay (Charleston)
Westport, 2005


0 25 50 100 Kilometers
Westport
Astoria
Newport
Coos Bay (Charleston)
Westport, 2007

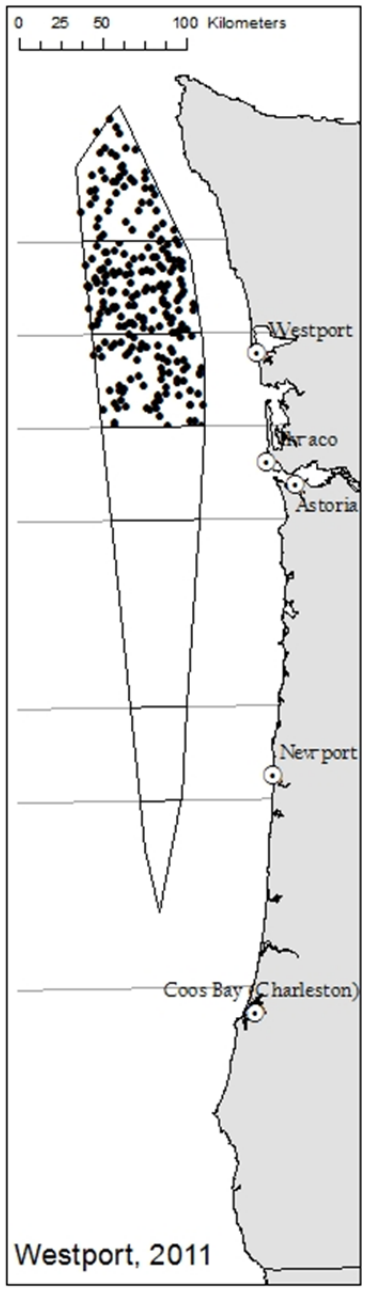

0 25 50 100 Kilometers
Westport
Astoria
Newport
Coos Bay (Charleston)
Westport, 2011

Figure 4-2. Westport: tows on trips for vessels departaing from and returning to the same port (one dot per tow, randomly distributed within the region in which the tow occured, blanks indicate confidential areas (arease where fewer than three vessels operated).

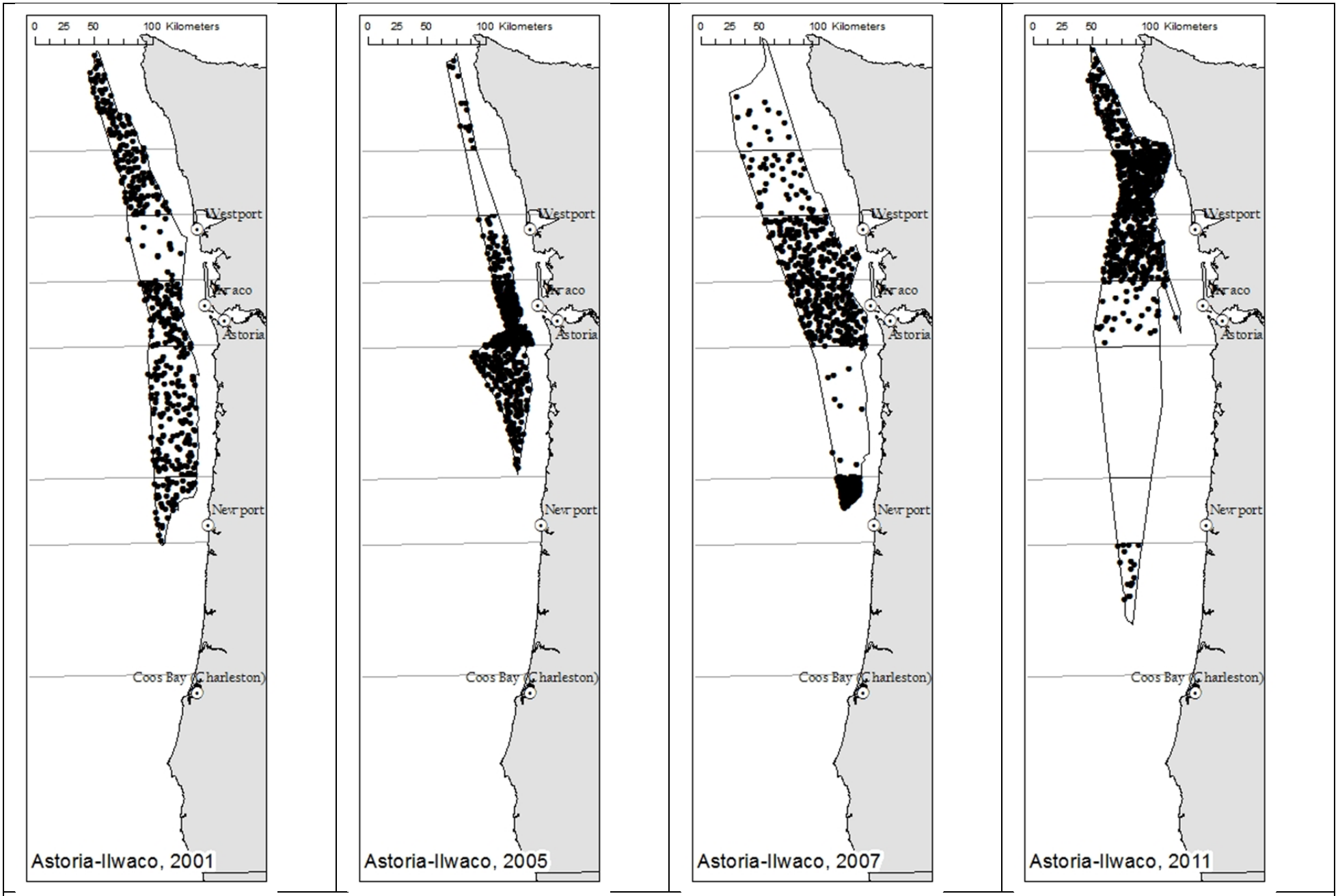


Figure 4-3. Astoria-Ilwaco: tows on trips for vessels departaing from and returning to the same port (one dot per tow, randomly distributed within the region in

which the tow occured, blanks indicate confidential areas (arease where fewer than three vessels operated)

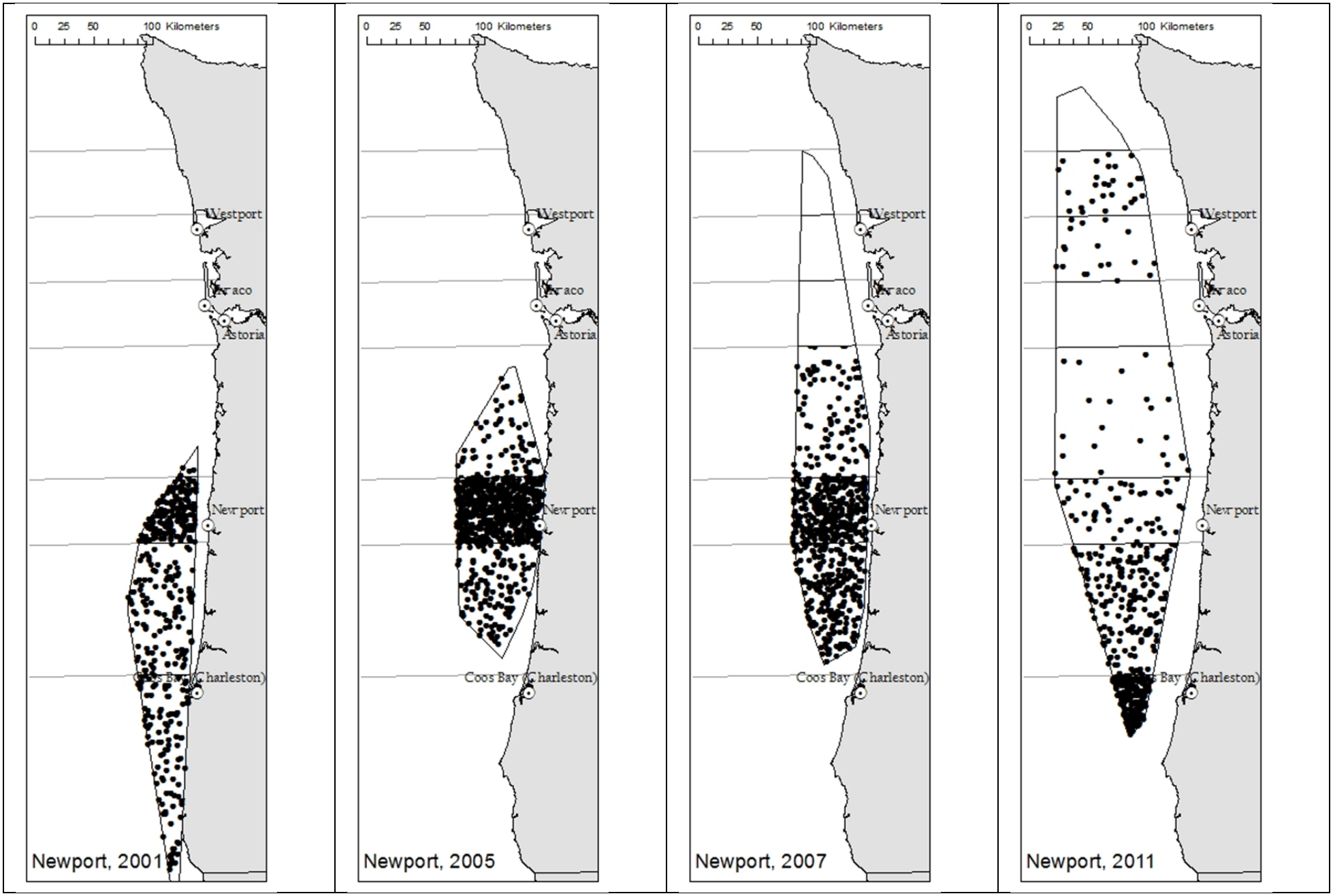
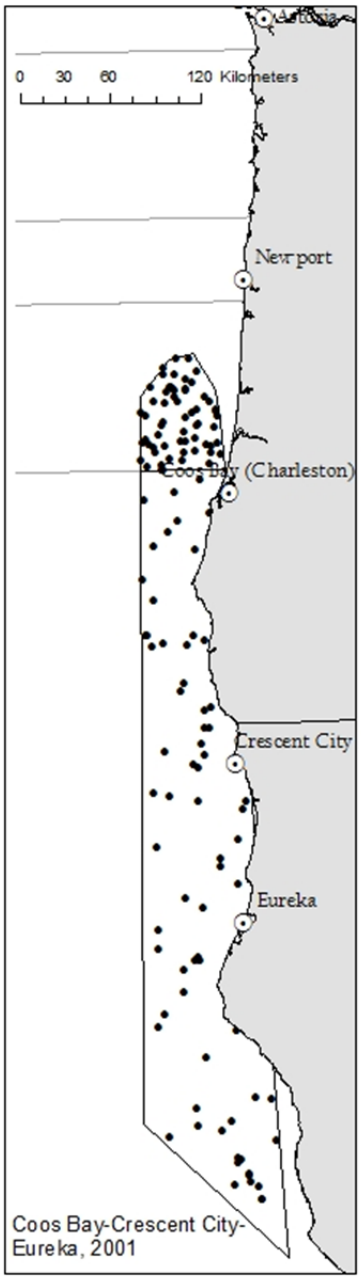
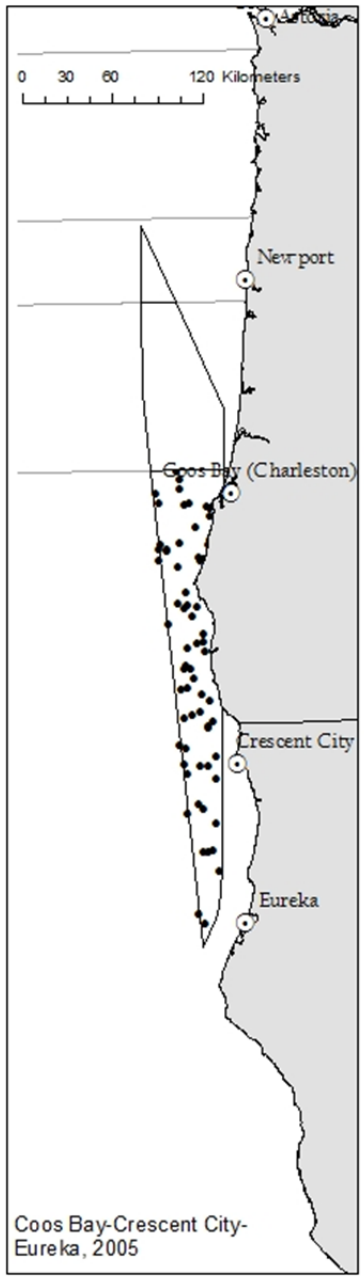
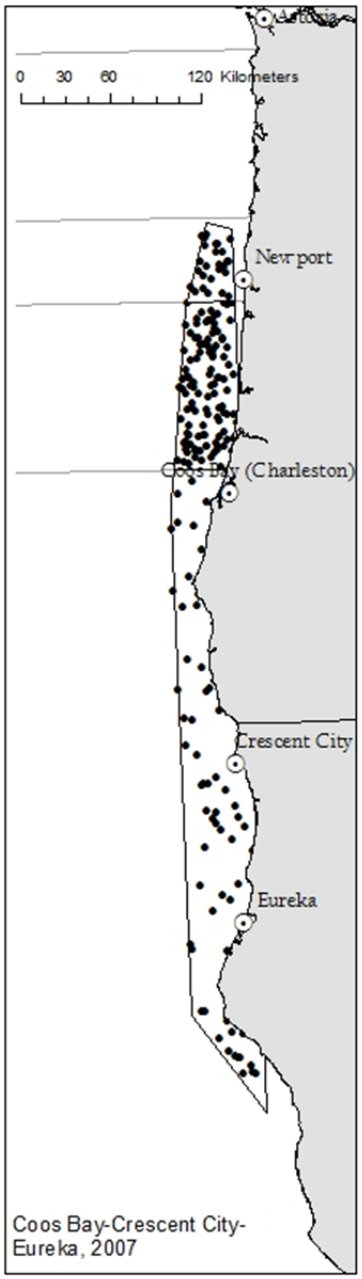

0 25 50 100 Kilometers
Westport
Astoria
Newport
Coos Bay (Charleston)
Newport, 2001
Newport, 2005
Newport, 2007
Newport, 2011

Figure 4-4. Newport: tows on trips for vessels departaing from and returning to the same port (one dot per tow, randomly distributed within the region in which the tow occured, blanks indicate confidential areas (arease where fewer than three vessels operated)


0 30 60 120 Kilometers
Newport
Coos Bay (Charleston)
Crescent City
Eureka
Coos Bay-Crescent City-Eureka, 2001


0 30 60 120 Kilometers
Newport
Coos Bay (Charleston)
Crescent City
Eureka
Coos Bay-Crescent City-Eureka, 2005


0 30 60 120 Kilometers
Newport
Coos Bay (Charleston)
Crescent City
Eureka
Coos Bay-Crescent City-Eureka, 2007

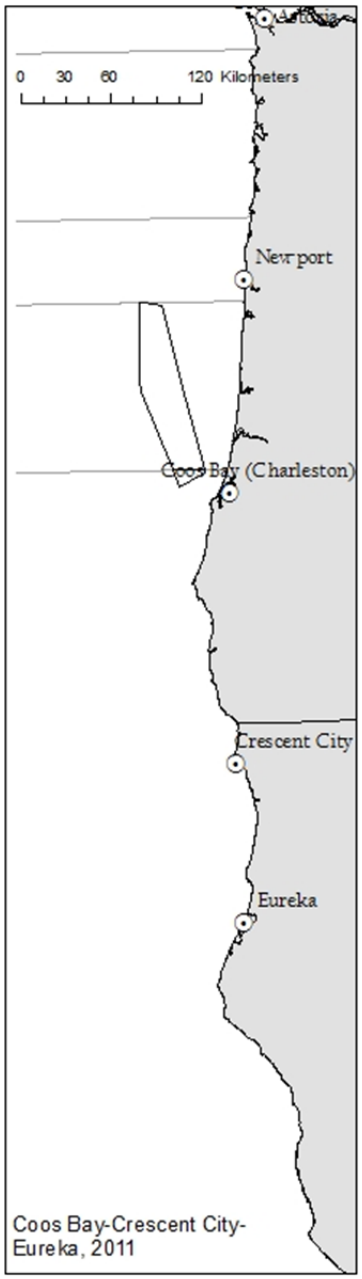

0 30 60 120 Kilometers
Newport
Coos Bay (Charleston)
Crescent City
Eureka
Coos Bay-Crescent City-Eureka, 2011

Figure 4-5. Coos Bay, Crescent City, Eureka: tows on trips for vessels departaing from and returning to the same port (one dot per tow, randomly distributed within the region in which the tow occured, blanks indicate confidential areas (arease where fewer than three vessels operated)

Table 4-3. Number of tows by fishing zone and year for Westport, WA. (Cells representing less than 3 vessels excluded.) See map below for key to fishing zones.

Fishing Zone	2001	2005	2007	2011
Departure/Return Port = Westport				
Neah Bay	187	282	134	51
Westport North	77	109	78	118
Westport South	9	52	272	72
Astoria North	15	8	4	
Total	**288**	**451**	**488**	**241**
Departure/Return Port = Astoria-Ilwaco				
Neah Bay	261	295	147	170
Westport North	172	109	111	512
Westport South	22	86	452	302
Astoria North	123	369	217	33
Astoria South	122	223	168	
Newport North	41		8	
Newport South				17
Total	**741**	**1082**	**1103**	**1034**
Departure/Return Port = Newport				
Westport North				27
Westport South				18
Astoria South	4	60	93	23
Newport North	176	593	286	50
Newport South	223	122	216	330
Total	**403**	**775**	**595**	**448**
Departure/Return Port = Coos Bay-Crescent City-Eureka				
Newport North			26	
Newport South	61		114	
South	82	78	86	
Total	**143**	**78**	**226**	

Given the relatively small amount of quota that may be reallocated among geographic regions, the QS trading that will change geographic distribution regardless of the initial allocations, and fleet mobility, the effect of the initial allocations on area of harvest is likely to be negligible. Therefore, the method of harvest, total harvests, and distribution of harvest are not likely to change the biological effects of the initial allocations on groundfish, including overfished species, ESA-listed salmon, other protected species and other fish resources.

With respect to the whiting fishery, if there were to be a biological effect it would most likely occur as a result of shifts in the size of the fish harvested through a change in the timing of the harvest or simply an increase in the amounts of larger sized fish caught.

The annual migratory pattern of whiting, along with the inter-annual variation in those patterns, is discussed in Section 3.2.1.2. The populations start the year in a southerly distribution and move to the north as the year progresses, with more larger fish moving further to the north than smaller fish. The extent of northerly migration varies by year. The fish also grow as the season progresses. Because the fish take longer to reach more northerly areas, there might be some possibility that over the short-term harvest would occur somewhat later in the year if quota is distributed and harvested in more northern regions. The additional opportunity for growth could lead to some increase in stock productivity. A 10

percent increase in productivity has been projected comparing a hypothetical scenario where 100 percent of the harvest is taken in April to one where 100 percent is taken in September (PFMC 1997)[7]. Using this 10 percent hypothetical result as a maximum, and applying that result to the 8.2 percent maximum geographic reallocation, results in an upper bound on the impact on stock productivity of less than 1 percent. This would be further reduced by the fact that the difference in timing between more northern and southern fisheries is far less than the five-month delay of the hypothetical example and reasons given above to expect that the geographic shifts would be substantially less than the 8.2 percent hypothetical maximum.

Whiting caught in more northerly areas also tend to be larger in size. Whether harvesting larger fish (independent of timing of harvest) has an effect on stock productivity depends on growth rates, fecundity, and natural mortality of fish of different sizes. For whiting, harvesting a larger proportion of older fish in any given year is likely to have an upward influence on stock productivity, relative to harvesting the same amounts of whiting with a smaller proportion of older fish. Again, over the long term the amount of any shift in geographic distribution of harvest is likely to be small.

4.3 Direct and Indirect Impacts to the Socioeconomic Environment

The impact on net benefits generated for the nation as a whole is expected to vary minimally among the alternatives. Alternatives that allocate to those most likely to use the allocation, rather than transfer it to another entity, will have lower transition costs. However, the amount of these costs relative to the program as a whole is expected to be minimal and information is not available by which a determination can be made as to which allocation is likely to result in the lowest levels of post allocation transfers.

The primary effects are distributional and will be described in the following sections.

4.3.1 Harvesting Sector Impacts

4.3.1.1 Shoreside Whiting

Changing the allocation history periods will shift QS among recipients. How different allocation periods address policy goals is discussed in Chapter 5. Here, the objective is to show the allocational results and discuss impacts.

In general, any permit owner that receives lesser or no initial allocation is on a par with those who will enter the fishery at a later time (having to acquire quota in order to enter the fishery). The initial allocation is essentially the granting of a capital asset that will affect harvester competitiveness and assist existing participants in the transition to the new management system. To the degree that initial allocation match up with the harvesters that will use the quota, transition costs and disruption will be lessened.

Comparison of Allocations to Recent and Historic Shares of Harvest by Permit

One measure of a permit's likelihood of continuing in the fishery and the level of allocation it would need to acquire to minimize disruption to its operations is the permit's recent and historic share of the fleet harvest. Allocations in proportion to these amounts may reduce a fishing operation's need to acquire

[7] "Delaying all or part of the whiting harvest to later in the season allows the whiting to grow, and thus fewer would be caught to achieve the harvest guideline. This could equate to as much as a 10% increase in longterm yield if the entire harvest were delayed until September each year, compared to the entire harvest being taken in April" ((PFMC 1997)).

quota through purchase thereby minimizing disruption with implementation of the trawl rationalization program, or following the reallocation contained in the action alternatives covered in this document.

In Figure 4-6, along the bottom of the graph permits are arrayed from those receiving the least allocation under status quo (No Action) to those receiving the most. The allocations to these permits are shown by the solid line marked by diamonds, increasing steadily from the left side to the right side of the graph. The highest allocation to any permit was under 4 percent (far right hand side). Since the allocation period for the No Action Alternative was 1994-2003, this line tracks fairly closely with the 1994-2003 history line, although the No Action allocation line is generally below the history line because 20 percent of the QS was allocated to processors. Note that the No Action allocation line is not exactly 20 percent below the permits' 1994-2003 average history because of the provision that dropped each permit's two worst years from the calculation. The 2007-20010 history for each permit is tracked by the dotted line. On the left hand side of the graph it can be seen that there were about five permits that had minimal history from 1994-2003 that had over a 1 percent share of the history from 2007-2010. Moving toward the right, a number of other permits can be seen which had substantially higher histories in recent years relative to their 1994-2003 history and relative to their initial allocations (No Action). Similarly, on the right hand side of the graph can be seen three permits which received initial allocations of over one percent of the QS that had no participation from 2007-2010. There are another five permits that did not participate from 2007-2010 that received initial allocation amounts of between about one half and one percent. The allocation results for the other alternatives are shown in the graph by different shape symbols. By picking individual permits and examining the allocational results, one can see that for permits with recent histories (2007-2010) that differ dramatically from their history during the initial allocation base period (1994-2003), the allocational result moves closer to their more recent history values as the allocation periods are extended to include more recent years. For example, the permit with the highest share of the 2007-2010 landings history (over 8.5 percent) received about a QS allocation of 2 percent under No Action but would receive a QS allocation of just under 3 percent if the allocation period is extended through 2007 (Alternative 2), between 3 percent and 4 percent if the allocation period is extended to 2010, and over 5 percent if the early years of the allocation period were eliminated (Alternative 4). A similar but inverse result can be observed for those permits with zero or minimal history in recent years (2007-2010).

Following the figure is a statistical summary of the information provided in Figure 4-6.

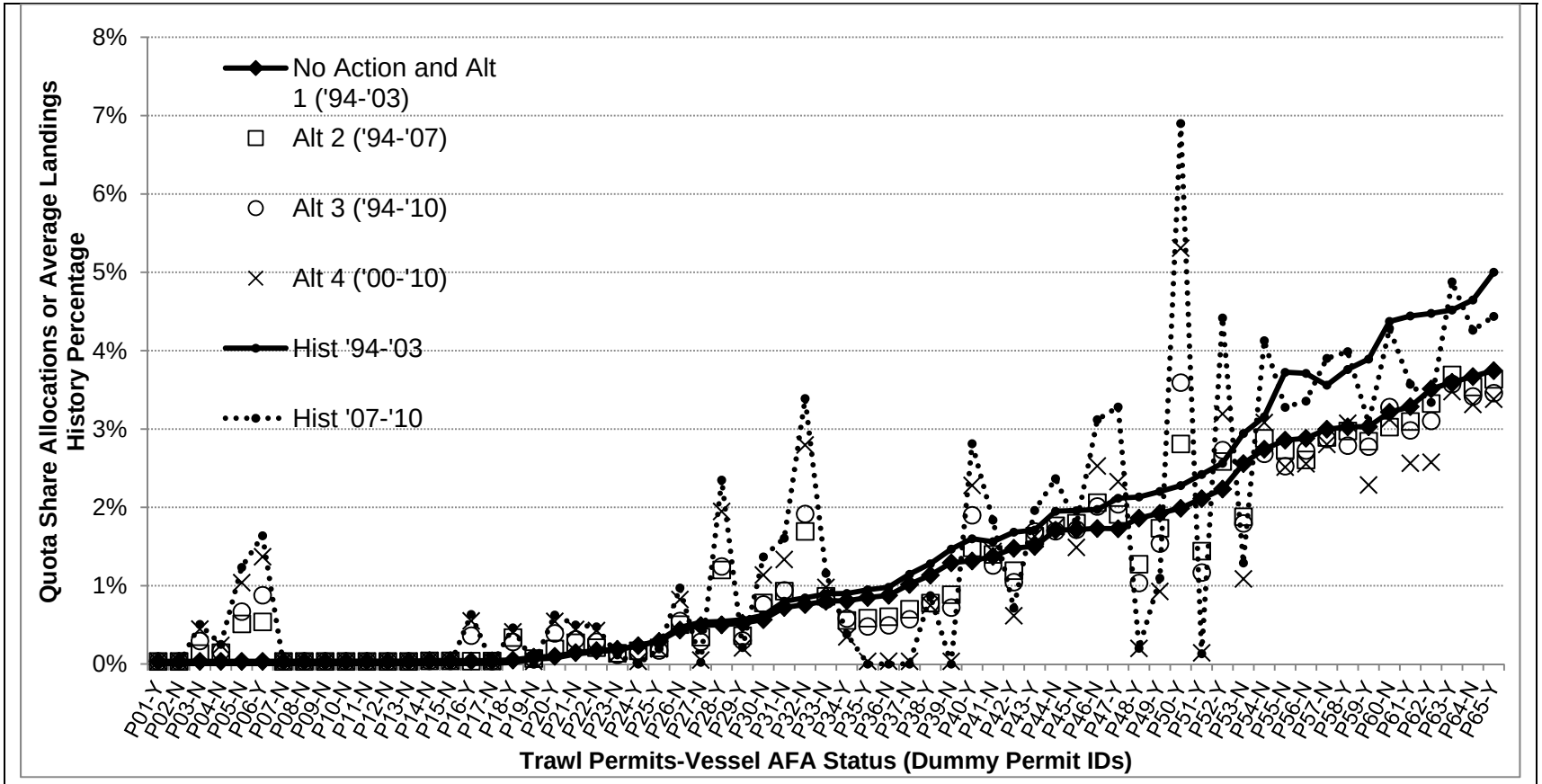


Figure 4-6. Shoreside whiting QS allocations to permits, by alternative, compared to each permit's share of shoreside whiting landings in recent and historic periods (permits ordered from lowest initial allocation to highest initial allocation under status quo (No Action) – permit numbers followed by an "N" were not associated with AFA vessel at any time from 1994 through 2011, those with a "Y" were. (Excludes 102 permits that received only equal allocations of 0.04 percent each, for which the allocation does not change among the alternatives.

Statistical Summary of Figure 4-6: Comparisons to Status Quo. Relative to status quo, Alternatives 2, 3 and 4 would allocate QS to 6 permits that would not otherwise receive QS based on permit catch history from whiting targeted trips (Table 4-4).[8] Alternative 4 would allocate the most to this group, a total of 3.0 percent to all permits in the group and a maximum of 1.3 percent to any one permit in the group. Alternative 2 would benefit 27 permits (6 permits that newly qualifying for QS based on whiting catch history and 21 previously qualifying permits) while reducing the allocation of 38 permits. A total of 6.3 percent of the QS would be redistributed under Alternative 2. Alternative 3 would benefit 25 permits (6 newly qualifying permits and 19 previously qualifying permits, while reducing the allocation of 40 permits. A total of 9.0 percent of the QS would be redistributed under Alternative 3. Alternative 4 would benefit 28 permits (6 newly qualifying permits and 22 previously qualifying permits, while reducing the allocation of 37 permits (25 permits with reduced allocations and 12 permits which would receive no allocation based on permit catch history). A total of 17.4 percent of the QS would be redistributed under Alternative 4.

[8] However these permits would receive a quota share allocations of approximately 0.04% as part of equal sharing of the shoreside whiting allocation and may also receive some small amount to cover bycatch on the nonwhiting trips

Table 4-4. Changes in the amount of shoreside whiting QS allocated to permits under the alternatives relative to status quo (No Action) based on individual permit history of shoreside whiting trips (table excludes the 0.04 percent that each permit received as its share of the equal allocation and permits' share of the 0.1 percent allocated for nonwhiting trips).[a/]

	Alternatives		
	Alt 2: 1994-2007	Alt 3: 1994-2010	Alt 4: 2000-2010
Number of Permits **Not Previously Qualifying** for an Allocation based on Whiting Trip Permit History	6	6	6
Total Allocation Increases for Those Permits	1.2%	1.9%	3.0%
Maximum To Any Permit	0.5%	0.8%	1.3%
Max Increase as a Percent of Status Quo Allocation [b/]	1468.3%	2452.2%	3874.1%
Number of Previously Qualifying Permits With **Increased** Allocations Under the Alternative	21	19	22
Total Percent of Increase for Those Permits	5.1%	7.1%	14.4%
Maximum Increases to Any One Permit	0.9%	1.6%	3.3%
Max Increase as a Percent of Status Quo Allocation	123.1%	80.8%	167.1%
Previously Qualifying Permits with **Decreased** Allocations Under the Alternative	38	40	25
Total Percent of Decreases for Those Permits	-6.3%	-9.0%	-13.2%
Maximum Decreases to Any One Permit	-0.7%	-0.9%	-2.0%
Max Decrease as a Percent of Status Quo Allocation	-26.5%	-44.6%	-93.3%
Previously Qualifying Permits with **Zero** Permit History-Based Allocations Under Status Quo	-	-	12
Total Percent of Decreases for Those Permits	-	-	-4.2%
Maximum Decreases to Any One Permit	-	-	-1.3%
Max Decrease as a Percent of Status Quo Allocation	-	-	-97.4%

a/ Alternative 1 is identical to Status Quo for permits.
b/ Increase represent a percent change relative to the equal allocation amounts received by these permits under status quo.

Statistical Summary: Comparisons to Recent and Historic Periods. Relative to their 1994-2003 historic averages, under the No Action alternative 24 permits would receive allocations very slightly above their 1994-2003 average–amounts of about 0.03 percent each (Table 4-5). Because the permits are allocated only 80 percent of the total QS, most permits receive allocations that are below the long-term average.[9] For all alternatives, the total amounts by which the QS allocations are below the 1994-2003 average is 15.1 percent (the sum of the increases plus the decreases). One might expect this amount to be zero (increases in shares would exactly balances decreases), however the effect of the 20 percent allocated to processors, the share taken by buyback permits from 1994-2003, and the QS allocated equally among all permits, leads to a different result.

[9] A total of 102 permits receiving only equal shares of the whiting QS and or whiting QS allocated to cover bycatch on non-whiting trips are not included in the figures or the summary tables.

Table 4-5. Differences in allocations of **shoreside** whiting QS to permits under the alternatives relative to 1994-2003 comparison years. [a/]

	Alternatives				
	No Action	1: 1994-2003	2: 1994-2007	3: 1994-2010	4: 2000-2010
Number of Permits With Allocations **Higher** Than Comparison Period Share	24	24	30	31	32
Total Differences Between Allocations and Comparison Period Shares for Those Permits	0.7%	0.7%	4.9%	7.6%	15.4%
Maximum Amount Above for Any One Permit	0.0%	0.0%	0.8%	1.3%	3.0%
Max Difference as a Percent of 1994-2003 Levels	1616.4%	1616.4%	100.5%	57.7%	133.0%
Number of Permits With Allocations **Lower** Than Comparison Period Share	41	41	35	34	33
Total Differences Between Allocations and Comparison Period Shares for All of Those Permits	-15.8%	-15.8%	-20.0%	-22.7%	-30.5%
Maximum Amount Below for Any One Permit	-1.3%	-1.3%	-1.4%	-1.5%	-2.3%
Max Difference as a Percent of 1994-2003 Levels	-25.1%	-25.1%	-27.3%	-30.8%	-94.1%
Sum of Deviations from Comparison Period (Total Absolute Value of Changes For Those With Higher and Lower Allocations)	16.5%	16.5%	24.9%	30.3%	45.9%

a/ The 1994-2003 averages are based on each permit's share of the entire fleet's landings, including those permits that were bought back.

Note that buyback permits were included in determining each permit's share of the historic harvest for the comparison to 1994-2003 historic shares of harvests. If the buyback permits were omitted from the calculation, the total amount by which the permits would be below their 1994-2003 averages would be 23.5 percent. This underage is the combined effect of the 20 percent of the QS allocated to processors and the 3.5 percent of the QS allocated equally among 102 permits not included in the tables (i.e., permits for which results do not vary among alternatives). The comparisons provided in Table 4-6 and Table 4-7 are for periods in which the buyback permits were not present. In both tables the total underage is 23.5 percent for all alternatives.

One measure of the amount by which the allocations vary from historic averages is the total amount allocated to each permit deviates from the averages summed across all permits. The closer the match between the averages and the allocations, the lower the deviations will be. The worse the match (i.e., with some permits receiving substantially more and others receiving substantially less than their long-term averages), the greater the deviations will be.

For example, for the No Action Alternative and Alternative 1, the 24 permits receiving more than the 1994-2003 average receive a total of 0.7 percent more, and the 41 permits that receive less receive a total of 15.8 percent less (Table 4-5). The combined deviation from the long-term average is 16.5 percent under these alternatives (last row of Table 4-5). The deviations increase to 24.9, 30.3, and 45.9 percent, for Alternatives 2, 3, and 4, respectively.

Using 2004-2006 as the comparison period (the base period used in the Amendment 20 analysis) it can be seen that the total deviation relative to the 2004-2006 average is 56.9 percent under No Action, decreasing to 34.9 percent under Alternative 4 (Table 4-6). The number of permits receiving greater allocations (between 34 and 36 permits) and lesser allocations (between 29 and 31 permits), relative to the 2004-2006 comparison period, remains relatively stable among the alternatives.

Table 4-6. Differences in allocations of shoreside whiting QS to permits under the alternatives relative to 2004-2006 comparison years.

	Alternatives				
	No Action	1: 1994-2003	2: 1994-2007	3: 1994-2010	4: 2000-2010
Number of Permits With Allocations **Higher** Than Comparison Period Share	35	35	34	36	36
Total Percent of Increases for Those Permits	16.7%	16.7%	11.8%	10.8%	5.7%
Maximum Amount Above for Any One Permit	2.3%	2.3%	1.6%	1.5%	0.8%
Max Difference as a Percent of 2004-2006 Levels	833.2%	833.2%	586.3%	554.9%	296.1%
Number of Permits With Allocations **Lower** Than Comparison Period Share	30	30	31	29	29
Total Percent of Decreases for Those Permits	-40.2%	-40.2%	-35.3%	-34.4%	-29.2%
Maximum Amount Below for Any One Permit	-4.4%	-4.4%	-3.5%	-3.1%	-2.2%
Max Difference as a Percent of 2004-2006 Levels	-68.7%	-68.7%	-55.8%	-61.7%	-44.1%
Sum of Deviations from Comparison Period (Totals of the Absolute Value of Changes For Those With Higher and Lower Allocations)	56.9%	56.9%	47.1%	45.2%	34.9%

Using 2007-2010 as the comparison period it can be seen that the total deviation relative to the 2007-2010 average is 56.6 percent under No Action, decreasing to 32.2 percent under Alternative 4 (Table 4-7). The number of permits receiving greater allocations (between 33 and 36 permits) and lesser allocations (between 29 and 32 permits), relative to the comparison 2007-2010 comparison period, remains relatively stable among the alternatives.

Table 4-7. Differences in allocations of **shoreside** whiting QS to permits under the alternatives relative to 2007-2010 comparison years.

	Alternatives				
	No Action	1: 1994-2003	2: 1994-2007	3: 1994-2010	4: 2000-2010
Number of Permits With Allocations **Higher** Than Comparison Period Share	36	36	34	33	33
Total Percent of Increases for Those Permits	16.5%	16.5%	11.4%	8.6%	4.3%
Maximum Amount Above for Any One Permit	2.1%	2.1%	1.4%	1.2%	0.6%
Max Difference as a Percent of 2007-2010 Levels	a/	a/	a/	a/	33.0%
Number of Permits With Allocations **Lower** Than Comparison Period Share	29	29	31	32	32
Total Percent of Decreases for Those Permits	-40.0%	-40.0%	-34.9%	-32.2%	-27.8%
Maximum Amount Below for Any One Permit	-6.5%	-6.5%	-5.7%	-4.9%	-3.2%
Max Difference as a Percent of 2007-2010 Levels	-76.6%	-76.6%	-67.0%	-57.8%	-37.6%
Sum of Deviations from Comparison Period (Totals of the Absolute Value of Changes For Those With Higher and Lower Allocations)	56.6%	56.6%	46.3%	40.8%	32.2%

a/ Permit with maximum increase had no landings in the 2007-2010 base period.

Comparison of Allocations by Recent and Historic Years of Participation by Permit

The previous figures and tables viewed the allocations in the context of recent and historic participation based on each permit's initial allocations and harvest shares over several different periods. In this section, performance of the alternatives with respect to recent and historic participation is examined in terms of the number of years of activity in the fishery, independent of the level of activity in any particular year. There are a total of 17 years of pre-2011 history being considered as part of the allocation period. Table 4-8 compares the QS allocations that would be received by permit holders, grouped by the duration of their participation and recent participation. For example the first set of rows in Table 4-8 show that there were 16 permits with at least 15 years of participation and that the allocations to these permits decreases with each successive option, starting at 43.30 percent under Alternative 1 and ending at 41.8 percent under Alternative 4. The most allocated to any single permit declines from 3.7 percent under Alternative 1 to 3.5 percent under Alternative 4. This trend across the alternatives is generally the opposite of that observed for the mothership CHA allocations. The second grouping of data in the table show the allocations for permits with at least one year of participation in the allocation period which places greatest emphasis on more recent years (Alternative 4, 2000-2010) as compared to those permits with no participation in the allocation period. The final grouping shows the allocations that would go to permits with some history after the 2003 control date, as compared to those with no history after the control date.

Table 4-8. Shoreside whiting QS allocations to permits under the reallocation alternatives.

	No Action- Alt 1 (1994-2003)	Alt 2 (1994-2007)	Alt 3 (1994-2010)	Alt 4 (2000-2010)
Permits with at least 15 yrs participation 1994-2010				
# of permits	16	16	16	16
Amount of QS allocated	43.3%	42.7%	42.5%	41.8%
Max QS allocation	3.7%	3.7%	3.6%	3.5%
Permits with less than 15 yrs participation 1994-2010				
# of permits	49	49	49	49
Amount of QS allocated	33.2%	33.8%	34.0%	34.7%
Max QS allocation	2.7%	2.9%	3.6%	5.3%
Permits with at least 1 yr participation 2000-2010				
# of permits	53	53	53	53
Amount of QS allocated	71.9%	73.2%	73.8%	76.1%
Max QS allocation	3.7%	3.7%	3.6%	5.3%
Permits with no participation 2000-2010				
# of permits	12	12	12	12
Amount of QS allocated	4.6%	3.2%	2.7%	0.4%
Max QS allocation	1.3%	0.9%	0.7%	0.0%
Permits with at least 1 yr participation 2004-2010				
# of permits	44	44	44	44
Amount of QS allocated	66.3%	69.4%	70.6%	75.0%
Max QS allocation	3.7%	3.7%	3.6%	5.3%
Permits with no participation 2004-2010				
# of permits	21	21	21	21
Amount of QS allocated	10.2%	7.1%	5.9%	1.5%
Max QS allocation	2.1%	1.4%	1.2%	0.2%

Allocations to Permits and Entities Relative to Accumulation Limits

The shoreside vessel limit is 15 percent of quota pounds, i.e., the maximum amount of whiting quota pounds that can be used on a single vessel in any one year in the shoreside whiting sector is 15 percent of the total. Examination of Figure 4-6 shows that the maximum allocations to any single permit under No Action, and Alternatives 2 and 3 would be just over 3.5 percent. The maximum allocations to a permit under Alternative 4 would be just over 5 percent. The initial allocation to permits would therefore be well below the 15 percent maximum that could be used on any single vessel, leaving substantial room for consolidation through transfers of quota pounds.

A control limit of 10 percent applies to all QS owned by a single entity. Figure 4-7displays the total QS allocations going to entities holding permits. Whereas one point in Figure 4-6 represented a single permit, each point in Figure 4-7 represents a single permit-owning entity and the allocations to all permits held by that entity. This figure shows that for the portion of the QS allocations made to permits, the most a single entity is expected to receive is just over 8.5 percent under No Action, Alternative 1, Alternative 2 and Alternative 4, and just under 8 percent under Alternative 3. None of these amounts exceeds the 10 percent QS control limit. However, under the shoreside IFQ program, some entities receive QS for both their permit history and qualified processing activity. The performance of the alternatives with respect to QS issued to entities controlling both permits and processing history is addressed in Section 4.3.2.1.

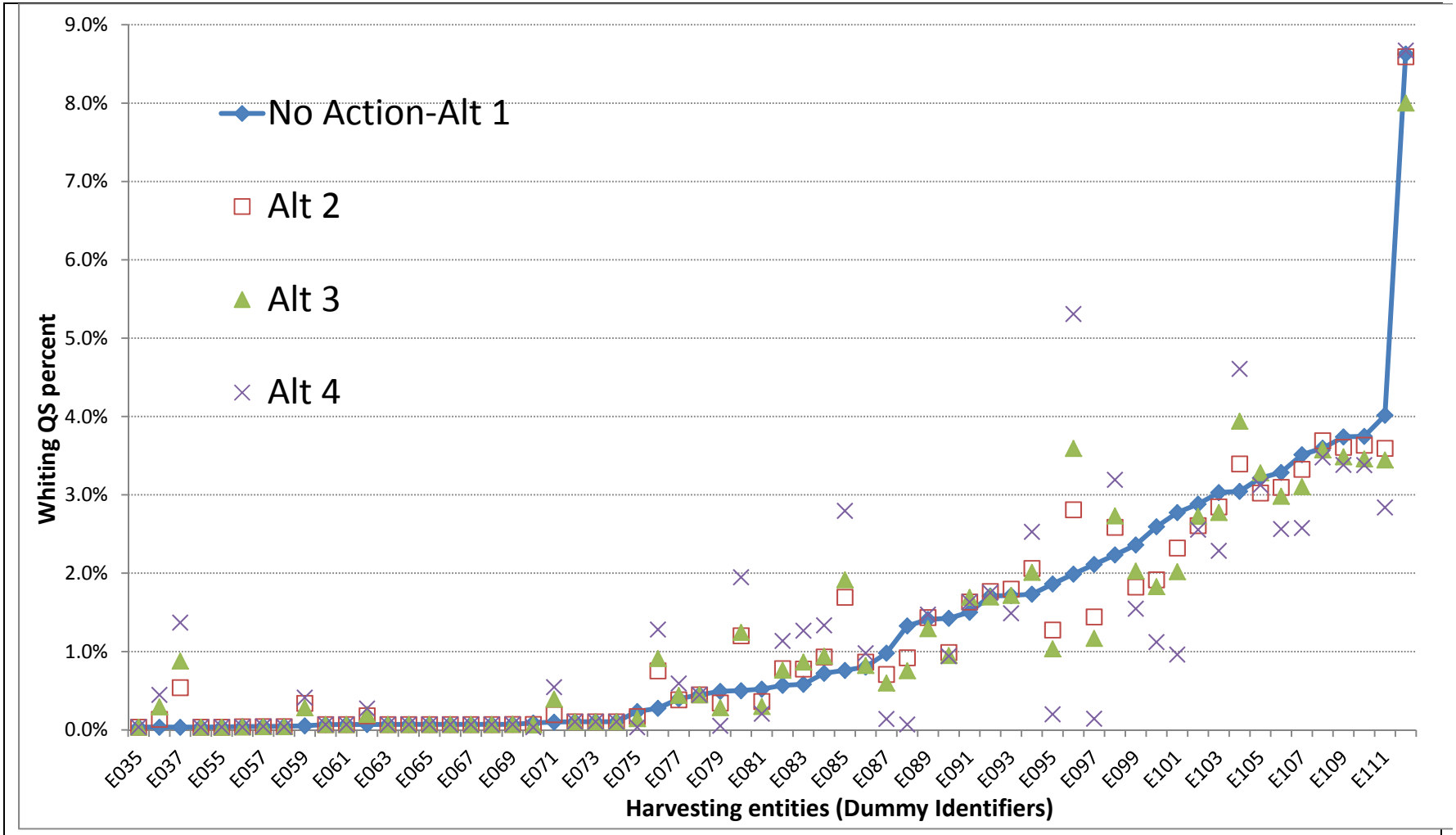


Figure 4-7. Concentration of shoreside whiting QS allocations among entities owning permits by alternative (results ordered from lowest to highest for the No Action alternative).[a/]

a/ Excludes 102 permits that received only equal allocations of 0.04 percent each, for which the allocation does not change among the alternatives.

Allocations to Permits Associated with AFA and Amendment 15 Vessels

Some of the discussions of the allocations have focused on the issue of relative advantages and stratagems that may have been pursued by permits associated with AFA vessels compared with permits that are not associated with AFA vessels. Opportunities for vessels receiving Pacific Coast Whiting Vessel Licenses to participate in the whiting fishery under Amendment 15 have also been a concern. The horizontal axis in Figure 4-6 has been labeled to indicate permits that have been associated with AFA vessels. A total of 27 of the 65 permits receiving shoreside whiting QS based on whiting catch history have been associated with AFA vessels and 38 have not (Table 4-9). A total of 51 of the 65 permits have been associated with vessels that received an Amendment 15 Pacific Coast Whiting Vessel License (Amendment 15 vessels) and 14 have not.

Table 4-10 shows that for permits not associated with AFA vessels, inclusion of more recent years in the allocation formulas benefits permits associated with Amendment 15 vessels relatively more than permits not associated with Amendment 15 vessels.

Table 4-9. Number of permits with shoreside whiting history by affiliation with AFA and Amendment 15 vessels.

	Permits Associated with Amendment 15 Vessels	Permits **Not** Associated with Amendment 15 Vessels	Total
Permits Associated with AFA Vessels	27	-	27
Permits **Not** Associated with AFA Vessels	24	14	38
Total	51	14	65

Table 4-10. Shoreside whiting QS allocations to permits by affiliation with AFA and Amendment 15 vessels (including amounts distributed as equal allocations to permits with no whiting history).

	Permits Associated with Amendment 15 Vessels				Permits **Not** Associated with Amendment 15 Vessels			
AFA	SQ – Alt 1	Alt 2	Alt 3	Alt 4	SQ – Alt 1	Alt 2	Alt 3	Alt 4
Permits Associated with AFA Vessels	41.0%	40.7%	41.2%	40.5%	-	-	-	-
Permits **Not** Associated with AFA Vessels	32.3%	33.4%	33.4%	35.5%	3.3%	2.4%	2.0%	0.6%
Totals	73.3%	74.2%	74.5%	75.9%	3.30%	2.41%	2.04%	0.65%

Allocations Relative to Permit Dependence

One way permit dependence on whiting was assessed based on whiting exvessel revenue as a percent of total exvessel revenue. In 2007-20010, relative to 1994-2003 averages, 13 permits remained in the same dependence range, 15 permits increased their dependence, 9 permits decreased their dependence, 23 previously active permits became inactive, and 6 previously inactive permits became active. Of the fifteen permits increasing their dependence, three went from a dependence level of less than 25 percent to

a level greater than 50 percent. Of the nine permits that decreased their dependence, only one permit went from a level of greater than 50 percent to less than 25 percent.

It is important to note, however, that using the ratio of ex-vessel whiting revenues to total ex-vessel revenues (expressed as a percent) associated with the entity and asserting that the higher the percentage, the higher the dependence is not the only way to consider dependence. Vessels and processing plants have operations that incur variable costs and fixed costs. Generally speaking, net income is the difference between variable and fixed costs. There may be vessels and plants that are solely dependent on whiting to cover those costs. On the other hand, there may be vessels and plants with low level of dependence but count on the whiting fishery to help pay for the costs of the operation while spreading out these costs across several fisheries. Whiting may be the pillar (100% dependence) that the entity rests on or whiting may be one of the legs of a three-legged or four-legged stool that the entity sits on (33% or 25% dependence).

Table 4-11. Number of shoreside permits by level of dependence on shoreside whiting, 1994-2003 compared to 2007-2010.

	2007-2010 Average Dependence							
1994-2003 Average Dependence	>90%	75% to 90%	50% to 75%	25% to 50%	10% to 25%	>0 to 10%	Not Active	Total
>90%				1				1
75% to 90%			1				1	2
50% to 75%	1	2	2	5			1	11
25% to 50%			4	6	1		3	14
10% to 25%	1		2		5	1	4	13
>0 to 10%				2	3		14	19
Not Active		1		1	3	1	2	8
	2	**3**	**9**	**15**	**12**	**2**	**25**	68

Note: The "Not Active" category includes three permits active in the mothership fishery with no activity in the shoreside whiting fishery.

Vessels participating in Alaska fisheries would have a lesser level of dependence than indicated in these tables. Information on Alaskan fisheries indicates that most vessels that participate in Alaska likely rely on the West Coast whiting fishery for less than 50 percent of their gross revenue (i.e. it might be reasonable conjecture that for any vessel that participates in Alaskan fisheries estimates of whiting dependence provided based on West Coast fishery receipts could be reduced by at least 50 percent, Table 4-12). Due to confidentiality restrictions individual vessel data collected by the NWFSC from the cost earnings surveys could not be released, but summarized results have been provided. Using 2003, 2004, 2007 and 2008 data based on 31 voluntary responses to cost earning surveys, the NWFSC calculated the percentage of annual revenue earned in the West Coast whiting fishery for vessels which operated in both the West Coast whiting fishery and Alaska fisheries, denoted as the whiting dependency index. The NWFWC reports: "Revenue from operations in Alaska fisheries was relatively stable over the time period, ranging from $941,811 per vessel during 2004 to $1,027,782 per vessel during 2008. Revenue earned in the West Coast whiting fishery varied much more, ranging from $215,048 per vessel during 2003 to $612,671 per vessel during 2008." (Personal Communication, August 9, 2012).

Table 4-12 Gross revenue dependence indicators (whiting dependency index) for West Coast whiting for vessels that also participated in Alaska fisheries.

	Gross Revenue from West Coast Whiting

Minimum (average of the lowest three values)	49.0%
Mean	26.9%
Maximum (average of the highest three values)	9.6%

The following tables separate out the permits that have been associated with AFA vessels from those which have not and provide the allocation estimates for permits grouped based on dependency levels. Note that the dependence of these permits on West Coast whiting may be lower than indicated in these tables. Additionally, some permits that are not associated with AFA vessels were associated with vessels that participated in Alaskan fisheries.

In general permits showing more than 75 percent of their 1994-2003 West Coast revenue from shoreside whiting activity and those with minimal 1994-2003 revenue (less than 10 percent or inactive) gain QS with increasing emphasis on more recent years under the alternatives (Table 4-13). Non AFA vessels with 25 percent to 50 percent of their West Coast revenue from shoreside whiting tend to lose with increasing emphasis on more recent years while those in the 10 percent to 25 percent range tend to gain.

Table 4-13. Allocation of shoreside whiting QS to limited entry trawl permits with shoreside whiting history under each alternative by level of permits' dependence on shoreside whiting and affiliation with AFA vessels (1994-2003).

	Level of Dependence (**1994-2003** Average)						
	>75%	50% to 75%	25% to 50%	10% to 25%	>0 to 10%	Not Active	Totals
			Permits Associated With AFA Vessels				
			Number of Permits in Group				
	2	6	8	4	6	4	30
			Total Allocation for Group				
No Action & Alt 1	4.9%	13.1%	18.9%	3.3%	0.8%	0.1%	41.0%
Alt2	4.1%	13.0%	18.9%	3.1%	1.0%	0.6%	40.8%
Alt3	3.8%	13.1%	18.8%	3.1%	1.4%	1.0%	41.2%
Alt4	2.5%	12.8%	18.9%	3.1%	1.8%	1.5%	40.5%
			Permits Not Associated With AFA Vessels				
			Number of Permits in Group				
		4	8	8	14	4	38
			Total Allocation for Group				
No Action & Alt 1		9.8%	17.2%	7.4%	1.0%	0.1%	35.5%
Alt2		9.7%	15.7%	8.5%	1.1%	0.8%	35.8%
Alt3		9.7%	15.0%	8.4%	1.2%	1.2%	35.4%
Alt4		10.0%	13.5%	9.4%	1.4%	1.8%	36.1%
			All Permits with Shoreside Whiting History				
			Number of Permits in Group				
	2	10	16	12	20	8	68
			Total Allocation for Group				
No Action & Alt 1	4.9%	22.8%	36.2%	10.7%	1.7%	0.3%	76.6%
Alt2	4.1%	22.6%	34.7%	11.7%	2.1%	1.5%	76.6%
Alt3	3.8%	22.8%	33.8%	11.5%	2.5%	2.1%	76.6%
Alt4	2.5%	22.8%	32.4%	12.5%	3.2%	3.2%	76.6%

Note: Totals to less than 100% due to exclusion of amounts allocated to processors and amounts distributed as equal allocations to permits with no whiting history. The "Not Active" category includes three permits that were active only in the mothership sector.

Relative to 2007 to 2010 dependence levels, increasing the allocation formula emphasis on more recent years of history increases the allocation to those permits most dependent (greater than 50 percent) in more

recent years (as measured by West Coast exvessel revenues). Permits with minimal 2007-2010 revenue (less than 10 percent or inactive) tend to lose QS with increasing emphasis on more recent years, along with those with 25 percent to 50 percent of their revenue from shoreside whiting. The pattern for the permits in the 25 percent to 50 percent range not associated with AFA vessels tends to be stronger than for those associated with AFA vessels.

Table 4-14. Allocation of shoreside whiting QS to limited entry trawl permits with shoreside whiting history under each alternative by level of permits' dependence on shoreside whiting and affiliation with AFA vessels (2007-2010).

	Level of Dependence (**2007-2010** Average)						
	>75%	50% to 75%	25% to 50%	10% to 25%	>0 to 10%	Not Active	Totals
			Permits Associated With AFA Vessels				
			Number of Permits in Group				
	5	5	9	1	1	9	30
			Total Allocation for Group				
No Action & Alt 1	5.1%	11.3%	17.5%	0.1%	1.1%	6.0%	41.0%
Alt2	5.8%	11.9%	17.8%	0.3%	0.8%	4.2%	40.8%
Alt3	6.3%	12.7%	17.8%	0.3%	0.8%	3.4%	41.2%
Alt4	7.2%	13.7%	17.5%	0.4%	0.7%	0.9%	40.5%
			Permits Not Associated With AFA Vessels				
			Number of Permits in Group				
		4	6	11	1	16	38
			Total Allocation for Group				
No Action & Alt 1		8.4%	15.8%	6.9%	0.0%	4.3%	35.5%
Alt2		9.3%	14.9%	8.5%	0.0%	3.1%	35.8%
Alt3		9.5%	14.5%	8.7%	0.0%	2.6%	35.4%
Alt4		10.7%	14.1%	10.6%	0.0%	0.7%	36.1%
			All Permits				
			Number of Permits in Group				
	5	9	15	12	2	25	68
			Total Allocation for Group				
No Action & Alt 1	5.1%	19.7%	33.3%	7.0%	1.2%	10.3%	76.6%
Alt2	5.8%	21.2%	32.7%	8.8%	0.8%	7.3%	76.6%
Alt3	6.3%	22.2%	32.3%	8.9%	0.8%	6.0%	76.6%
Alt4	7.2%	24.4%	31.6%	11.0%	0.8%	1.6%	76.6%

Note: Totals to less than 100% due to exclusion of amounts allocated to processors and amounts distributed as equal allocations to permits with no whiting history. The "Not Active" category includes three permits that were active only in the mothership sector.

Exvessel Value Equivalents

To provide some perspective on the economic significance of the allocation levels, Table 4-15 translates a 0.1 percent allocation into an exvessel value equivalent for an array of possible exvessel prices and levels of allocation to the shoreside sector. The values provided in Table 4-15 range from $4,409 per 0.1 percent (for a price of $0.05 per pound and a sector allocation of 40,000 mt) to $24,251 per 0.1 percent (for a price of $0.11 per pound and an allocation of 100,000 mt). From 2006 through 2010, total landings in the shoreside fishery ranged from 40,300 mt to 97,300 mt and averaged 64,900 mt. Exvessel prices ranged from $0.06 per pound to $0.11 per pound and averaged $0.07 per pound (adjusted for inflation). The annually issued QP will likely trade at an amount equal to the portion of exvessel value which represents economic profit. QS typically trades from anywhere between 3.5 and 10 times the annual exvessel value of the QP (Asche 2001). One study reports that the ratio of QS-to-exvessel price ranged from 4:1 to 9:1 in the B.C. groundfish trawl industry, a fishery that likely has an operational cost structure comparable to that of the West Coast trawl fishery (Tamm, *et al.* 2010).

Table 4-15. Ex-vessel value equivalent of a 0.1 percent share of the shoreside whiting fishery for a range of prices and sector allocation levels ($).

	Whiting Ex-vessel Prices ($ per lb)			
Shoreside Sector Allocations (mt)	0.05	0.07	0.09	0.11
40,000	4,409	6,173	7,937	9,700
60,000	6,614	9,259	11,905	14,550
80,000	8,818	12,346	15,873	19,401
100,000	11,023	15,432	19,842	24,251

4.3.1.2 Mothership Catcher Vessels

Changing the allocational periods will shift catch history assignments (CHA) among recipients. How different allocation periods address policy goals is discussed in Chapter 5. Additionally, Section 5.4.2.3 contains an evaluation of the effects of the 500 mt threshold that must be met for a permit to qualify for a mothership catcher vessel whiting endorsement. A permit must qualify for such an endorsement in order to receive an allocation. In this chapter, the objective is to show the allocational results and impacts.

In general, harvesters who receive lesser or no initial allocations are on a par with those who enter the fishery at a later time (i.e., having to acquire quota in order to effectively enter the fishery). The initial allocation is essentially the granting of a capital asset that will affect harvester competitiveness and assist existing participants in the transition to the new management system. To the degree that initial allocation match up with the harvesters that will use the quota, transition costs and disruption will be lessened.

Comparison of Allocations to Recent and Historic Shares of Harvest

One measurement of a vessel's likelihood of continuing in the fishery and the level of allocation it would need to minimize disruption to its operations is the permit's recent and historic share of the fleet harvest. Allocations in proportion to these amounts may reduce a fishing operations' need to purchase additional quota after implementation of the trawl rationalization program, or following the reallocation described in the action alternatives covered in this document. In Figure 4-8 permits are arrayed along the bottom of

the graph from those receiving the least allocation under status quo (No Action) to those receiving the most.

No Action allocations to permits are shown by the solid line marked with diamonds, increasing steadily from the left side to the right side of the graph. The highest allocation to any permit was almost 10 percent (far right hand side). Since the allocation period for the No Action Alternative was 1994-2003, this line tracks the 1994-2003 history line fairly closely. The match is closer than for the shoreside permits shown in Figure 4-6 because there is no processor allocation (all of the catch history allocation goes to the permits).

The 2007-20010 history for each permit is tracked by the dotted line. On the left hand side of the graph it can be seen that there was 1 permit that had minimal history from 1994-2003 but over 4 percent of the history from 2007-2010. Moving to the right several permits are shown that had substantially higher histories in recent years relative to their 1994-2003 history and relative to their initial allocations (No Action). Similarly, on the right hand side of the graph can be seen between four and six permits that received initial allocations of one percent or more of the catch history but had no participation from 2007-2010.

The allocation results for the other alternatives are indicated by the different shape symbols. By examining allocational results for individual permits, one can see that for permits with recent histories (2007-2010) that differ dramatically from their history during the allocation base period (1994-2003), the allocational result moves closer to their 2007-2010 histories as the allocation periods include more recent years. For example, the permit with the highest share of the 2007-2010 landings history (about 12 percent) and receiving a CHA allocation of about 10 percent under status quo, would receive about 12 percent under Alternative 2 (extending the allocation period to 2007) and Alternative 3 (extending the allocation period to 2010), and over 14 percent under Alternative 4 (dropping the early years of the allocation period). Permit P027 with no history in the 2007-2010 comparison period would receive close to 4 percent under No Action and Alternative 1, and would receive successively less as more emphasis is placed on more recent years.

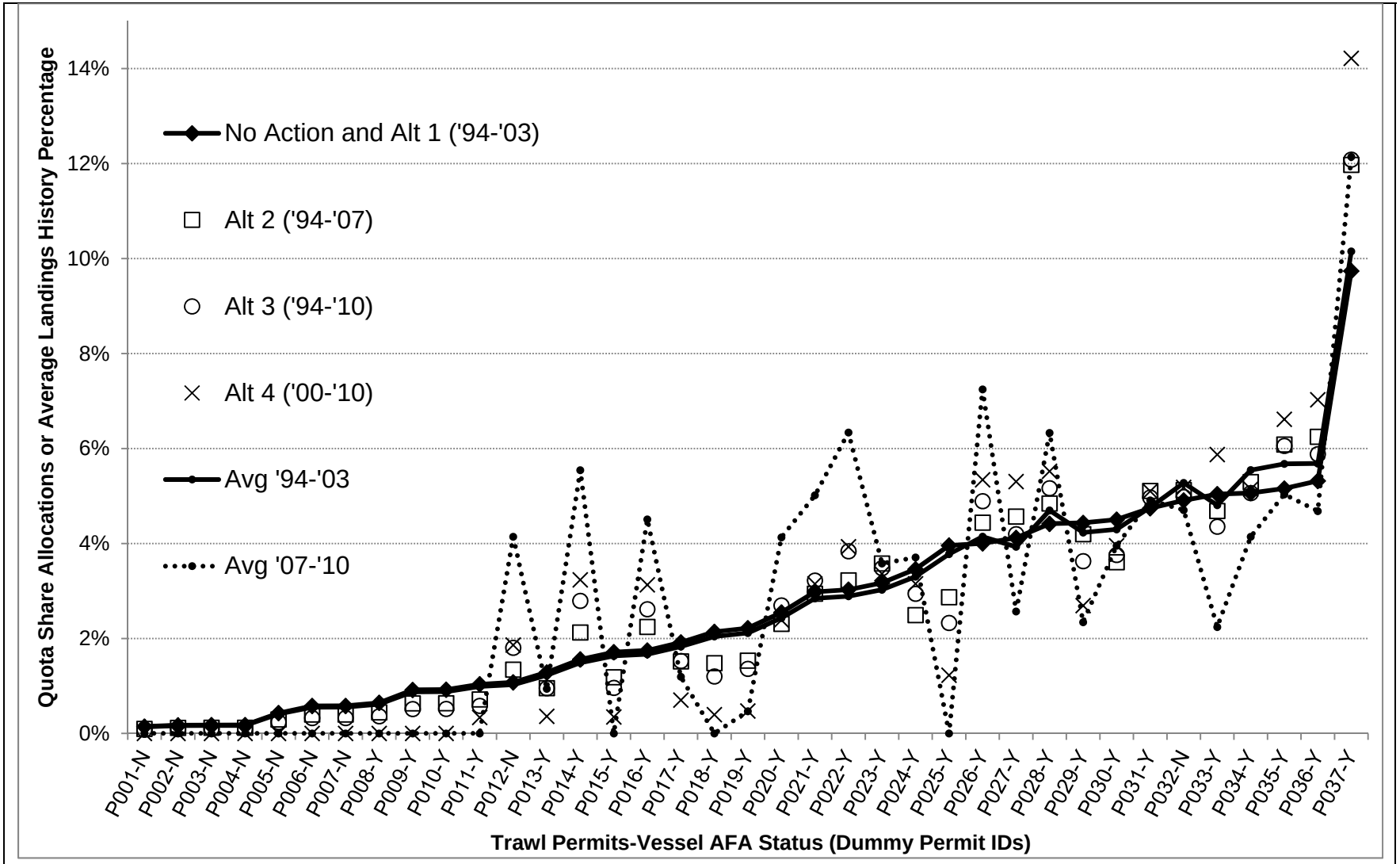


Figure 4-8. Mothership catcher vessel whiting catch history assignments to permits, by alternative, compared to each permit's share of shoreside whiting landings in recent and historic periods (permits ordered from lowest initial allocation to highest initial allocation under status quo (No Action) – permit numbers followed by an "N" were not associated with AFA vessel at any time from 1994 through 2011, those with a "Y" were.

What follows is a statistical summary of the information provided in Figure 4-6.

Statistical Summary: Comparisons to Status Quo. Alternatives 2, 3 and 4 would not allocate CHA to permits not otherwise receiving CHA under No Action (Table 4-16). Elimination of the 1994-1999 qualifying years under Alternative 4 does not result in any permits dropping out of this group. Alternative 2 would benefit 14 previously qualifying permits while reducing the allocations of 23 permits. A total of 7.6 percent of the CHA would be redistributed under Alternative 2. Alternative 3 would benefit 16 previously qualifying permits, while reducing the allocations of 21 permits. A total of 10.2 percent of the CHA would be redistributed under Alternative 3. Alternative 4 would benefit 16 previously qualifying permits, while reducing the allocations of 21 permits (11 permits with reduced allocations and 10 permits which would receive no allocation). A total of 17.9 percent of the CHA would be redistributed under Alternative 4.

Table 4-16. Changes in the amount of mothership whiting CHA allocated to permits under the alternatives relative to status quo (No Action) based on individual permit history of mothership sector whiting trips.

	Alternatives		
	Alt 2: 1994-2007	Alt 3: 1994-2010	Alt 4: 2000-2010
Number of Permits **Not Previously Qualifying** for an Allocation based on Whiting Trip Permit History	0	0	0
Number of Previously Qualifying Permits With **Increased** Allocations Under the Alternative	14	16	16
Total Percent of Increase for Those Permits	8.2%	10.2%	17.9%
Maximum Increases to Any One Permit	2.2%	2.3%	4.5%
Max Increase as a Percent of Status Quo Allocation	23.0%	24.1%	46.0%
Previously Qualifying Permits with **Decreased** Allocations Under the Alternative	23	21	11
Total Percent of Decreases for Those Permits	-8.2%	-10.2%	-13.2%
Maximum Decreases to Any One Permit	-1.1%	-1.6%	-2.7%
Max Decrease as a Percent of Status Quo Allocation	-27.5%	-41.2%	-69.0%
Previously Qualifying Permits with **Zero** Permit History Based Allocations Under Status Quo	-	-	10
Total Percent of Decreases for Those Permits	-	-	-4.7%
Maximum Decreases to Any One Permit	-	-	-0.9%
			-100.0%

Statistical Summary: Comparisons to Recent and Historic Periods. Relative to their 1994-2003 historic averages, under the No Action alternative 32 permits would receive allocations above their 1994-2003 average (Table 4-17). Under all the alternatives, the total amount by which the CHA allocations are above the 1994-2003 average is 5.1 percent (the sum of the increases plus the decreases). One might expect this amount to be zero (increases in shares would exactly balances decreases), however the effect of the shares of harvest taken by buyback permits during 1994-2003 results in a relative increase in CHA shares to the remaining permits. In the comparisons to 2004-2006 (Table 4-18) and 2007-2010 (Table 4-19), the sum of the increases and decreases is zero since there was no buyback permit history during this period to confound the results.

Table 4-17. Differences in allocations of at-sea mothership sector whiting CHA to permits under the alternatives relative to 1994-2003 comparison years.

	Alternatives				
	No Action	1: 1994-2003	2: 1994-2007	3: 1994-2010	4: 2000-2010
Number of Permits With Allocations **Higher** Than Comparison Period Share	32	32	18	14	17
Total Differences Between Allocations and Comparison Period Shares for Those Permits	5.8%	5.8%	9.9%	12.1%	20.0%
Maximum Amount Above for Any One Permit	0.5%	0.5%	2.3%	2.5%	4.6%
Max Difference as a Percent of 1994-2003 Levels	10.4%	10.4%	24.3%	25.4%	47.6%
Number of Permits With Allocations **Lower** Than Comparison Period Share	5	-0.6%	19	23	20
Total Differences Between Allocations and Comparison Period Shares for Those Permits	-0.6%	-0.2%	-4.8%	-7.0%	-14.9%
Maximum Amount Below for Any One Permit	-0.2%	-4.2%	-0.7%	-1.3%	-2.4%
Max Difference as a Percent of 1994-2003 Levels	-4.2%	-	-19.9%	-35.0%	-65.8%
Number of Permits with No History in the Comparison Years and No Allocation Under the Alternatives [b/]	-		-	-	-
Sum of Deviations from Comparison Period (Totals of the Absolute Value of Changes For Those With Higher and Lower Allocations)	6.4%	6.4%	14.7%	19.0%	35.0%

a/ The 1994-2003 averages are based on each permit's share of the entire fleet's landings, including those of the permits that were bought back.
b/ 1 additional permits is screened out by the requirement for 500 mt of deliveries and is not included in this table.

One measure of the divergence between the allocations and historic average catch history is the total amount by which the allocations deviate from historical averages, summed across all permits. The closer the match between the averages and the allocation, the lesser the divergence. The worse the match (i.e., with some permits receiving substantially more and others receiving substantially less than their long-term averages), the greater the divergence.

For example, for the No Action Alternative and Alternative 1, the 32 permits receiving more than their 1994-2003 average receive a total of 5.8 percent more, and the 5 permits that receive less receive a total of 0.6 percent less (Table 4-17). The combined deviation from the long-term average is 6.4 percent under these alternatives (last row of Table 4-17). Those deviations increase to 15.7, 19.0, and 35.0 percent for Alternatives 2, 3 and 4, respectively.

Using 2004-2006 as the comparison period (the base period used in the Amendment 20 analysis) it can be seen that the total deviation relative to the 2004-2006 average ranges from 56.8 percent under No Action to 30.8 percent under Alternative 4 (Table 4-18). The number of permits receiving greater and lesser allocations relative to the comparison period remains relatively stable across the No Action Alternative and Alternatives 1 thru 3, but declines under Alternative 4 because a number of permits drop out with the elimination of the early qualifying years (1994-1999).

Table 4-18. Differences in allocations of at-sea mothership sector whiting CHA to permits under the alternatives relative to 2004-2006 comparison years.

	Alternatives				
	No Action	1: 1994-2003	2: 1994-2007	3: 1994-2010	4: 2000-2010
Number of Permits With Allocations **Higher** Than Comparison Period Share	24	24	25	25	16
Total Differences Between Allocations and Comparison Period Shares for Those Permits	28.4%	28.4%	21.5%	21.7%	15.4%
Maximum Amount Above for Any One Permit	3.4%	3.4%	2.3%	2.5%	2.7%
Max Difference as a Percent of 2004-2006 Levels	591.7%	591.7%	401.8%	572.5%	620.1%
Number of Permits With Allocations **Lower** Than Comparison Period Share	13	13	12	12	11
Total Differences Between Allocations and Comparison Period Shares for All of Those Permits	-28.4%	-28.4%	-21.5%	-21.7%	-15.4%
Maximum Amount Below for Any One Permit	-9.7%	-9.7%	-7.4%	-7.3%	-5.2%
Max Difference as a Percent of 2004-2006 Levels	-49.8%	-49.8%	-38.3%	-37.7%	-26.7%
Number of Permits with No History in the Comparison Years and No Allocation Under the Alternatives[a/]	-	-	-	-	10
Sum of Deviations from Comparison Period (Totals of the Absolute Value of Changes For Those With Higher and Lower Allocations)	56.8%	56.8%	42.9%	43.4%	30.8%

a/ 1 additional permits is screened out by the requirement for 500 mt of deliveries and is not included in this table.

Using 2007-2010 as the comparison period it can be seen that the total deviation relative to the 2007-2010 average ranges from 50.4 percent under No Action, decreasing to 33.2 percent under Alternative 4 (Table 4-19). The number of permits receiving greater and lesser allocations relative to the comparison period remains relatively stable across the No Action Alternative and Alternatives 1 through 3 but declines under Alternative 4 because several permits fail to qualify with the elimination of the early qualifying years (1994-1999).

Table 4-19. Differences in allocations of at-sea mothership sector whiting CHA to permits under the alternatives relative to 2007-2010 comparison years.

	Alternatives				
	No Action	1: 1994-2003	2: 1994-2007	3: 1994-2010	4: 2000-2010
Number of Permits With Allocations **Higher** Than Comparison Period Share	25	25	26	25	15
Total Differences Between Allocations and Comparison Period Shares for Those Permits	25.3%	25.3%	21.6%	17.5%	16.7%
Maximum Amount Above for Any One Permit	4.0%	4.0%	2.9%	2.3%	3.6%
Max Difference as a Percent of 2007-2010 Levels	a/	a/	a/	a/	162.0%
Number of Permits With Allocations **Lower** Than Comparison Period Share	12	-25.1%	11	12	12
Total Differences Between Allocations and Comparison Period Shares for All of Those Permits	-25.1%	-4.0%	-21.5%	-17.3%	-16.5%
Maximum Amount Below for Any One Permit	-4.0%		-3.4%	-2.8%	-2.4%
Max Difference as a Percent of 2007-2010 Levels		-			
Number of Permits with No History in the Comparison Years and No Allocation Under the Alternatives[b/]	-		-	-	10
Sum of Deviations from Comparison Period (Totals of the Absolute Value of Changes For Those With Higher and Lower Allocations)	50.4%	50.4%	43.1%	34.8%	33.2%

a/ Permits with maximum difference had no 2007-2010 history.
b/ 1 additional permits is screened out by the requirement for 500 mt of deliveries and is not included in this table.

Comparison of Allocations by Recent and Historic Years of Participation

The previous figures and tables compared the allocations in the context of recent and historic participation based on each permit's initial allocations and harvest share over several different periods. In this section, performance of the alternatives with respect to recent and historic participation is examined in terms of the number of years of activity in the fishery, independent of the level of activity in any particular year. There are a total of 17 years of pre-2011 history being considered as part of the allocation period. Table 4-20 compares the CHA that would be received by permit holders, grouped by the duration of their participation and recent participation. For example the first set of rows shows that there were 9 permits with at least 15 years of participation and that the allocations to these permits generally increase with each successive option, from 46.5 percent under Alternative 1 to 57.5 percent under Alternative 4. The maximum allocated to any single permit increases from 9.7 percent under Alternative 1 to 14.2 percent under Alternative 4. This trend among the alternatives is generally the opposite of that observed for the shoreside whiting QS allocations. The second grouping of data in the table shows the allocations for permits with at least one year of participation during the allocation period which places greatest emphasis on more recent years (i.e., Alternative 4, 2000-2010) compared with permits that had no participation during that allocation period. The final grouping shows the allocations that would go to permits with some history after the 2003 control date, compared with permits that have no history after the control date.

Table 4-20. Mothership whiting CV Catch History allocations to permits under the reallocation alternatives.

	No Action- Alt 1 (1994-2003)	Alt 2 (1994-2007)	Alt 3 (1994-2010)	Alt 4 (2000-2010)
Permits with at least 15 yrs participation 1994-2010				
# of permits	9	9	9	9
Amount of QS allocated	46.5%	52.7%	52.6%	57.5%
Max QS allocation	9.7%	12.0%	12.1%	14.2%
Permits with less than 15 yrs participation 1994-2010				
# of permits	28	28	28	18
Amount of QS allocated	53.5%	47.3%	47.4%	42.5%
Max QS allocation	5.0%	4.7%	4.4%	5.9%
Permits with at least 1 yr participation 2000-2010				
# of permits	26	26	26	20
Amount of QS allocated	71.2%	69.8%	70.6%	69.9%
Max QS allocation	5.3%	6.2%	6.1%	7.0%
Permits with no participation 2000-2010				
# of permits	11	11	11	7
Amount of QS allocated	28.8%	30.2%	29.4%	30.1%
Max QS allocation	9.7%	12.0%	12.1%	14.2%
Permits with at least 1 yr participation 2004-2010				
# of permits	24	24	24	24
Amount of QS allocated	90.4%	93.3%	94.6%	98.9%
Max QS allocation	9.7%	12.0%	12.1%	14.2%
Permits with no participation 2004-2010				
# of permits	13	13	13	3
Amount of QS allocated	9.6%	6.7%	5.4%	1.1%
Max QS allocation	2.1%	1.5%	1.2%	0.4%

Allocations to Permits Associated with AFA and Amendment 15 Vessels

Some of the discussion of the allocations has centered around the issue of relative advantages and stratagems that may have been pursued by permits associated with AFA vessels compared with permits that are not associated with AFA vessels. In Figure 4-8 the labels on the horizontal axis indicate permits that have been associated with AFA vessels. The following tables summarize total CHA allocations to permits associated with AFA vessels and to permits not associated with AFA vessels under the alternatives. The tables show total CHA allocated to the 28 AFA-associated permits with mothership whiting history varies only slightly under the reallocation alternatives. There are 9 permits with mothership whiting history that are not associated with AFA vessels.

Table 4-21. Number of permits with mothership history and AFA and Amendment 15 vessel affiliation.

	Permits Associated with Amendment 15 Vessels	Permits Not Associated with Amendment 15 Vessels	Total
Permits Associated with AFA Vessels	28	1	29
Permits **Not** Associated with AFA Vessels	9	1	10
Total	37	2	39

The following table provides a statistical summary, showing for each alternative the total allocations for AFA vessels compared to non-AFA vessels. In general, the total allocations among permits grouped in this fashion do not fluctuate substantially among the alternatives.

Table 4-22. Changes in CHA allocations among the permits associated AFA vessels as compared to permits not associated with AFA vessels.

	No Action (1994-2003)	**Alt 1 (1994-2003)**	**Alt 2 (1994-2007)**	**Alt 3 (1994-2010)**	**Alt 4 (2000-2010)**
Mothership Whiting Catch History Share:					
AFA Vessels	91.8%	91.8%	92.0%	91.9%	93.0%
Non-AFA Vessels	8.2%	8.2%	8.0%	8.1%	7.0%

The next table breaks the allocations down further, showing a split-out for the permits associated with Amendment 15 vessels. For the 14 permits not associated with Amendment 15 vessels, there is a decline in allocations as the emphasis on more recent years increases.

Table 4-23. CHA allocation to permits by AFA and Amendment 15 vessel affiliation.

	Permits Associated with Amendment 15 Vessels				Permits **Not** Associated with Amendment 15 Vessels			
AFA	SQ – Alt 1	Alt 2	Alt 3	Alt 4	SQ – Alt 1	Alt 2	Alt 3	Alt 4
Permits Associated with AFA Vessels	90.8%	91.3%	91.4%	93.0%	0.9%	0.6%	0.5%	0.0%
Permits **Not** Associated with AFA Vessels	7.8%	7.7%	7.8%	7.0%	0.4%	0.3%	0.2%	0.0%
Totals	98.6%	99.0%	99.2%	100.0%	1.3%	0.9%	0.7%	0.0%

Allocations Relative to Accumulation Limits

There is a 20 percent limit on the maximum amount of CHA that can be controlled by a single entity, and a limit of 30 percent on the share of CHA that can be harvested by a single vessel. Figure 4-9 displays the total CHA allocation going to entities holding permits. Whereas a point in Figure 4-8 represents a single permit, each point in Figure 4-9 represents a single permit-owning entity and the allocations to permits controlled by that entity. This figure shows that the most any single entity is believed to have received under the No Action Alternative is about 10 percent. Each of the action alternatives (except Alternative 1 which for permits is identical to No Action) would increase the maximum initial allocations to a single entity to just over 12 percent for Alternatives 2 and 3, and over 14 percent for Alternative 4.

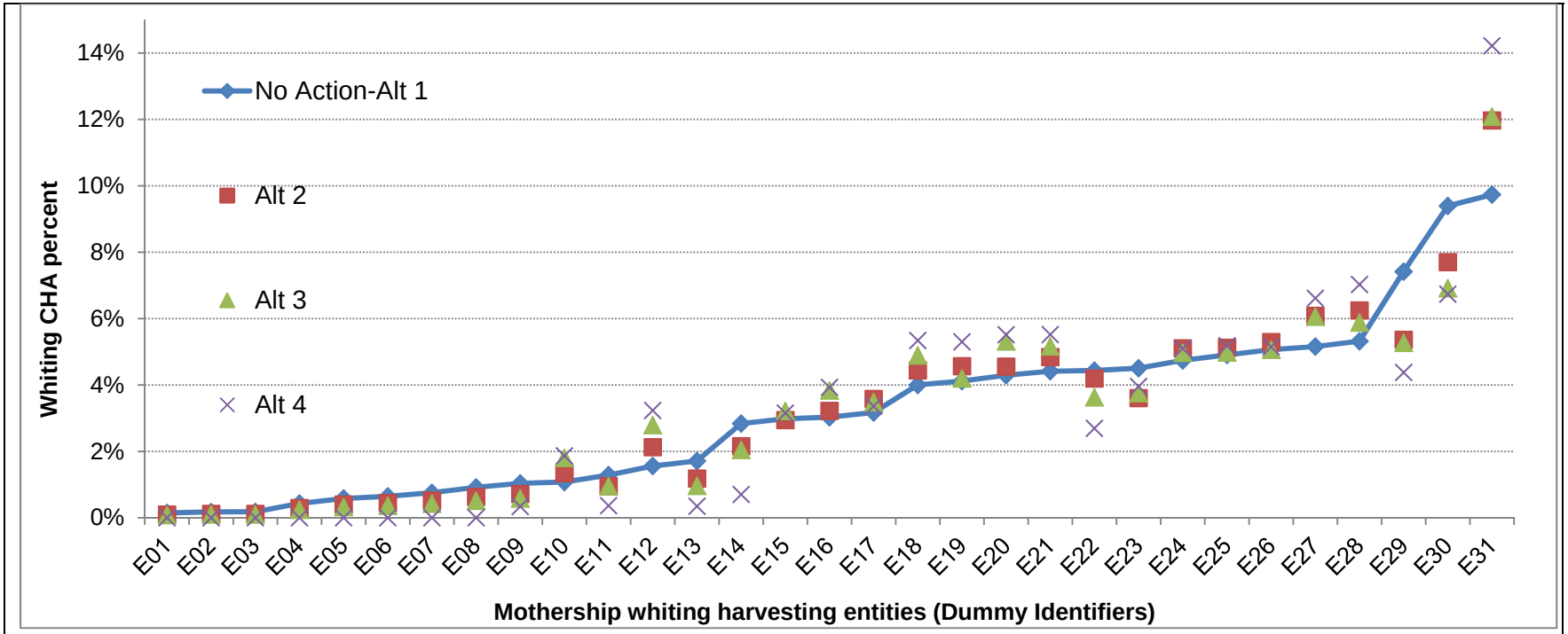


Figure 4-9. Concentration of mothership whiting CHA allocations among entities owning permits, by alternative (results ordered from lowest to highest for the No Action Alternative.

Allocations Relative to Dependence

In the section on "Allocations Relative to Dependence" in Section 4.3.1.1, the limitations of data based on West Coast landings receipts is discussed and indicators are provided of levels of dependence for vessels that participate in Alaska fisheries. For the mothership fleet, there are only two vessels with more than 10 percent of their West Coast revenue dependent on the mothership sector that were not AFA vessels. Therefore detail is not provided on AFA vs. non AFA vessels due to potential confidentiality concerns.

Relative to dependence for the 1994-2003 comparison period, the permits with the greatest dependence on West Coast fisheries generally receive greater allocations under the alternatives that place more emphasis on more recent years (with the exception of Alternative 3 for permits that received more than 75 percent of their revenue from mothership whiting deliveries). This pattern is the opposite of that seen for shoreside vessels, where vessels more dependent on the fishery in the 1994-2003 period tended to see reduced allocations as the emphasis on more recent years increases. In general, for permits with less than 50 percent of their revenue from the mothership whiting fishery, allocations decline with increasing emphasis on more recent years (Table 4-24).

Table 4-24. Allocations to permits under each alternative by level of mothership whiting dependence (1994-2003).

	Level of Dependence (**1994-2003** Average)						
	>75%	50% to 75%	25% to 50%	10% to 25%	>0 to 10%	Not Active	Totals
			Number of Permits in Group				
	9	6	8	5	11	29	68
			Total Allocation for Group				
No Action & Alt 1	42.3%	20.8%	22.7%	10.1%	4.2%	-	100.0%
Alt2	45.2%	20.4%	21.4%	10.0%	3.0%	-	100.0%
Alt3	43.7%	21.0%	22.1%	10.6%	2.6%	-	100.0%
Alt4	45.7%	23.6%	21.3%	9.1%	0.4%	-	100.0%

Note: Includes 29 permits with no mothership history and one permit with some history but less than the 500 mt required to qualify for CHA.

Increasing the emphasis on more recent history years in the allocation formula increases the allocation to those permits with greater than 10 percent dependence in more recent years (2007-2010), with the exception of Alternative 2 for permits with between 10 percent and 25 percent dependence (Table 4-25). Permits with minimal 2007-2010 revenue (less than 10 percent or inactive) tend to lose QS with increasing emphasis on more recent years.

Table 4-25. Allocations to permits under each alternative by level of mothership whiting dependence (2007-2010).

	Level of Dependence (**2007–2010** Average)						
	>75%	50% to 75%	25% to 50%	10% to 25%	>0 to 10%	Not Active	Totals
			Number of Permits in Group				
	7	6	6	2	3	44	68
			Total Allocation for Group				
No Action & Alt 1	30.1%	24.5%	23.1%	5.6%	3.2%	13.6%	100.0%
Alt2	32.9%	25.6%	24.6%	5.0%	2.5%	9.5%	100.0%
Alt3	33.3%	26.2%	24.7%	5.6%	2.5%	7.7%	100.0%
Alt4	36.9%	28.5%	25.5%	5.8%	1.1%	2.3%	100.0%

Note: Includes 29 permits with no mothership history and one permit with some history but less than the 500 mt required to qualify for CHA.

Exvessel Value Equivalents

To provide some perspective on the economic significance of differences in the allocation levels, Table 4-26 translates a 0.1 percent allocation into an exvessel value equivalent for an array of possible exvessel prices and levels of allocation to the mothership sector. The values provided in the table range from $4,409 per 0.1 percent (for a price of $0.05 per pound and an allocation level of 20,000 mt) to $21,164 per 0.1 percent (for a price of $0.12 per pound and an allocation level of 60,000 mt). From 2006 through 2010, total whiting deliveries in the mothership fishery ranged from 24,100 mt to 57,500 mt and averaged 44,100 mt. Exvessel prices ranged from $0.05 per pound to $0.12 per pound and averaged $0.08 per pound (with inflation adjustments). The annually-issued QP will likely trade at an amount equal to the portion of the exvessel revenue that represents economic profit. . QS typically trades from anywhere between 3.5 and 10 times the annual exvessel value of the QP (Asche 2001). One study reports that the ratio of QS-to-exvessel price ranged from 4:1 to 9:1 in the B.C. groundfish trawl industry, a fishery that likely has an operational cost structure comparable to that of the West Coast trawl fishery (Tamm, *et al.* 2010).

Table 4-26. Exvessel value equivalent of a 0.1 percent share of the mothership whiting fishery for a range of prices and sector allocation levels ($).

	Whiting Exvessel Prices ($ per lb)				
Mothership Sector Allocations (mt)	0.05	0.06	0.08	0.10	0.12
20,000	4,409	5,291	7,055	8,818	10,582
40,000	6,614	7,937	10,582	13,228	15,873
60,000	8,818	10,582	14,110	17,637	21,164

4.3.1.3 Combined Shoreside and Mothership Activities

Allocations

Some permits have participated in both the shoreside and mothership fisheries and would receive adjustments in their allocations for both sectors as a result of a change in the allocation periods. Figure 4-10 shows the combined effect of the alternatives in terms of the share of total whiting quota received by each permit. Note that the dummy permit numbers in the figures in this document do not necessarily correspond to one another.

In the following figure it can be seen that there are a few permits on the far right hand side that would receive no allocation from either fishery under a continuation of status quo. (In the section on cumulative impacts there is a figure that shows the total value of allocations to permits, including nonwhiting allocations.) Also of note is that the larger a permit's allocation under status quo, the greater the benefit received from increasing emphasis on more recent years (i.e., the amount by which allocations under the alternatives are above the No Action line increases as you move from left to right in the figure). Conversely, the amount of the reductions in allocations under the alternatives (distances to points below the No Action line) tends to increase moving from right to left, at least until the alternative allocations approach zero.

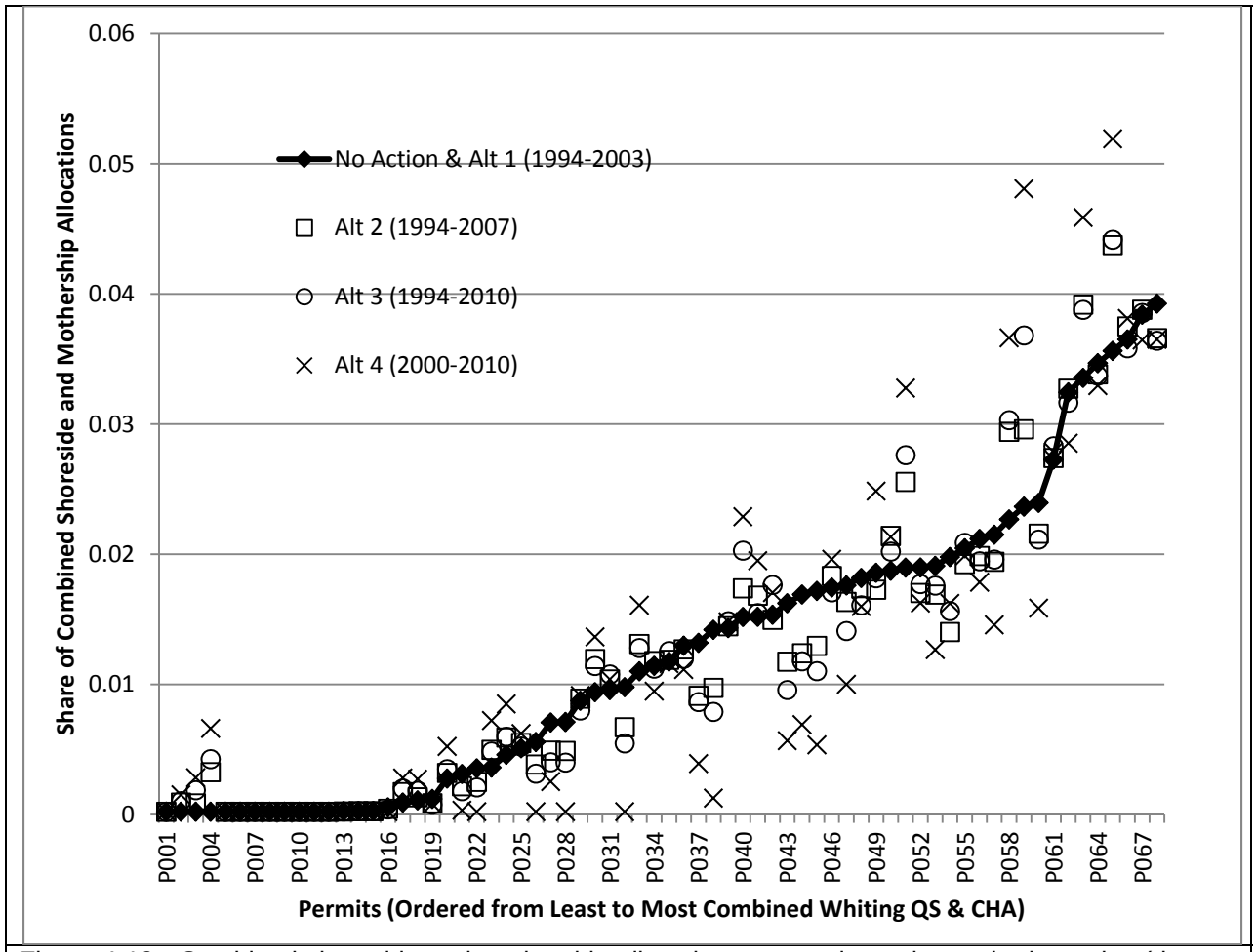


Figure 4-10. Combined shoreside and mothership allocations to permits under each alternative (dummy permit numbers are different from other figures).

The following figure examines these dynamics from the perspective of the shoreside allocations.

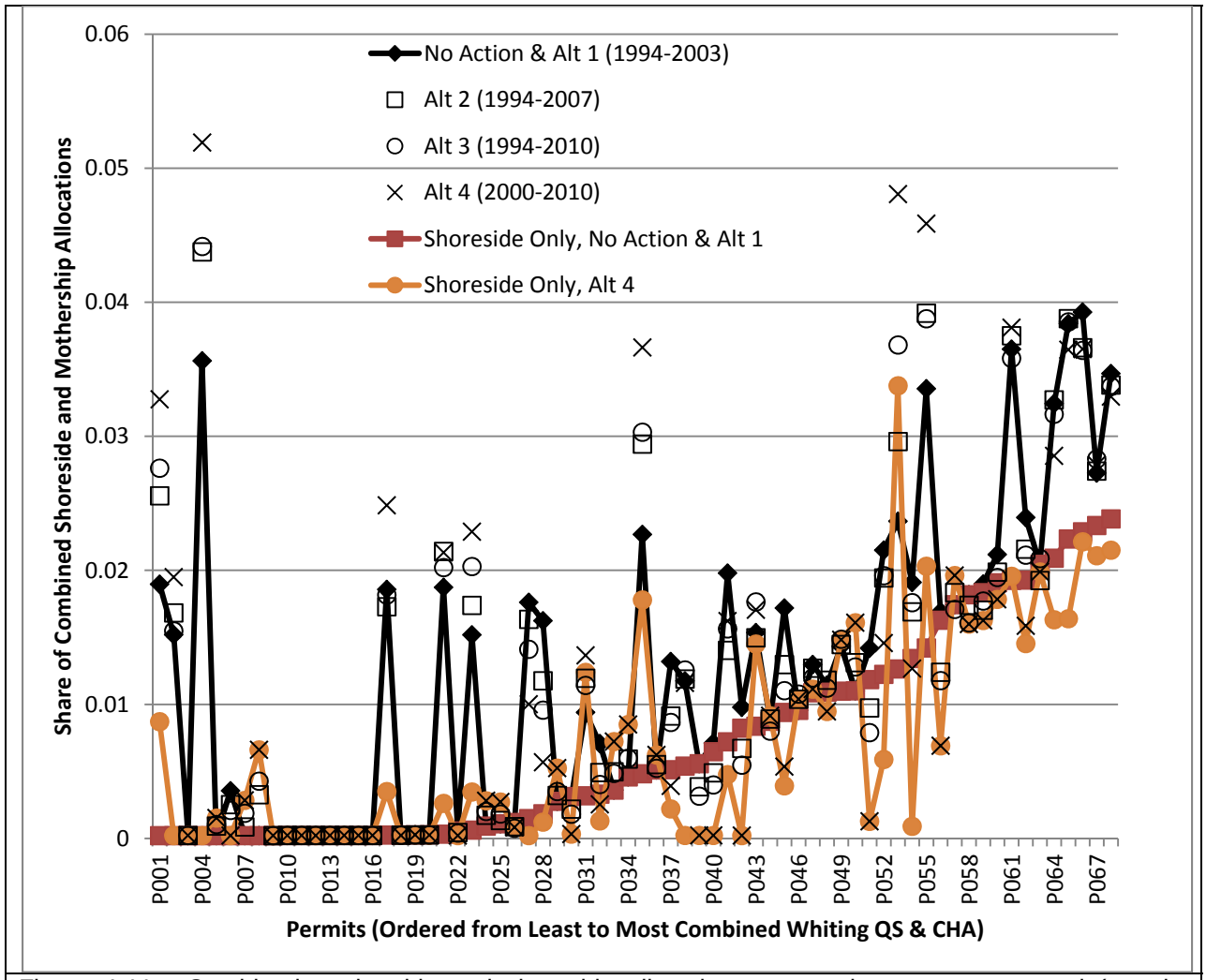
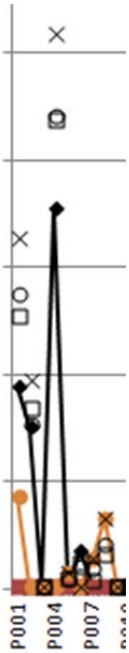


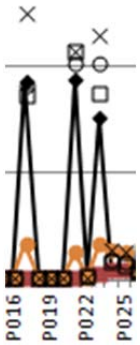
Figure 4-11. Combined mothership and shoreside allocations to permits, except as noted (permits ordered from least to most shoreside allocation under No Action and Alternative 1).

The permits in Figure 4-11 have been reordered from the least to the most shoreside allocation and a line added to show the status quo and Alternative 4 shoreside allocations.



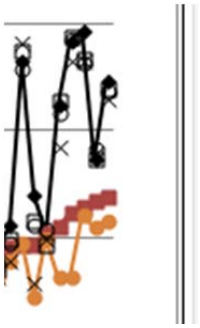
🡐Starting on the far left hand side of the figure the first permit shows minimal shoreside history under status quo and a substantial increase under Alternative 4. The status quo line for the combined allocation shows that this permit, while receiving minimal shoreside allocation received a more substantial mothership allocation. That allocation would be increased further under options that emphasize more recent years. The second and fourth permits over receive no benefit from additional emphasis on more recent years in terms of their shoreside allocations, but do derive benefit from their mothership allocations.

Next come a few points that receive minimal shoreside allocations that might receive some benefit from an emphasis on more recent years. ➔



🡐Toward the center of the graph are another three permits with minimal shoreside allocations that receive a bump in shoreside allocations as a result of an increased emphasis on more recent years, and also receive allocations as a result of participating in the mothership fishery.

On the far right hand side can be seen that permits receiving the highest shoreside allocations under status quo generally experience reductions in both their shoreside and mothership allocations with increased emphasis on more recent years. ➔



The Figure 4-12 is similar to Figure 4-11 except it highlights permits' mothership sector allocations and orders the permits according to the status quo mothership sector allocations.

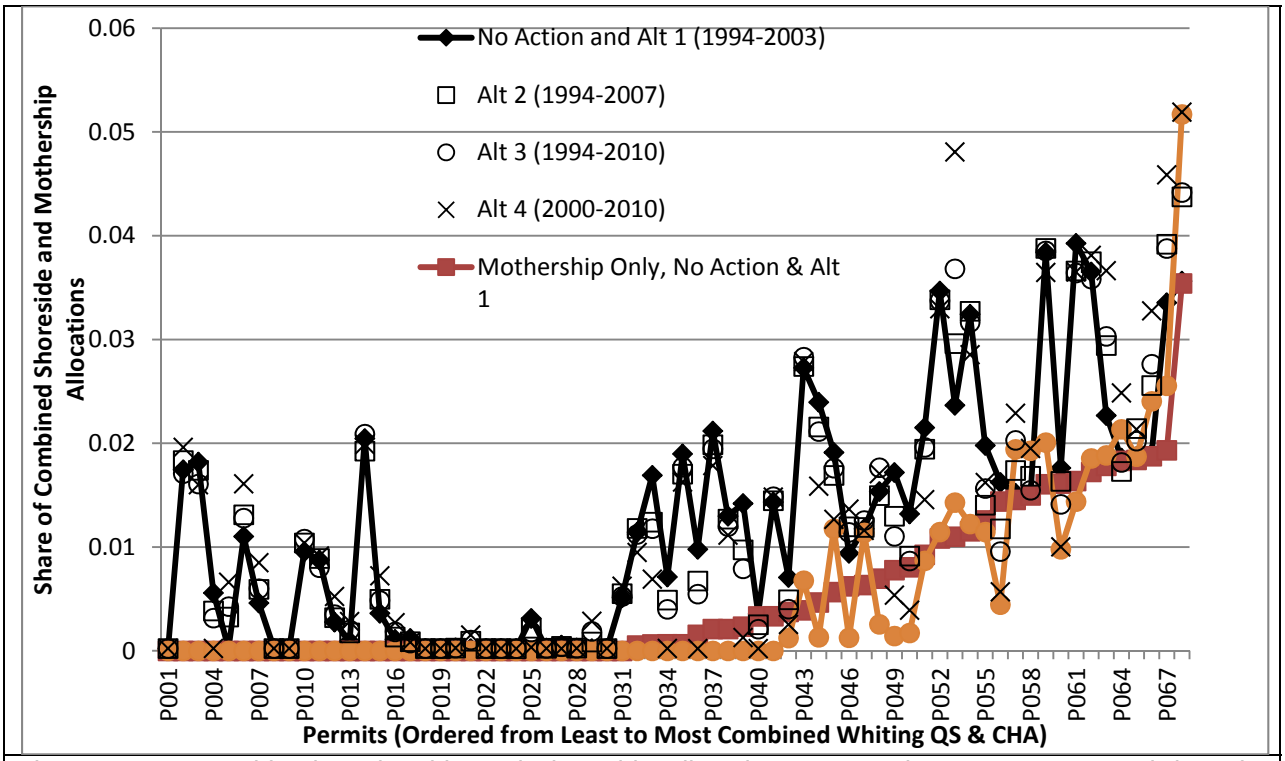


Figure 4-12. Combined mothership and shoreside allocations to permits, except as noted (permits ordered from least to most mothership allocation under No Action and Alternative 1).

Allocations among AFA and Non-AFA Vessels

Some of the discussion of the allocation alternatives has centered on the issue of relative advantages and stratagems that may have been pursued by permits associated with AFA vessels compared with permits not associated with AFA vessels. The following table summarizes the total allocations for permits associated with AFA vessels compared with allocations to permits not associated with AFA vessels for combined shoreside whiting and mothership whiting allocations. The total CHA allocated to the 30 AFA-associated permits varies only slightly under the reallocation alternatives. There are 34 catcher vessel permits with west coast whiting history that are not associated with AFA vessels.

Table 4-27. Changes in allocations among the permits associated AFA vessels as compared to permits not associated with AFA vessels (shoreside and mothership combined).

	No Action (1994-2003)	Alt 1 (1994-2003)	Alt 2 (1994-2007)	Alt 3 (1994-2010)	Alt 4 (2000-2010)
Combined Shoreside-Mothership Whiting (weighted) "Quota":					
AFA Vessels	59.5%	59.5%	59.4%	59.7%	59.6%
Non-AFA Vessels	27.8%	27.8%	27.9%	27.6%	27.7%

Apparently Latent Permits

At the June 2012 Council meeting, interest was expressed in those permits receiving an allocation of whiting quota shares (QS) or catch history allocations (CHA) that had no post-2003 whiting catch history in their respective sectors. Entities may depend on a particular fishery in a number of ways. In addition to direct participation, entities may depend on a fishery to recover investments or provide a backup opportunity during downturns in other fisheries. Additionally, some entities may have invested in multiple permits prior to the start of the program in order to accumulate a greater initial quota allocation. These participants may have needed only one permit to operate their vessel prior to the start of the rationalization program, thereby causing their other permits to remain dormant.

Of the 21 permits in the shoreside whiting fishery that were inactive after 2003, six remained active in other West Coast or Alaskan fisheries (including some that were active in the mothership fishery) while 15 had no activity in any West Coast or Alaskan fisheries (see Table 3-3 of the EA). Of the 14 permits[10] in the mothership whiting fishery that were inactive after 2003, 12 remained active in other West Coast or Alaskan fisheries (including some that were active in the shoreside fishery) while two had no activity in any West Coast or Alaskan fisheries (Table 3-5 of the EA). The two permits with some mothership sector history but none after 2003 were also among the 15 permits that had some shoreside history but no West Coast or Alaska activity after 2003.

The 15 permits with no post-2003 activity in any West Coast or Alaska fisheries were allocated 4.3 percent of the shoreside QS and 1.5 percent of the mothership sector CHA (Table 2). Six of these permits were owned by entities that owned other permits that remained active. These six permits accounted for 3.0 percent of the shoreside QS and 0.5 percent of the CHA. Thus, 1.3 percent of the shoreside QS and 1.0 percent of the CHA was associated with entities that apparently had no fishing activity after 2003, based on history associated with the trawl groundfish permits owned by these entities (these entities may have owned other fishing vessels or non-trawl limited entry permits).

Other Observations

- Two permits were not associated with vessels for most of the 2003-2010 period. Based on post-2006 status of permits and vessel registrations, 1.0 percent of shoreside QS and 1.5 percent of the mothership sector CHA (i.e., all of the CHA earned by dormant permits) was associated with the permits not registered with vessels.
- Permits associated with communities from Coos Bay and areas to the south (where the whiting fishery has been minimal in recent years) accounted for 2.3 percent of the shoreside whiting QS.

[10] Table 3-5 of the EA shows 39 permits in the mothership fishery, 14 of which were inactive after 2003, while Table 4-23 of the EA shows 37 permits in the mothership fishery 13 of which were inactive after 2003. The difference between these two tables is that Table 3-5 includes 2 permits which have mothership history but not enough history to qualify for an allocation under any alternative while Table 4-23 excludes these permits.

Table 4-28. Allocations to permits with no post-2003 activity showing geographic area (shading indicates change in geographic location of permit owner), vessel affiliation (U=not affiliated with a vessel) and whether permit is owned by an entity owning other permits.

Dummy Identifier [a/]	Permit Owner Also Owns Other Permits	Allocations: CHA Allocation	Allocations: Status Quo Allocation	Cumulative Percent (North-South)	Years: 2002-2003	Years: 2004-2006	Years: 2007-2008	Years: 2009-2010
P01			0.0%	0.0%	OR – North	OR – North	OR – North	WA – Coast
P02	Yes	0.5%	1.4%	1.4%	OR – North/U	WA – Pug Snd	WA – Pug Snd/U	WA – Pug Snd/U
P03			0.5%	1.9%	OR – North	OR – North	OR – North	OR – North
P04			0.0%	1.9%	OR – North	OR – North	OR – North	OR – North
P05			0.0%	2.0%	OR – North	OR – North	OR – North	OR – North
P06			0.1%	2.1%	OR – North	OR – North	OR – North	OR – North
P07	Yes		0.4%	2.5%	OR – South	OR – South	OR – South	OR – South
P08	Yes		1.0%	3.4%	OR – South/U	OR – South	OR – South	OR – South
P09	Yes		0.1%	3.5%	OR – South	OR – South	OR – South	OR – South
P10	Yes		0.1%	3.6%	CA – North	CA – North	CA – North	WA – Pug Snd
P11			0.0%	3.6%	CA – North	CA – North	CA – North	CA – North
P12			0.0%	3.7%	CA – North	CA – North	CA – North	CA – North
P13	Yes		0.1%	3.7%	CA – Cntrl	CA – Cntrl	CA – Cntrl	CA – Cntrl
P14			0.0%	3.8%	CA – Cntrl	CA – Cntrl	CA – Cntrl	CA – Cntrl
P15		1.0%	0.5%	4.3%	CA – Cntrl	CA – Cntrl/U	CA – Cntrl/U	CA – Cntrl/U
Total		1.5%	4.3%					
QS to Permits Not Registered to Vessels					1.5%	0.5%	1.0%	1.0%
QS to Owners of Multiple Permits				3.0%				
QS to Permits With Multiple Owners or Permits Not Registered to Vessels					3.0%	3.5%	3.5%	3.5%

a/ Dummy identifiers in this table do not correspond to dummy identifiers in other tables

4.3.1.4 Other Harvesting Sectors, Including Tribes and Recreational Fisheries

There is a possibility that other commercial sectors might be affected if the initial allocation of QS among shoreside whiting processors increases the probability that a processor serving those fisheries goes out of business. For this result to occur, the lack of an initial allocation (or a low initial allocation relative to other processors) would have to be a severe enough disadvantage that the processor became unable to compete with other processors and hence could not remain in business. The effect on any particular firm will ultimately depend on the fiscal strength of the business. Those who receive an initial allocation may experience a boost in their competitive advantage due to the infusion of new wealth (the value of the QS received). Those who receive lesser amounts relative to other processors or no allocations will be on a competitive par with newly entering processors (i.e., need to offer competitive prices to fishermen without the benefit of the leverage that processor owned QS might provide, or need to purchase QS to use in leveraging more deliveries from harvesters). Ultimately, the effect on other sectors would likely be geographic. If a processor goes out of business and there is not another processor within the community to pick up the slack, then it is likely that landings would shift to other communities, and possibly to harvesters in those other communities, depending on fleet mobility. The distributions of the allocations among processors and potential effects on communities are discussed in Sections 4.3.2 and 4.3.3.

Another potential effect on other sectors concerns the impact of the selected alternative on the effectiveness of control dates that may be used when limited access systems are considered for other fisheries in the future. The effect may be on both fairness and equity considerations for those fisheries and on the fishery conditions that develop during those deliberations. This issue is discussed further in Sections 5.4.5.3 and 5.5.3.

4.3.1.5 Adjacent Council Fisheries

Certain segments of the West Coast groundfish fleet move between Alaskan (North Pacific Fishery Management Council) area fisheries and the West Coast. This is particularly true of the catcher and processing vessels in the West Coast whiting fishery. A reduction in opportunities for participants on the West Coast may cause increased effort in other fisheries and conversely an increase in opportunity for participants on the West Coast may decrease their effort elsewhere. None of the alternatives will affect the fleet's overall opportunity on the West Coast. To the degree that a change in allocations results in a net increase or decrease in opportunities for those West Coast vessels that participate in Alaskan fisheries, the effect is likely to be minor because of the relatively small size of West Coast fisheries relative to those in Alaska.

The issue of reliability of control dates may also affect fisheries in other Councils, as identified in the previous section and discussed in greater in Sections 5.4.5.3 and 5.5.3.

4.3.2 Processing Sector Impacts

4.3.2.1 Shoreside Processors

Allocations to Shoreside Processors for Processing History

Processors receiving an initial QS allocation may experience a boost in their competitive advantage due to the infusion of new wealth (the value of the QS received). Whiting processors receiving an initial allocation are advantaged by the value of the asset granted in one of several ways: (1) as an alternative to offering higher prices, processors can use the QP they are issued annually as leverage to attract additional

landings; (2) the annually issued QP can be sold to harvesters and the revenue used to augment prices offered to harvesters, to offer processed product at lower prices, or to otherwise cover costs, augment profit, or improve competitiveness; (3) the QS may be sold for a one time capital infusion that may be used for a variety of business purposes or to augment profits. Those processors who receive lesser amounts relative to other processors or no allocations will be on a competitive par with newly entering processors (i.e., they would need to offer competitive prices to fishermen without the benefit of the leverage that processor-owned QS might provide, or would need to purchase QS to use in leveraging more deliveries from harvesters).

This section includes displays that show for each alternative the expected distribution of the 20 percent of QS allocated to processors compared to recent year and historic deliveries, in Figure 4-13 and Figure 4-14, and more detailed displays in Figure 4-15 and Figure 4-16. In these figures, a QS allocation equal to 20 percent of a processor's history for a given period would fall directly on the history line for that period. An allocation falling below the history line indicates the processor's initial allocation covers less than 20 percent of its historical landings for that period, while an allocation lying above the history line indicates the allocation would cover more than 20 percent of processor's landings during the period. The figures include comparisons to two historic periods: 1998-2003 and 2004-2006. Note that processors' No Action QS allocations were based on their 1998-2004 history and so fairly closely track the 1998-2003 history line.

(Note--The Draft EA used processor counts that included one processor that operated four processing plants. Each of these four plants established a QS account and received separate processors' QS allocations under the No Action Alternative. For this analysis, especially in regards to estimating impacts on communities, it was decided each of these four processing plants should be treated separately. This treatment changes the count of processors that were active in the fishery at some point during 1994-2010 from 16 to 19 (see, for example, Figure 4-13). However two of those processing plants are no longer in existence and so did not receive processors' QS allocations under the No Action Alternative. Consequently, in this EA's displays that include counts of processors receiving QS allocations under the alternatives, the processor count is reduced from 19 to 17 (see, for example, Table 4-30).

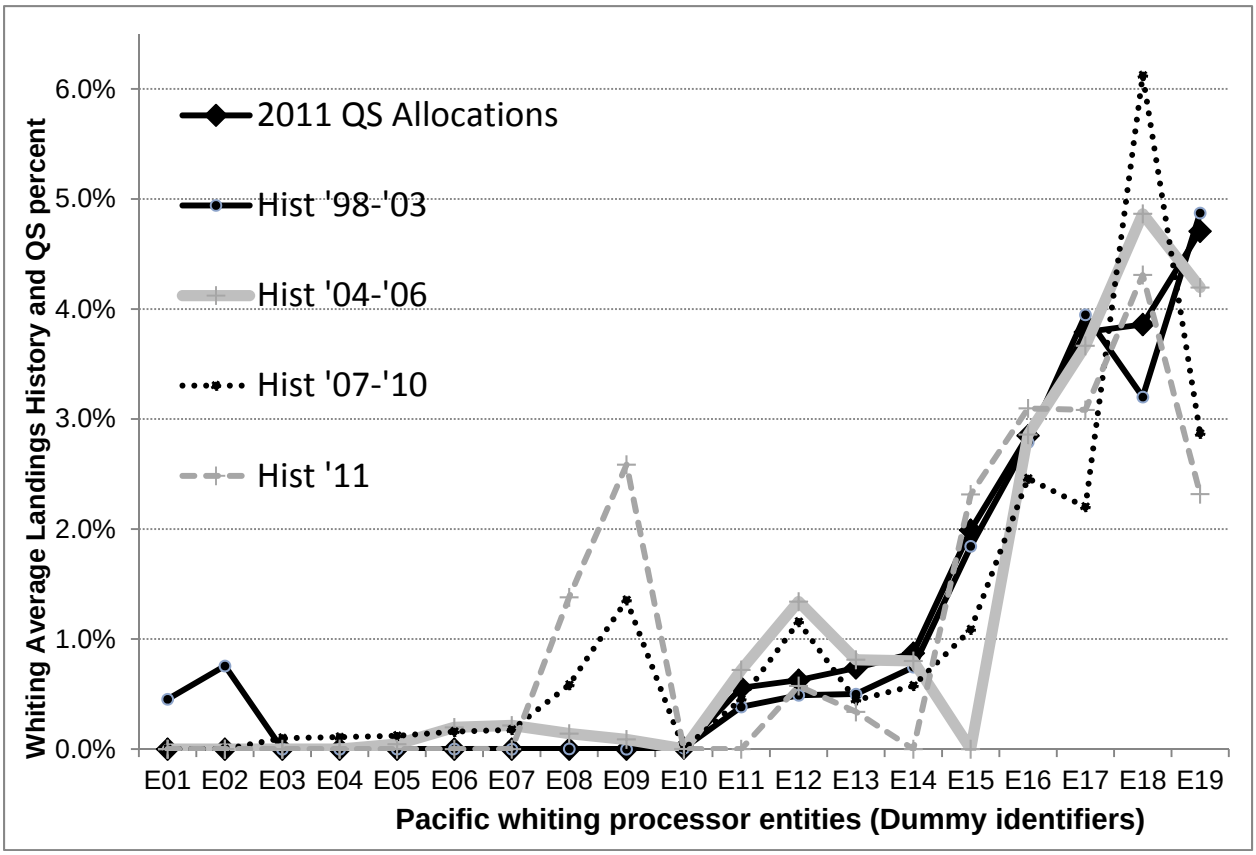


Figure 4-13. 2011 (No Action) QS allocations compared with recent years' deliveries to **shorebased processors** (Note the percentages displayed for historical deliveries have been scaled to 20 percent of actual amounts in order to compare with the QS allocated to processors – processors are allocated 20% of the total shorebased whiting QS).

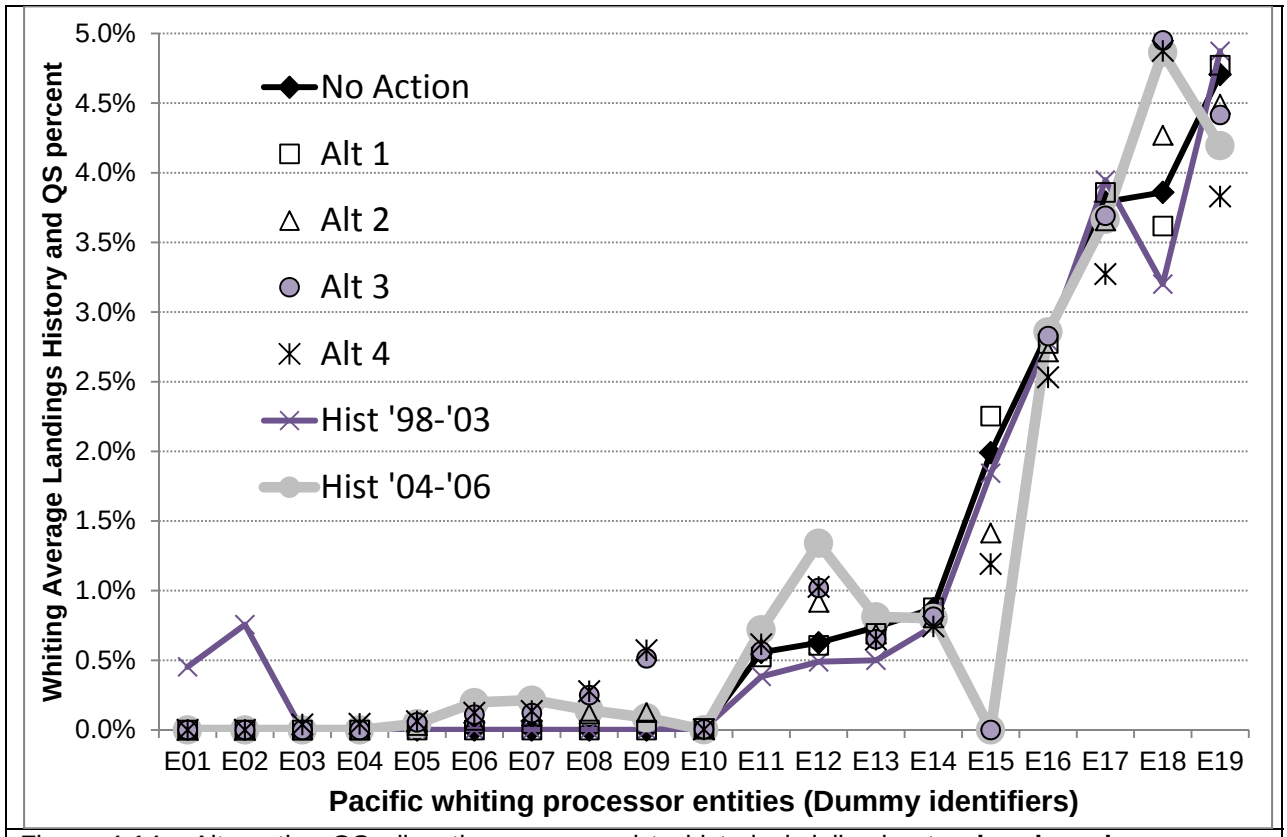


Figure 4-14. Alternative QS allocations compared to historical deliveries to **shorebased processors** during 1998-2004 and 2004-2006. (Note the percentages displayed for historical deliveries have been scaled to 20 percent of actual amounts in order to compare with the QS allocated to processors – processors are allocated 20% of the total shorebased whiting QS).

In the two preceding figures it may be difficult to discern the differences between alternatives because of the scale of the graphs. The following two figures (Figure 4-15 and Figure 4-16) are included to highlight the results displayed in the lower and upper ranges, respectively, of Figure 4-14.

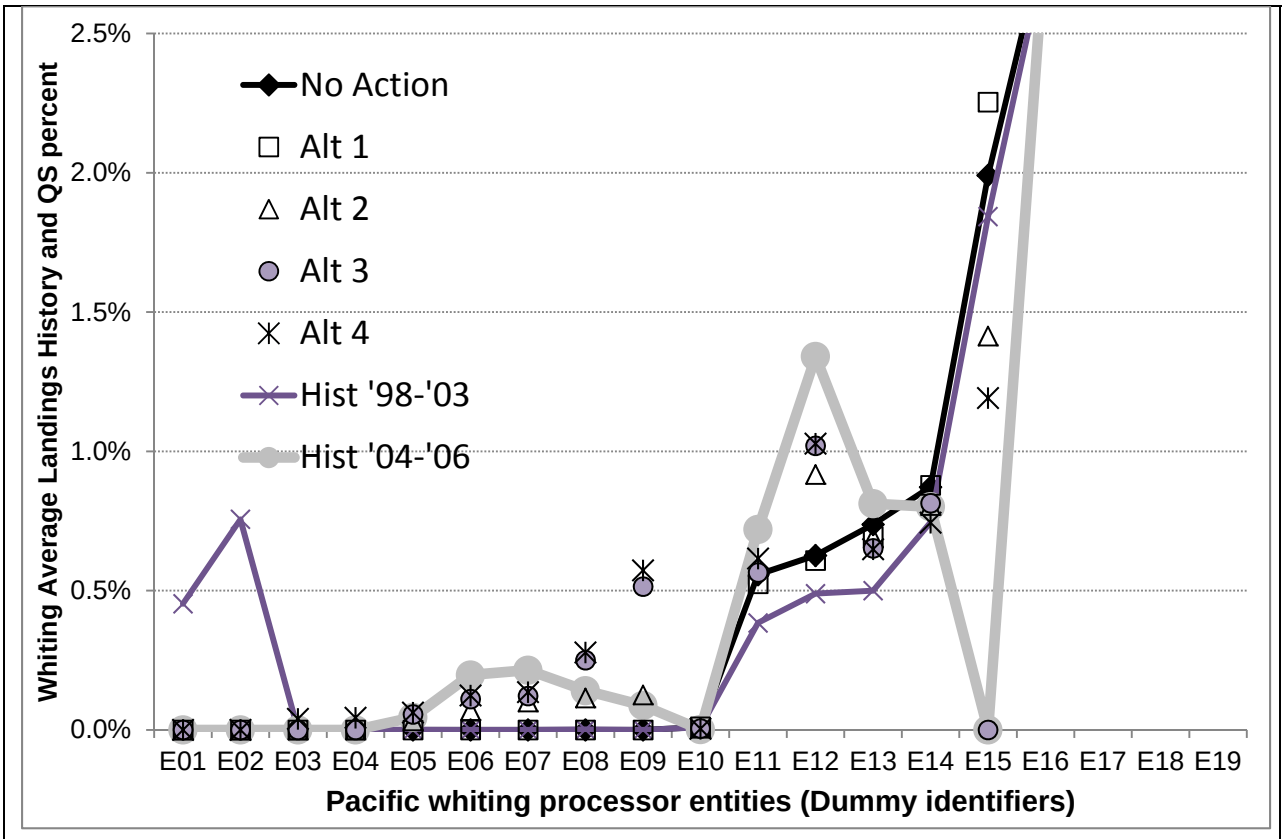


Figure 4-15. Magnification of the results for **shorebased processors** for entities displayed toward the left-hand side of Figure 4-14.

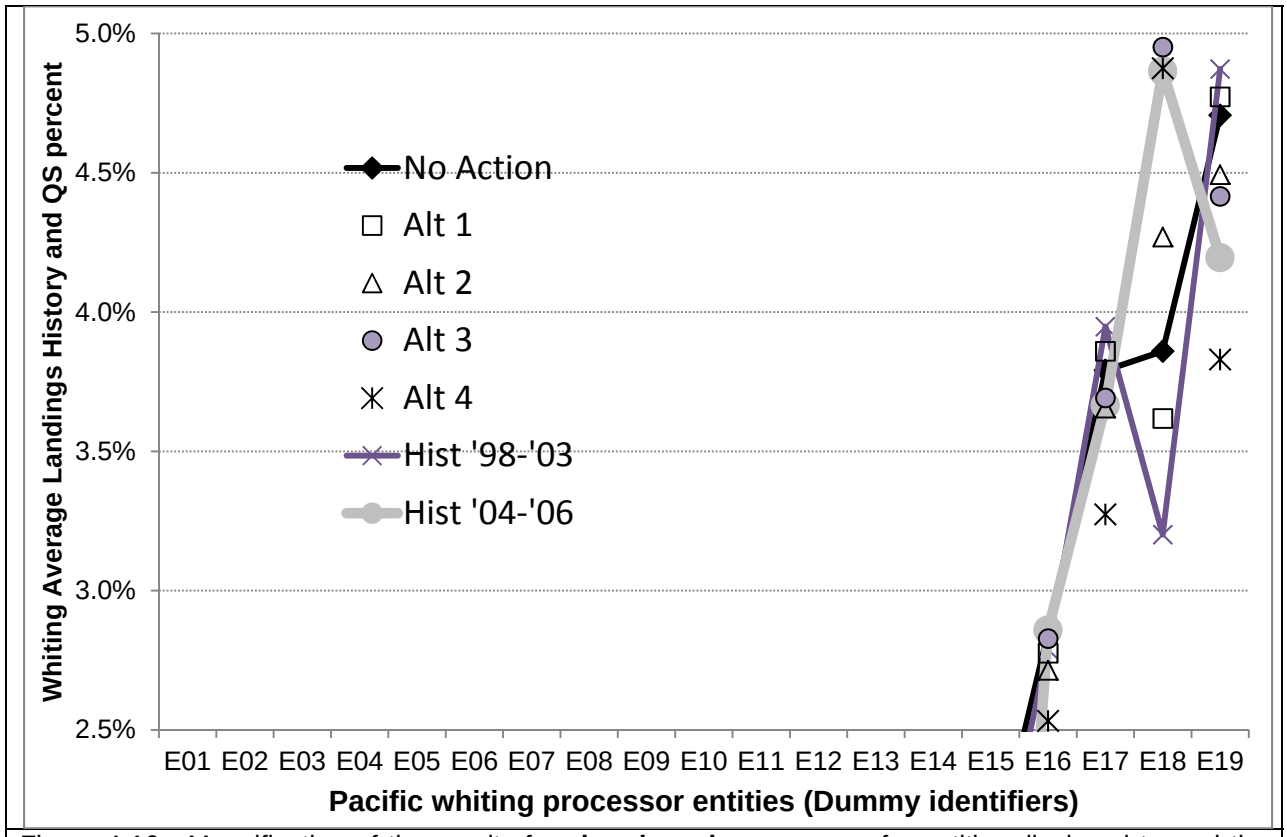


Figure 4-16. Magnification of the results for **shorebased processors** for entities displayed toward the right-hand side of Figure 4-14.

Figure 4-13 shows that six processors' initial allocations (E06, E07, E08, E09, E12, and E18) under No Action ("2011 QS allocations") failed to cover 20 percent of their 2007-2010 delivery levels. Despite the challenges this may have created, two processors that received no initial allocations under No Action (E08 and E09) took a larger share of deliveries in 2011 than their 2007-2010 averages. One processor failed to achieve its 2007-2010 share in 2011, but did receive more landings than would be expected if it had to cover 20 percent of deliveries with its own QS (E18). Another of those processors (E12) was able to cover 20 percent of its deliveries in 2011 with QS received from its initial allocation.

Several processors that did not receive initial allocations and participated at relatively low levels or not at all during 2007-2010 (E01 through E07 and E10) also did not participate in 2011. Two processors that received moderate initial allocations that were equivalent to more than 20 percent of their 2007-2010 landings also did not participate in 2011 (E11 and E14).

Alternative 1 would roll the end of the qualifying period back one year from 2004 to 2003. This change seems to make relatively little difference for most processors, but gives a small benefit to E15, E17 and E19, while reducing the allocation to E18 (Figure 4-15 and Figure 4-16). Alternatives 2, 3 and 4 would progressively move the allocations in the favor of those with stronger recent history and away from those with strong early history. The degree of change in moving from Alternative 3 to Alternative 4 is generally not as great for processors as it is for permits because fewer earlier years are included in the processors' allocation formulas [Alternative 4 drops six years for permits (1994-1999), but only two years for processors (1998 and 1999)]. An exception is one processor (E15) that receives no initial allocation under Alternative 3 due to failure to meet the recent participation requirement, but would be eligible for an initial allocation under all the other alternatives.

The summary of impacts presented in Table 4-29 shows that compared with No Action and depending on the alternative, up to seven additional processors may qualify for an initial QS allocation, and between three and five processors that qualified under No Action would receive an increased allocation under at least one of the action alternatives. Also, depending on the alternative, between five and seven processors would receive smaller QS allocations, and the total amount of QS reallocated among processors is between 0.4 percent and 2.7 percent. The maximum change in QS allocation from No Action for any one processor is a decrease of 2 percent (i.e., a loss of 100 percent of its initial allocation under No Action) for a processor that is screened out under Alternative 3.

Table 4-29. Changes in the amount of whiting QS allocated to processors under the alternatives relative to status quo (No Action) based on individual processor history of shoreside sector whiting trips.

	Alternatives			
	Alt 1: 1998-2003	Alt 2: 1998-2007	Alt 3: 1998-2010	Alt 4: 2000-2010
Number of Processors **Not Previously Qualifying** for an Allocation that would receive QS Allocations Under the Alternative	0	5	5	7
Total Increases in QS for Those Processors	0.00%	0.44%	1.05%	1.26%
Maximum Increase to Any One Processor	0.00%	0.13%	0.51%	0.57%
Number of Previously Qualifying Processors With **Increased** Allocations Under the Alternative	5	3	3	3
Total Increases in QS for Those Processors	0.41%	0.73%	1.49%	1.47%
Maximum Increase to Any One Processor	0.26%	0.41%	1.09%	1.02%
Max Increase as a Percent of Status Quo	13.24%	10.64%	28.29%	26.32%
Number of Previously Qualifying Processors with **Decreased** Allocations Under the Alternative	5	7	6	7
Total Decreases in QS for Those Processors	-0.41%	-1.18%	-0.56%	-2.73%
Maximum Decrease to Any One Processor	-0.24%	-0.58%	-0.29%	-0.88%
Max Decrease as a Percent of Status Quo	-6.24%	-28.96%	-6.18%	-18.63%
Number of Previously Qualifying Processors with **Zero** Allocations Under the Alternative	0	0	1	0
Total Decreases in QS for Those Processors	0.00%	0.00%	-1.99%	0.00%
Maximum Decrease to Any One Processor	0.00%	0.00%	-1.99%	0.00%
Max Decrease as a Percent of Status Quo	#N/A	#N/A	-100%	#N/A

Allocations and Processor Involvement and Dependence

Processors' average annual dependence and involvement in the whiting fishery and scaled QS allocations are indicated by the data and icons shown in Table 4-30. The table uses processors' whiting purchases during several historic periods to indicate level of dependence and involvement in the fishery. Note that the QS allocations have been scaled up to sum to 100 percent in order to be comparable with involvement statistics. The absence of any graph icon in a given table cell indicates there is no whiting history for that entity and period; graph bars without shading indicate some history but a very low level of dependence or involvement relative to the other processors. The more bars that are shaded the greater the relative amount of dependence or involvement in the whiting fishery. Involvement values can be directly

compared with the scaled QS allocations shown on the right hand side of the table to see how QS allocations under the alternatives compare with each processor's historical participation. In general, processors with higher involvement would be expected to receive a greater share of the processors' QS allocation, and vice versa. For example, one processor (P15) shows increasing dependence through time but fairly low and declining levels of involvement. Since QS allocations are more closely associated with involvement than with dependence, this processor would tend to receive a slightly lower allocation under those alternatives that place more emphasis on recent years.

Related to investments made by processors, public comments submitted to the Council at the April 2012 Council meeting stated support for 2004 cutoff period based on the understanding that processors made investments in 2002 and 2003 before the control date for harvesters was announced, but for which no processing history was earned until 2003 and 2004 when these new processing facilities came online (Declaration of David Jincks, submitted by J. Timothy Hobbs). At the September 2012 Council meeting, testimony was provided that significant investment relative to whiting by a specified processor began in 1997, and that much of investments by that processor after 2004 were dedicated to giving them a position in the sardine fishery (Statement of C. Kayser).

Table 4-30. Processors' dependence on whiting (as measured by purchases), average annual percent involvement, and initial QS allocations.

Business ID	Average Annual Percent Dependence on Whiting (Exvessel Value of Whiting as a Share of Each Processor's Total West Coast Landing Receipts)			Average Annual Percent Involvement in Whiting (Each Processor's Share of the Total Whiting Harvest)			Whiting Processors' QS Allocations (SCALED TO 100% in order to compare with historical landings - actual allocations would be 20% of these values)				
Dummy	**Avg 94-03**	**Avg 04-06**	**Avg 07-10**	**Avg 94-03**	**Avg 04-06**	**Avg 07-10**	**No Action**	**Alt 1**	**Alt 2**	**Alt 3**	**Alt 4**
P01	0.40	0.72	0.36	0.26	0.17	0.11	**23.5%**	**23.9%**	**22.5%**	**22.1%**	**19.1%**
P02	-	0.11	0.12	-	0.01	0.01	**0.0%**	**0.0%**	**0.3%**	**0.6%**	**0.6%**
P03	0.68	-	0.80	0.12	-	0.05	**10.0%**	**11.3%**	**7.1%**	**0.0%**	**6.0%**
P04	0.00	0.00	0.00	0.00	0.00	0.00	**0.0%**	**0.1%**	**0.0%**	**0.0%**	**0.0%**
P05	0.00	0.02	0.02	0.00	0.01	0.03	**0.0%**	**0.0%**	**0.6%**	**1.3%**	**1.4%**
P06	0.04	0.07	0.04	0.17	0.16	0.09	**19.0%**	**19.3%**	**18.3%**	**18.5%**	**16.4%**
P07	0.01	0.07	0.03	0.01	0.04	0.02	**2.8%**	**2.6%**	**2.9%**	**2.8%**	**3.1%**
P08	0.09	0.09	0.07	0.09	0.12	0.12	**14.2%**	**13.9%**	**13.6%**	**14.1%**	**12.7%**
P09	0.03	0.08	0.04	0.01	0.03	0.02	**3.7%**	**3.5%**	**3.5%**	**3.3%**	**3.2%**
P10	0.00	-	0.01	0.00	-	0.00	**0.0%**	**0.0%**	**0.0%**	**0.0%**	**0.2%**
P11	-	0.43	0.61	-	0.00	0.06	**0.0%**	**0.0%**	**0.6%**	**2.6%**	**2.9%**
P12	0.00	0.09	0.09	0.00	0.00	0.01	**0.0%**	**0.0%**	**0.2%**	**0.3%**	**0.3%**
P13	0.03	0.07	0.07	0.04	0.06	0.05	**3.1%**	**3.0%**	**4.6%**	**5.1%**	**5.1%**
P14	-	-	0.04	-	-	0.00	**0.0%**	**0.0%**	**0.0%**	**0.0%**	**0.2%**
P15	0.48	0.86	0.95	0.04	0.04	0.03	**4.4%**	**4.4%**	**4.0%**	**4.1%**	**3.7%**
P16	0.18	0.46	0.41	0.11	0.34	0.40	**19.3%**	**18.1%**	**21.4%**	**24.8%**	**24.4%**
P17	-	0.03	0.05	-	0.01	0.01	**0.0%**	**0.0%**	**0.5%**	**0.6%**	**0.7%**

Ex-processor Value Equivalents

Data on ex-processor prices to provide a sense of the magnitude of the economic impact of changing production levels on processors are not available. However the QS to be allocated will be used to cover vessel deliveries, and therefore exvessel prices may provide an indicator of the magnitude of the financial benefit provided to processors by their QS allocations[11]. A range of possible exvessel values per 0.1 percent of total QS under different sector allocations is shown in Table 4-15. Export prices might also be used to provide a sense of the economic importance processors might place on the amounts of QS to be allocated. In 2011, the reported export price per pound of head-and-gut whiting was $0.889. Using a product recovery rate of 0.65 yields an equivalent round pound price of approximately $0.58 per pound. This value is applied to the same range of shoreside whiting allocations shown in Table 4-15.

Table 4-31. Export value equivalent per 0.1 percent of whiting QS (assuming the imputed 2011 price of $0.58 per pound and a product recovery rate of 0.65) ($).

Shoreside Sector Allocations (mt)	Value Equivalent Assuming Whiting Export Price of $0.58 per lb
40,000	51,147
60,000	76,721
80,000	102,294
100,000	127,868

Allocations to Shoreside Processors for Processing and Permit Harvesting History

Combining the QS allocated for processing history with QS allocated for permit harvesting history shows that only four processing entities receive a larger whiting allocation as a result of also owning permits (see entities E08, E10, E17 and E19 in Figure 4-17 compared with allocations to those same entities shown in Figure 4-14). The maximum increase in whiting QS for any processing entity due to also receiving a harvester allocation is 3 percent under No Action and Alternative 1, 2.8 percent under Alternatives 2 and 3, and 2.3 percent under Alternative 4. The overall control limit for whiting QS is 10 percent. As shown in Figure 4-17, when permit and processor allocations are combined, under no alternative would the amount of whiting allocated to a single entity be expected to exceed the control limit of 10 percent.

[11] The actual financial value of the QS would depend on the present value of the stream of net revenues that are in excess of the normal profit levels associated with receiving whiting deliveries.

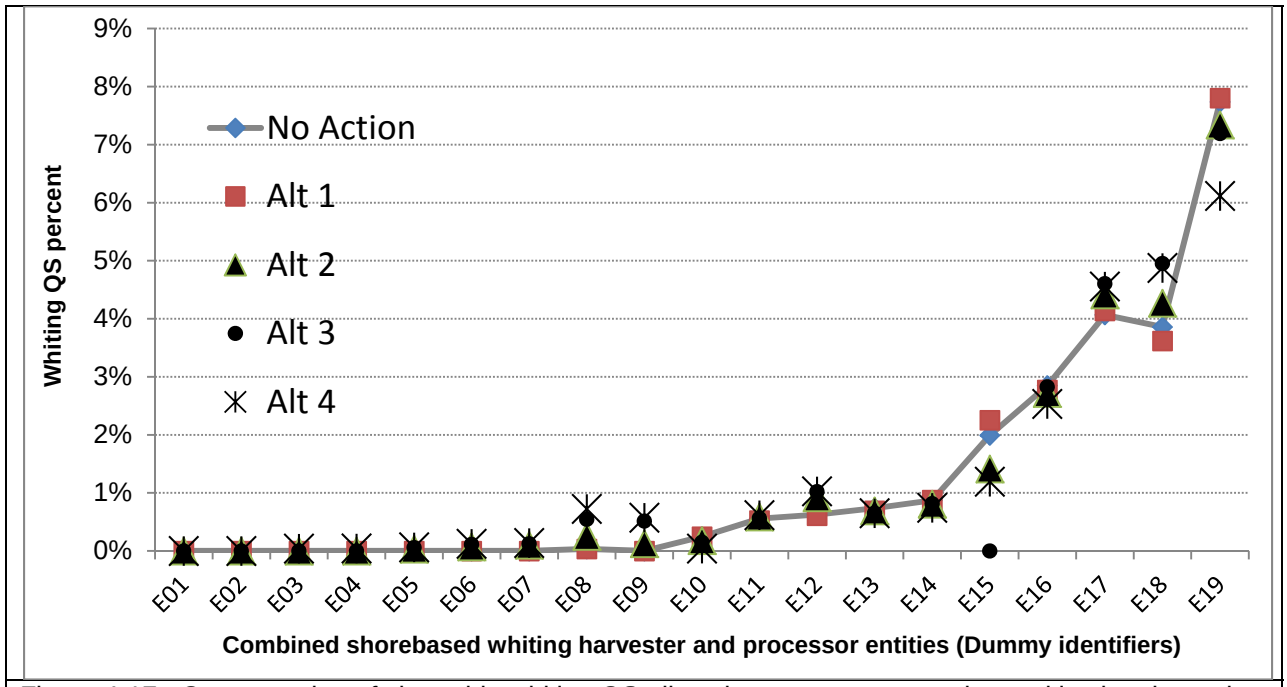


Figure 4-17. Concentration of shoreside whiting QS allocations among processing entities by alternative, including allocations of QS to processors owning permits (results ordered from lowest to highest processor allocation portion under the No Action alternative, i.e., the same order as in Figure 4-14).

Effect of Adjusting the Recent Participation Period (Alternative 3)

All of the Alternatives except Alternative 3 have a recent participation period the end of which coincides with the end of the allocation period. For Alternative 3 the allocation period ends in 2010 (1998-2010) but the recent participation period ends in 2007 (2004-2007). By excluding the last three years of the allocation period from the recent participation period (i.e., excluding 2008, 2009 and 2010), three processors are screened out. As a result, a total of 1.4 percent of QS is reallocated among the 14 remaining processors that are eligible to receive an allocation under Alternative 3, with each receiving an increase of 7.4 percent relative to the allocation they would have received if the recent participation period under Alternative 3 were 2004-2010 rather than 2004-2007.

4.3.2.2 Mothership Processors

To the degree there is an alliance between certain MS/CV permit owners and mothership processors, an increase or decrease in the CHA assignments to catcher vessel permits may increase or decrease the processing opportunities of allied motherships. The data on mothership obligations for 2011 (Table 4-32) compared with data for 2012 (Table 4-33) show that the start-of-year obligations have shifted somewhat with some permits moving their CHA obligations from one company to another (in 2012, Company 1 picked up 4.4 percent from Company 2). Using either the 2011 or 2012 distributions, Company 2 would be the most adversely affected under any of the action alternatives, to the benefit of Companies 1 and 3.

Table 4-32. Change from No Action to mothership coop permits' CHA assignments under the reallocation alternatives based on **2011** coop agreements.

		Change relative to No Action (Alt 1)		
Mothership Coop	No Action – Alt 1	Alt 2	Alt 3	Alt 4
Company 1	25.5%	+0.5%	-0.0%	+1.4%

Company 2	26.0%	-2.0%	-2.3%	-5.3%
Company 3	38.3%	+1.8%	+2.5%	+4.8%
Company 4	10.3%	-0.3%	-0.2%	-0.9%
TOTAL	100.0%			

Table 4-33. Change from No Action to mothership coop permits' CHA assignments under the reallocation alternatives based on **2012** coop agreements.

		Change relative to No Action (Alt 1)		
Mothership Coop	No Action – Alt 1	Alt 2	Alt 3	Alt 4
Company 1	21.1%	+1.9%	+1.8%	+4.9%
Company 2	30.4%	-3.3%	-4.1%	-8.8%
Company 3	38.3%	+1.8%	+2.5%	+4.8%
Company 4	10.3%	-0.3%	-0.2%	-0.9%
TOTAL	100.0%			

4.3.3 Impacts on Communities

The effects of the initial allocations on the distribution of fishing among communities are difficult to predict. Quota is tradable and highly divisible, making it likely that quota will move toward those ports where profit margins tend to be the highest, regardless of the initial allocations. Where profit margins are similar, allocations given to entities that are already invested in whiting fishery-dependent capital assets are likely to stay with those entities at least in the near term. Similarly, where profit margins are similar, there will likely be some tendency in the near term for quota to move toward locations where whiting fishery-dependent capital assets are already in place. Regardless of how the quota is distributed, vessels may move operations between ports during the year based on the geographic distribution of fishing opportunities. Processors are likely to use their shares in the port in which their facilities are located, however processors that have facilities in more than one port may shift harvest between ports in response to the location of fishing opportunities or other factors. At the same time, the apparent recent shift of harvest toward more northern ports appears to be in response to investments in those ports, indicating that the location of fish is not the only factor driving the location of landings. Over the long term, it is expected that operations will move, or quota will be traded, to the ports where the highest profits can be earned, factoring in all forms of costs including average distance to fishing grounds, and catch and bycatch rates.

The 2011 whiting QS fishery provides a first look at how harvest might be redistributed among communities under trawl rationalization. Compared with 2007-2010, in 2011 there was a shift in landings, with the share of landings in Astoria increasing substantially from just over 25 percent to 45 percent, while the share of landings in Westport and Newport decreased (Figure 4-18). From displays in this section it can be seen that Astoria's 45 percent share of landings (Figure 4-18) far exceeds the amount of QS associated with the port, which is less than 30 percent assuming either the status quo distribution of QS among permits based on principle port of landing (Figure 4-19) or among processors (Figure 4-24). Again, the geographic distribution of fish in any year may also affect the distribution of landings among ports.

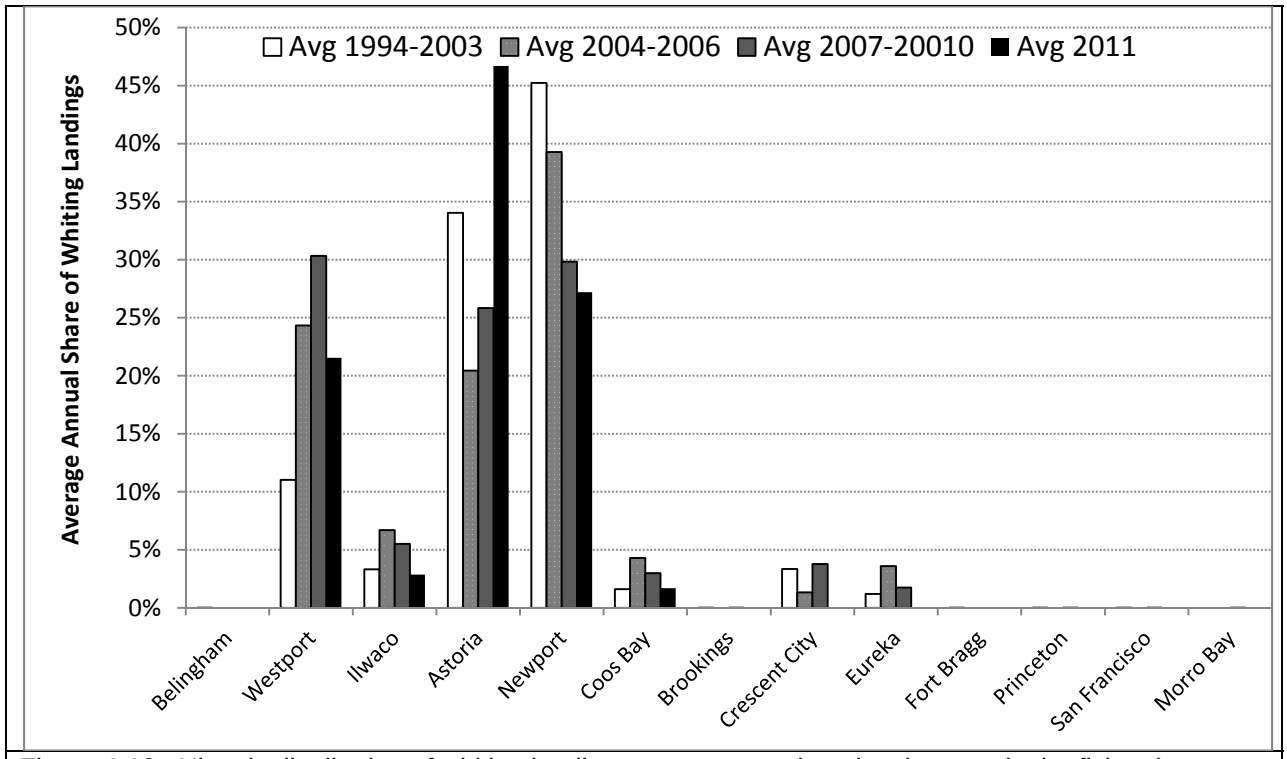


Figure 4-18. Historic distribution of whiting landings among ports (port involvement in the fishery).

For each alternative, this section first examines the geographic distribution of the 80 percent of QS allocated to permits based on (1) where the vessels associated with those permits have made landings in recent years (principle port), and (2) the addresses of permit owners. The latter analysis is provided for both QS and CHA recipients. Next the geographic distribution of the 20 percent of QS allocated to processors is examined. Finally, the allocational results under the alternatives are presented in the context of each port's dependence and involvement in the fishery.

Because of consolidation of landings on relatively fewer vessels in 2011, it is difficult to provide a geographic association of QS to ports based on 2011 landings history alone. Geographic distribution of the 80 percent of QS allocated among permits, evaluated based on permits' average landings history during 2007-2011, is shown in Figure 4-19. Based on average 2007-2011 landings patterns, the No Action Alternative tends to favor Newport while the alternatives incorporating more recent history tend to favor ports further north, though the exact strength of this trend is difficult to discern with certainty because of the number of permits that were inactive during the period ("Unknown"). The geographic distribution of quota in terms of the delivery ports of associated vessels is likely to indicate where expenditures will be made to cover some production costs (e.g. fuel, supplies, processing costs, etc.).

The geographic distribution of quota allocated to permits, evaluated based on the limited entry permit holder's address of record, is shown for shorebased whiting QS in Figure 4-20 and for mothership sector CHA in Figure 4-21. Permit owners' addresses may indicate where the profits from quota ownership are spent. For shorebased QS, the communities that would benefit most from increased emphasis on more recent years in the allocation formulas are in Oregon. For CHA, the communities that benefit most from increased emphasis on more recent years are in the Seattle and Portland metropolitan areas. The results for combined QS and CHA allocations are shown in Figure 4-22. Permit ownership address information is aggregated based on county. Table 4-34 lists the counties associated with each major port.

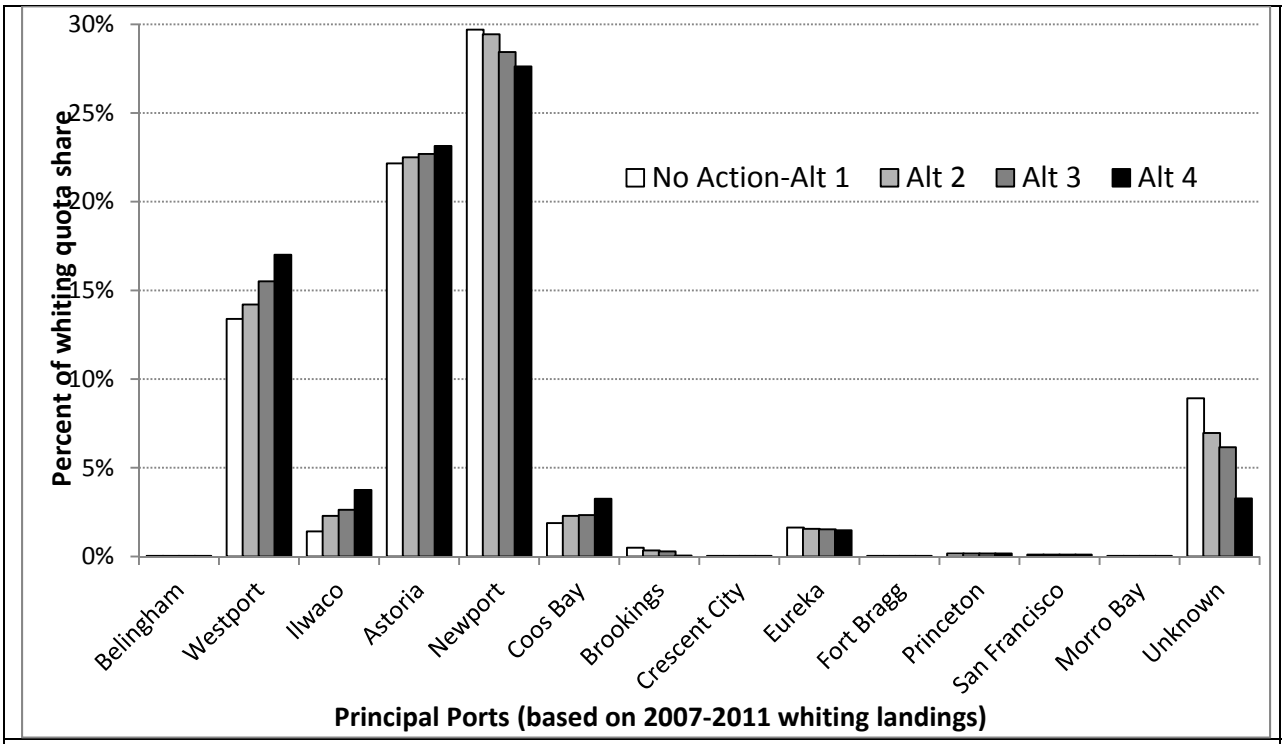


Figure 4-19. Distribution of permits' QS based on principle ports to which permits made deliveries during 2007-2011 (permits not participating during that time are placed in the unknown category).

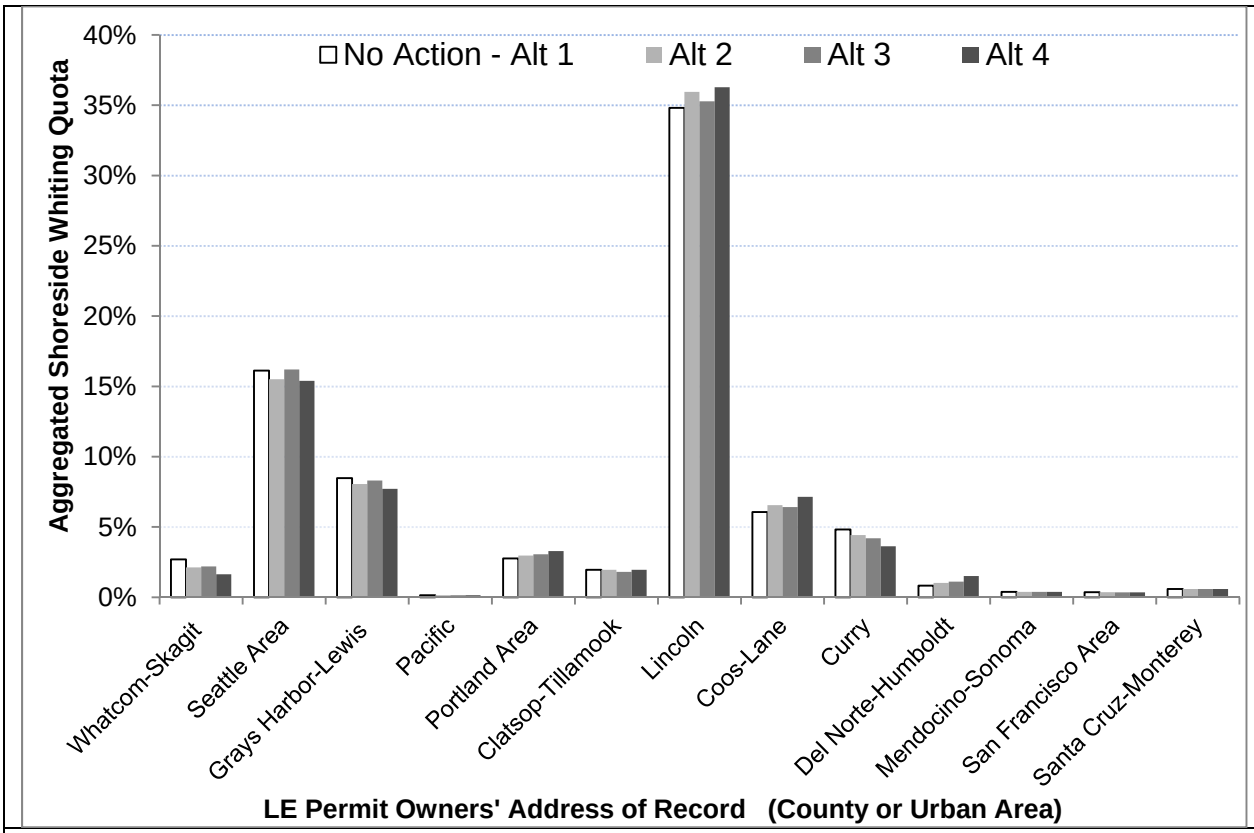


Figure 4-20. Distribution of permits' QS allocations among communities based on permit owners' addresses (totals to 80% of all QS).

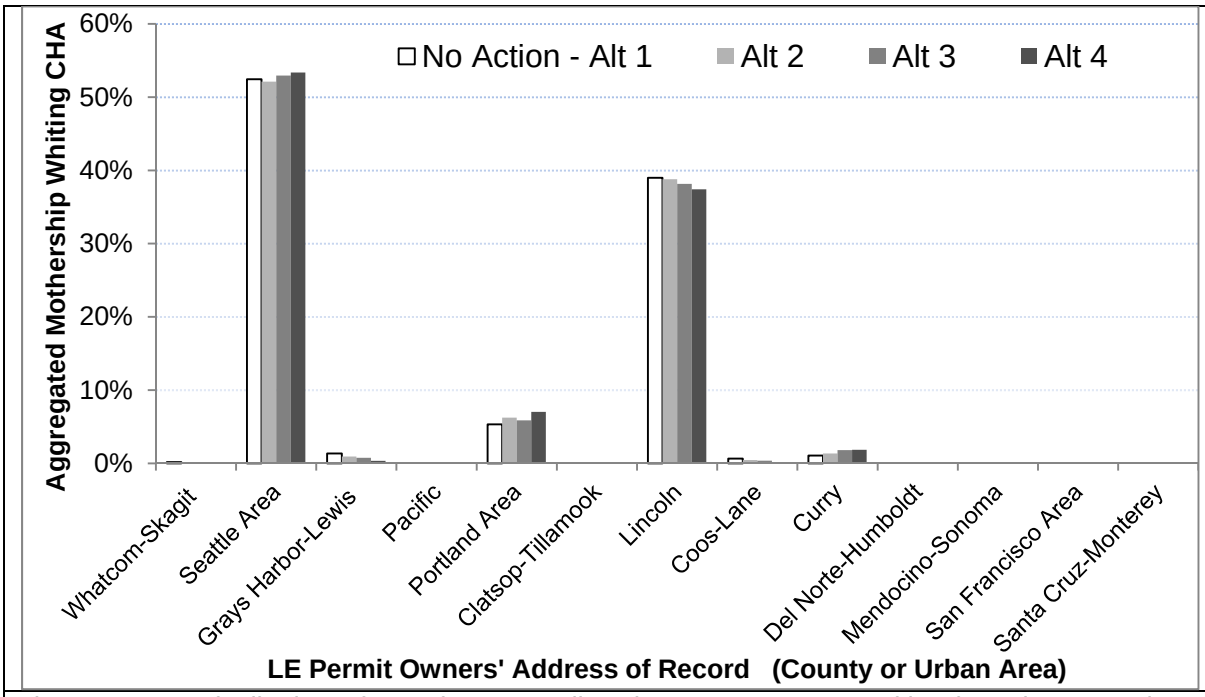


Figure 4-21. Distribution of permits' CHA allocations among communities based on permit owners' addresses.

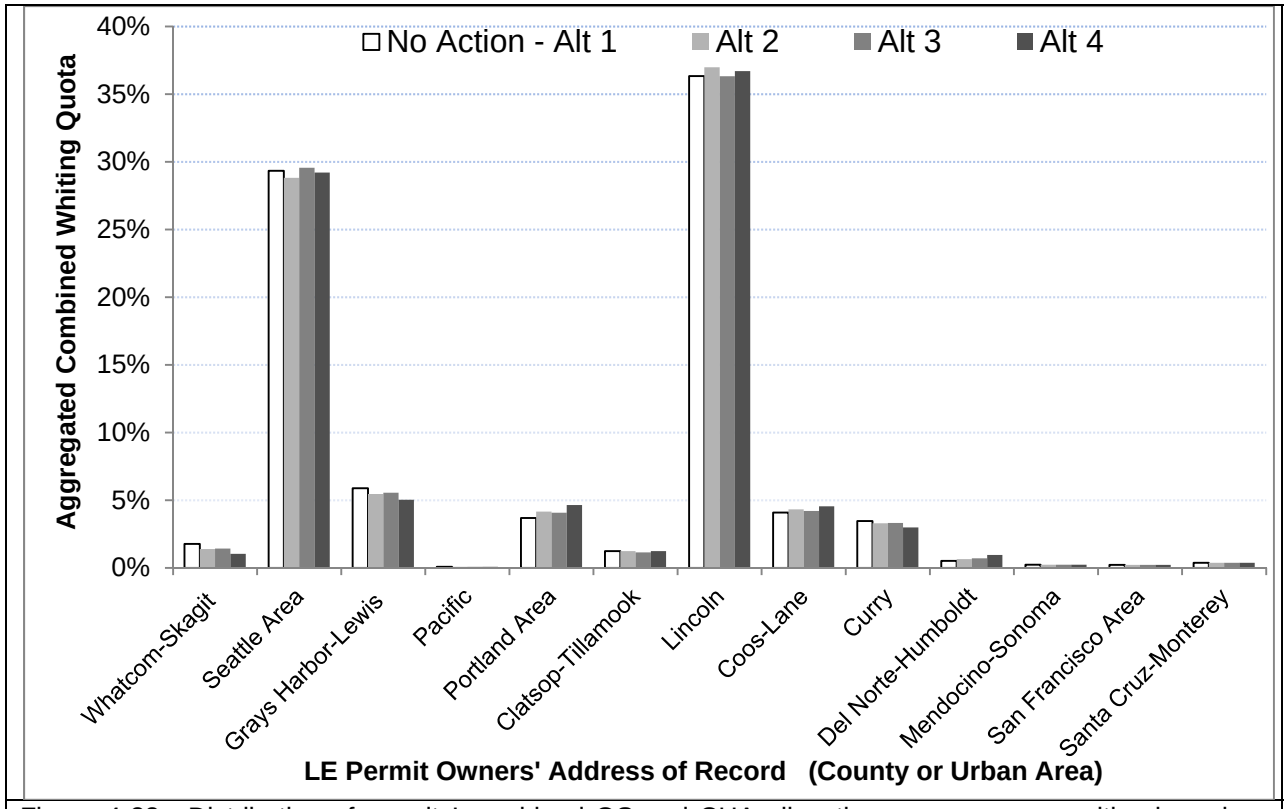


Figure 4-22. Distribution of permits' combined QS and CHA allocations among communities based on permit owners' addresses.

Table 4-34. Port-county correspondence.

Port	Corresponding Counties
Westport, WA	Grays Harbor-Lewis
Ilwaco, WA	Pacific
Astoria, OR	Clatsop-Tillamook
Newport, OR	Lincoln
Coos Bay, OR	Coos-Lane
Crescent City	Del Norte- Humboldt
Eureka	Del Norte- Humboldt
Fort Bragg	Mendocino-Sonoma

Of the portion of QS allocated to processors, just over 30 percent (i.e., 6 percent of all shorebased whiting QS) went to Astoria under the No Action alternative. Nevertheless processors in Astoria handled over 45 percent of the coastwide landings in 2011(Figure 4-23). In terms of the QS distributed among processors, allocation formulas that emphasize more recent years appear likely to shift allocations toward Westport and Ilwaco and away from Astoria and Newport (Figure 4-23).

Each port's estimated share of the allocations to processors is shown in Figure 4-23. Note that the bars in Figure 4-23 total to 20 percent for each alternative. In Figure 4-24 the distribution of QS is compared to the historic distribution of landed pounds by scaling processor QS allocations such that they total to 100

percent. Figure 4-25 makes this same comparison but in terms of port historic shares of ex-vessel revenue. Westport's ex-vessel revenues in some recent years expanded substantially more than the pounds of fish landed, indicating that higher prices were being paid in Westport. In a competitive market, higher ex-vessel prices could result from a variety of factors such as larger average size fish, better fish handling by fishermen, or competition among processors for deliveries.

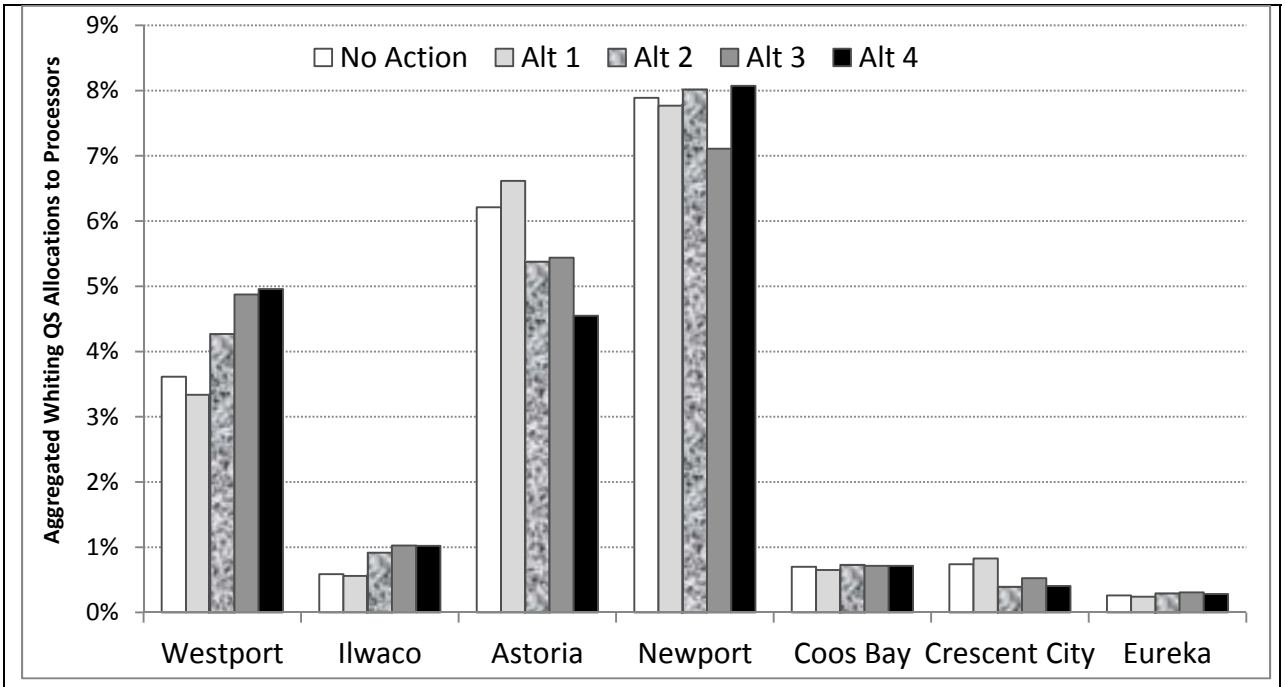


Figure 4-23. Whiting QS allocated to processors associated with each port based on the location of processors receiving quota and the distribution of processor's 2011 deliveries among ports.

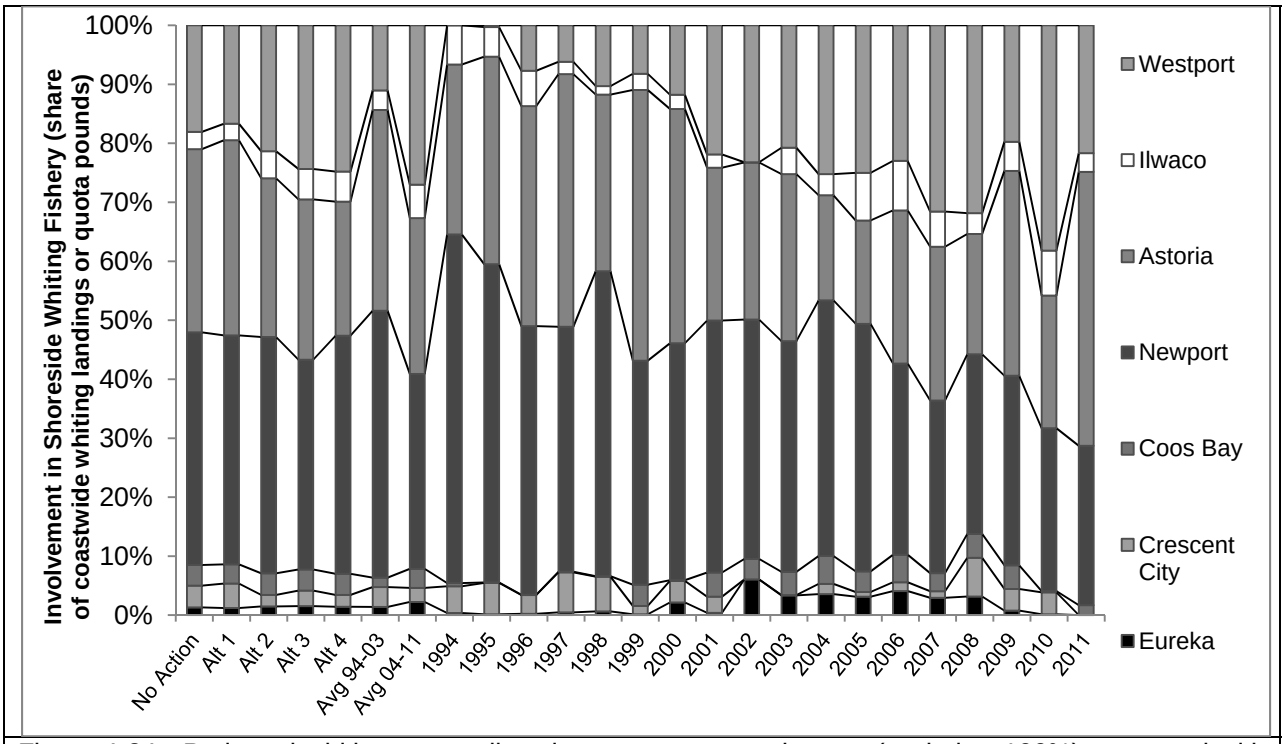


Figure 4-24. Projected whiting quota allocations to processors by port (scaled to 100%) compared with historical involvement in the whiting fishery (**share of round weight**). Quota is distributed based on processor QS allocations and 2011 landings for processors with more than one landing port.

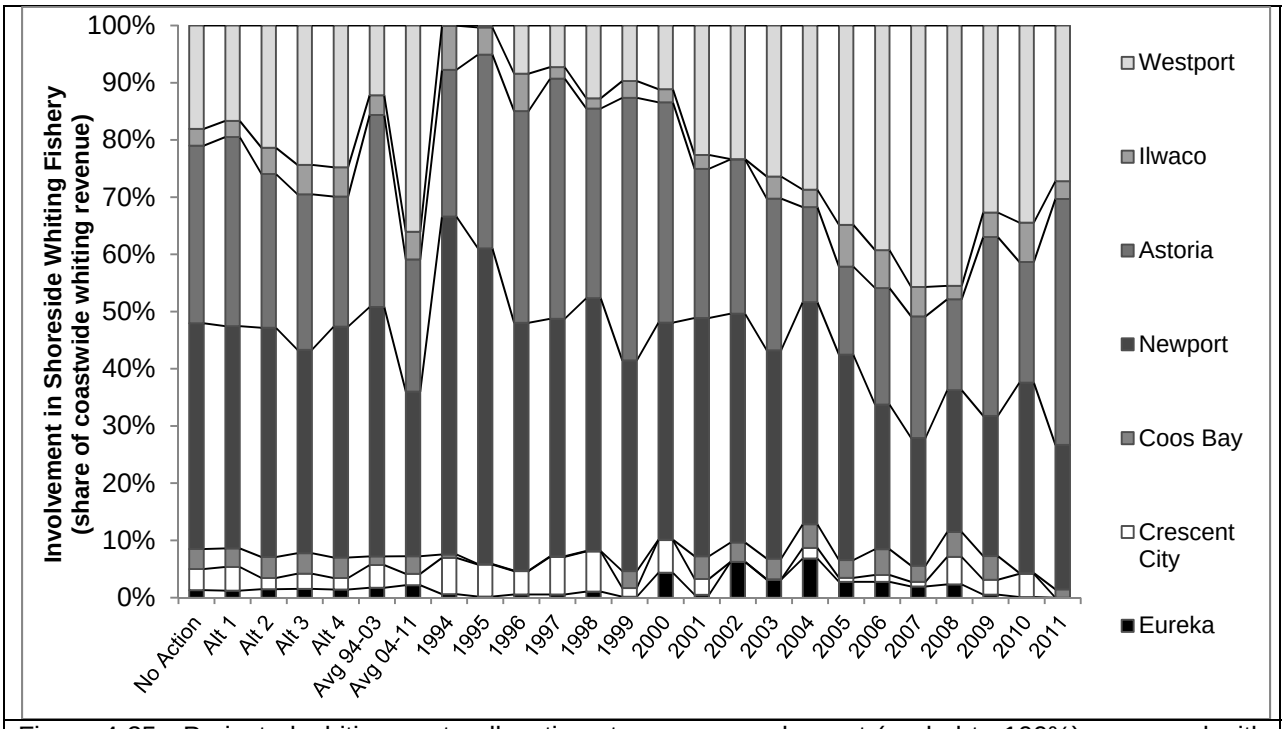


Figure 4-25. Projected whiting quota allocations to processors by port (scaled to 100%) compared with historical involvement in the whiting fishery (**share of revenue – exvessel value**). Quota is distributed based on processor QS allocations and 2011 landings for processors with more than one landing port.

Information on port dependence on whiting, in terms of whiting as a percent of total exvessel revenue from all West Coast fish landed in the port, is provided in Figure 4-26. Because it implies a long-term relationship, dependence is more likely a function of deliveries over multiple years than any single year. This is because dependence is a function of investments and investments are usually made based on longer term patterns and prospects. For example, Astoria's dependence on whiting is likely reflected more by the long-term averages than the single year high of about 23 percent in 2011 (Figure 4-26). Using the longer term averages, it appears that Westport and Newport have both been more dependent on the whiting fishery than Astoria (with Westport's average dependence increasing substantially during the more recent historic period).

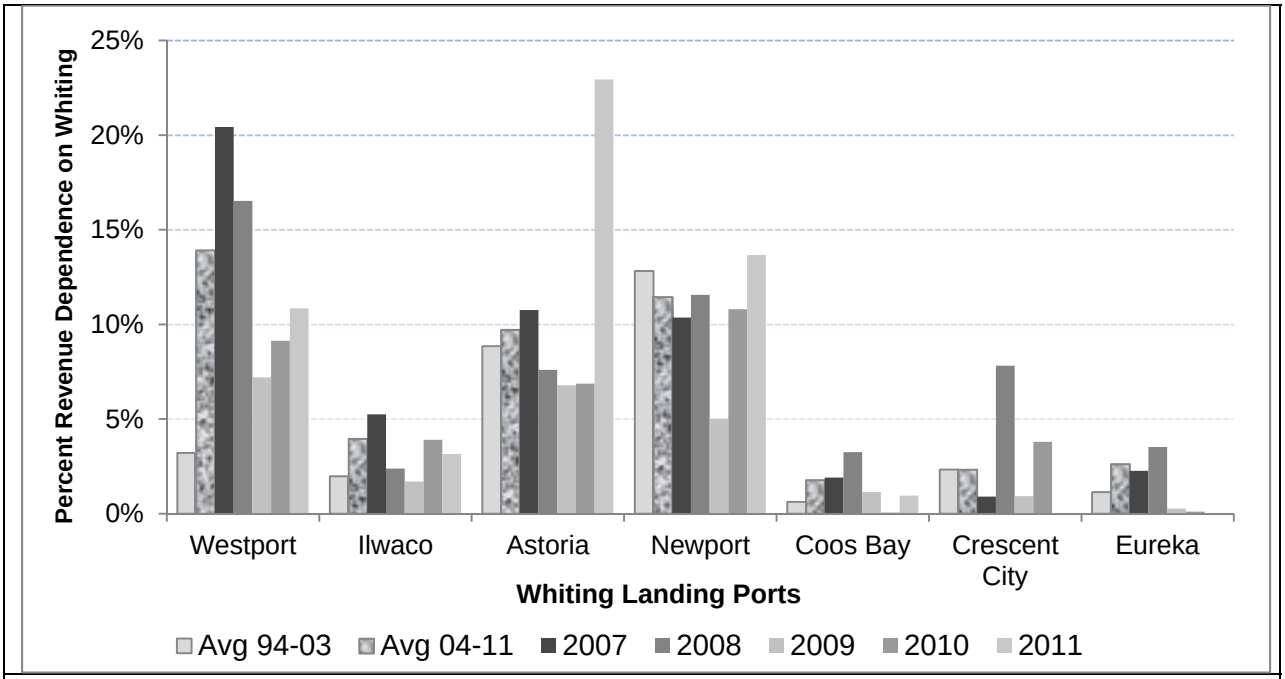


Figure 4-26. Port dependence on Pacific whiting landings revenues over historical averages and during recent years.

Table 4-35 summarizes the projected distribution of processors' whiting QS among west coast ports under the reallocation alternatives, and compares those allocations with dependence and involvement of processors in those ports over historic periods. For processors with whiting landings in more than one port, the table uses two methods to apportion QS among those ports (1) using the distribution of landings recorded in 2011, and (2) using the average distribution of landings over 2007-2010. The table shows that QS associated with processors in Westport increases moving from Status Quo toward Alternative 4, consistent with Westport's increased involvement in the whiting fishery over that time. Ilwaco's QS also increases moving from Status Quo toward Alternative 4, but from a much lower base. The increase in Westport's QS comes largely at the expense of QS associated with Astoria, especially under Alternative 4. The largest changes from status quo for any single port occurs under Alternative 4 where Westport gains 1.3 percent in QS while Astoria loses 1.7 percent.

Table 4-35. Port dependence on whiting, involvement (port historic share of the whiting deliveries), and estimated geographic distribution of the shoreside whiting QS allocated to processors based on processor delivery patterns in 2007-2010 and 2011 (for processors with more than one landing port for whiting).

							Processor Quota Share Allocations Associated with Each Port									
							Status Quo		Alternative 1		Alternative 2		Alternative 3		Alternative 4	
	Dependence			Involvement			Years used to distribute whiting QS among ports (for processors with whiting landings in multiple ports)									
	Avg '94-'03	Avg '04-'06	Avg '07-'10	Avg '94-'03	Avg '04-'06	Avg '07-'10	'07-'10	'11	'07-'10	'11	'07-'10	'11	'07-'10	'11	'07-'10	'11
Westport	3.2%	15.7%	13.3%	12.2%	34.3%	39.6%	3.6%	3.6%	3.3%	3.3%	4.2%	4.3%	4.8%	4.9%	4.9%	5.0%
Ilwaco	2.0%	5.1%	3.3%	3.4%	5.7%	4.7%	0.6%	0.6%	0.5%	0.6%	0.9%	0.9%	1.0%	1.0%	1.0%	1.0%
Astoria	8.8%	7.6%	8.0%	33.6%	17.5%	22.4%	6.1%	6.2%	6.5%	6.6%	5.3%	5.4%	5.3%	5.4%	4.4%	4.5%
Newport	12.8%	13.4%	9.4%	43.6%	33.3%	26.2%	7.9%	7.9%	7.8%	7.8%	8.0%	8.0%	7.1%	7.1%	8.1%	8.1%
Coos Bay	0.6%	2.3%	1.6%	1.5%	3.9%	2.9%	0.7%	0.7%	0.7%	0.7%	0.7%	0.7%	0.7%	0.7%	0.7%	0.7%
Crescent City	2.3%	0.9%	3.4%	4.0%	1.3%	3.1%	0.7%	0.7%	0.8%	0.8%	0.4%	0.4%	0.6%	0.5%	0.5%	0.4%
Eureka	1.1%	4.1%	1.5%	1.7%	4.1%	1.2%	0.4%	0.3%	0.4%	0.2%	0.5%	0.3%	0.5%	0.3%	0.5%	0.3%
									Change Relative to Status Quo							
Westport									-0.3%	-0.3%	+0.7%	+0.7%	+1.2%	+1.3%	+1.3%	+1.3%
Ilwaco									-0.0%	-0.0%	+0.3%	+0.3%	+0.4%	+0.4%	+0.4%	+0.4%
Astoria									+0.4%	+0.4%	-0.8%	-0.8%	-0.8%	-0.8%	-1.7%	-1.7%
Newport									-0.1%	-0.1%	+0.1%	+0.1%	-0.8%	-0.8%	+0.2%	+0.2%
Coos Bay									-0.0%	-0.0%	+0.0%	+0.0%	+0.0%	+0.0%	+0.0%	+0.0%
Crescent City									+0.1%	+0.1%	-0.3%	-0.3%	-0.2%	-0.2%	-0.3%	-0.3%
Eureka									-0.0%	-0.0%	+0.1%	+0.0%	+0.1%	+0.0%	+0.0%	+0.0%
Changes						Largest increase from Status Quo			+0.4%	+0.4%	+0.7%	+0.7%	+1.2%	+1.3%	+1.3%	+1.3%
						Largest decrease from Status Quo			-0.3%	-0.3%	-0.8%	-0.8%	-0.8%	-0.8%	-1.7%	-1.7%

4.3.4 Impacts on Agencies and Public Decision Processes

The cost of reallocating QS has been estimated as the equivalent of the efforts of a single full-time employee for three to six months, depending on complexity and extent of changes.

No Action and Alternatives 2, 3, and 4 would not use the control date to establish the end of the allocation period. Alternative 1 would use 2003 as the end of the allocation period. Implications of the choice among the alternatives for the utility of setting control dates in the future are discussed in Section 5.5.

4.4 Cumulative Impacts

A cumulative effects analysis is required by the Council on Environmental Quality (CEQ) (40 CFR part 1508.7). The purpose of a cumulative effects analysis is to consider the combined effects of many actions on the human environment over time that would be missed if each action were evaluated separately. CEQ guidelines recognize that it is not practical to analyze the cumulative effects of an action from every conceivable perspective, but rather, the intent is to focus on those effects that are truly meaningful. A formal cumulative impact assessment is not necessarily required as part of an EA under NEPA as long as the significance of cumulative impacts have been considered (U.S. EPA 1999). The following addresses the significance of the expected cumulative impacts as they relate to the federally managed groundfish fishery.

4.4.1 Consideration of the Affected Resources

In Chapter 3 (Description of the Affected Environment), the affected resources that exist within the Pacific whiting fishery environment are identified. Therefore, the significance of the cumulative effects will be discussed in relation to these affected resources listed below.

1. Physical Environment, including Habitat and Ecosystem
2. Biological Environment, including:
    - Groundfish
    - Pacific Halibut
    - Coastal Pelagic Species
    - Highly Migratory Species and Salmon
    - Protected Species, including ESA, MMPA, and MBTA
    - Marine Mammals and Seabirds
3. Socioeconomic Environment

4.4.2 Geographic Boundaries

The analysis of impacts focuses on actions related to the harvest of Pacific whiting. The core geographic scope for each of the affected resources listed above is focused on the Eastern Pacific Ocean (Chapter 3). The coastal stock of Pacific whiting is highly migratory in nature, spawning off southern California and northern Baja California during winter months and migrating north as adult fish during spring and summer months to feeding grounds primarily off Oregon, Washington, and Vancouver Island, Canada. The fish return to their spawning grounds primarily during fall and winter months. For habitat, the core geographic scope is focused on EFH within the EEZ, but includes all habitat utilized by Pacific whiting and other non-target species in the Eastern Pacific Ocean. For non-target species, those ranges may be expanded and would depend on the biological range of each individual non-target species in the Eastern

Pacific Ocean. The core geographic scope for endangered and protected resources can be considered the overall range of these resources in the Eastern Pacific Ocean. For human communities, the core geographic boundaries are defined as those U.S. fishing communities directly involved in the harvest or processing of the managed resources, which were found to occur in coastal states most notably from Westport, Washington to Eureka, California.

4.4.3 Temporal Boundaries

The temporal scope of past and present actions for the affected resources is primarily focused on actions that have occurred after FMP implementation (1982) and more importantly, since implementation of the trawl rationalization program in 2011. For endangered species and other protected resources, the scope of past and present actions is on a species-by-species basis (Section 3.2.5) and is largely focused on the 1980s and 1990s through the present, when NMFS began generating stock assessments for marine mammals and sea turtles that inhabit waters of the U.S. EEZ. The temporal scope of future actions for all affected resources extends about three years into the future. This period was chosen because the dynamic nature of resource management for this species and lack of information on projects that may occur in the future make it very difficult to predict impacts beyond this timeframe with any certainty.

4.4.4 Actions Other than the Proposed Action

4.4.4.1 Past, Present, and Reasonably Foreseeable Future Actions

Fishery-related Actions

The historical management practices of the Council have resulted in positive impacts on the health of the Pacific whiting stock. Numerous actions have been taken to manage the fisheries for this species through amendment and specifications actions. In addition, the nature of the fishery management process is intended to provide the opportunity for the Council and NMFS to regularly assess the status of the fishery and to make necessary adjustments to ensure that there is a reasonable expectation of meeting the objectives of the FMP and the targets associated with any rebuilding programs under the FMP. The statutory basis for Federal fisheries management is the Magnuson-Stevens Act. To the degree with which this regulatory regime is complied, the cumulative impacts of past, present, and reasonably foreseeable future Federal fishery management actions on the affected resources should generally be associated with positive long-term outcomes. Constraining fishing effort through regulatory actions can often have negative short-term socioeconomic impacts. These impacts are usually necessary to bring about long-term sustainability of a given resource, which should, in the long-term, promote positive effects on human communities, especially those that are economically dependent upon the Pacific whiting stock.

One of the primary related past actions is the allocation of QS for nonwhiting groundfish species to the same permits receiving whiting QS and CHA. This past action is particularly important with respect to the overall balance of equity in the trawl rationalization program because it allocated other co-occurring groundfish to those prosecuting their allocated quota on whiting directed trips, and ensured that all permit holders that qualified for quota were allocated something, and even this minimal “something” is quite valuable. Figure 4-27 shows that the lowest initial allocation to any single permit (all groundfish species combined) was equivalent to around $200,000 in terms of exvessel value (using 2011 harvest values and prices). QS typically trades from anywhere between 4 and 9 times exvessel value (Tamm, et al. 2010). At the same time, the value of some QP in the groundfish fishery is likely to be quite low because of the difficulty accessing certain species due to constraining bycatch species, or to a lack of markets. The preliminary estimate for 2011 is that roughly half of the potential exvessel value went unharvested due to such constraints. The equal allocation component of the program provided a minimum base allocation of

substantial value to every permit. For permits with no need for the equally allocated species, the equal allocation still provided an asset that could be traded to rebalance their allocation or make up a portion of any shortfalls relative to their recent participation levels. These issues are discussed further in Section 5.4.

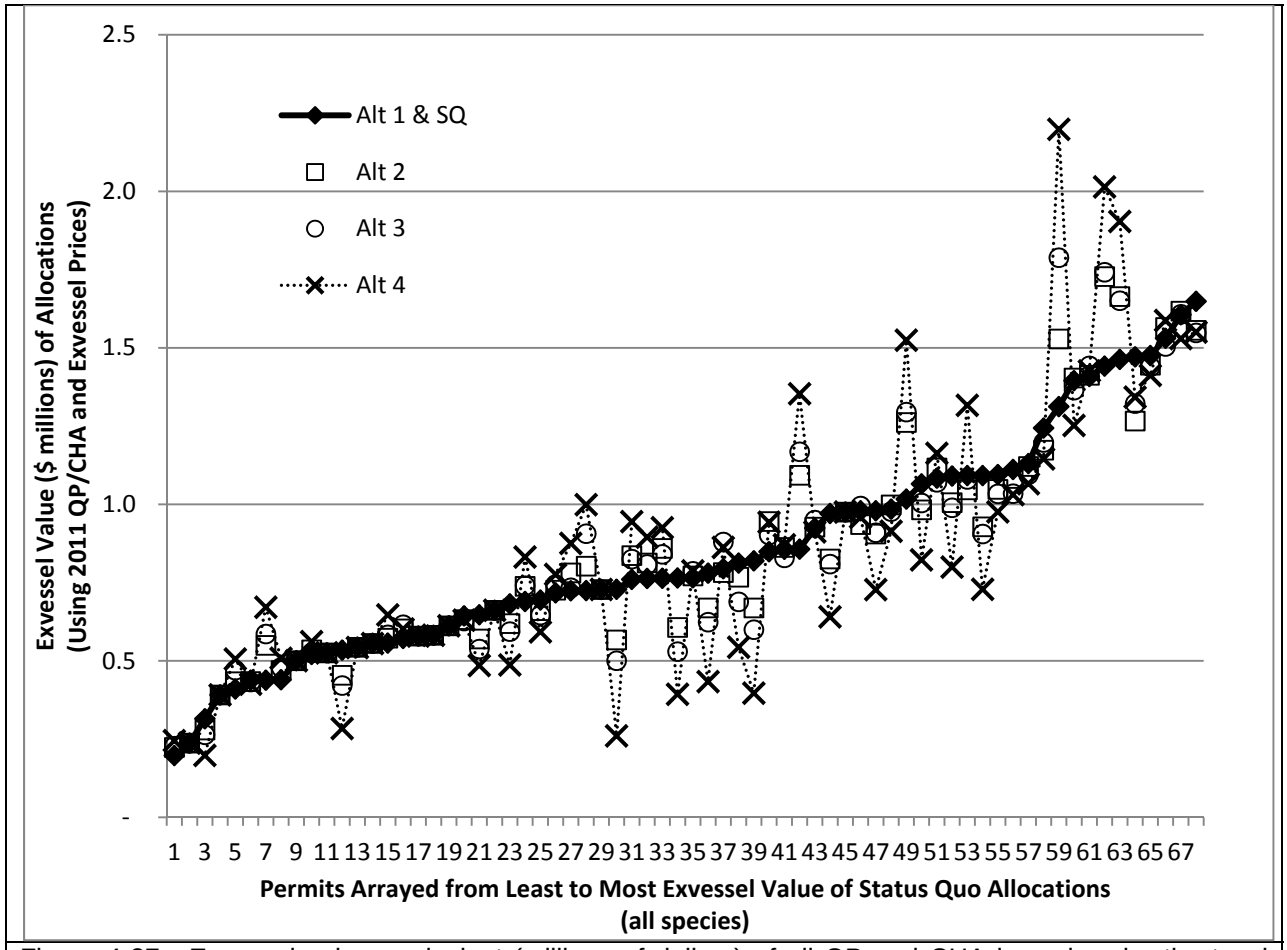


Figure 4-27. Exvessel value equivalent (millions of dollars) of all QP and CHA issued under the trawl rationalization program to permits with some directed whiting catch history.

As for future actions, the Council has developed harvest specifications for the 2013 and 2014 for groundfish stocks that will be implemented in January 2013 by NMFS. Harvest specifications are not expected to affect Pacific whiting stock because the specifications and management measures in place assure that the recommended harvest levels will not be exceeded. In the long term, it is important to evaluate the impacts on shares of total harvest allocated to entities rather than the allocation poundage. The Council is also in the process of evaluating a change in the allocation of widow rockfish QS. Like whiting, the directed widow rockfish fishery is conducted primarily with midwater gear. The reallocation is being considered because of the newly rebuilt status of widow rockfish. Up through recent years including in the Amendment 20 QS allocation, widow rockfish has been used primarily to cover bycatch. If widow rockfish is reallocated to provide quota to permits for vessels that targeted it historically, there is likely to be an overlap with the permits and vessels that target whiting, and a potential benefit to those permits from the reallocation of widow rockfish.

In addition, the Council and NMFS continue to work together on the trawl rationalization trailing actions (*e.g.*, chafing gear). Given the nature of the trailing actions and that they are a continuation of the trawl

rationalization program under Amendment 20, preliminary studies suggest that it is likely that these actions would have positive biological impacts.

Relative to the economic effects of this action, there are at least two regulatory provisions that need to be considered. The first is the Magnuson-Stevens Act requirement that the agency recovery regulatory costs of the trawl rationalization program. The amount to be collected is capped at 3% of the ex-vessel value of fish. NMFS and the Council are currently in the process of developing and implementing this cost recovery program and anticipate that will be implemented by 2014 if not sooner.

In addition, relative to the Pacific Cost Groundfish Fishery buyback program, efforts by the groundfish fleet and Congress have recently been focused on reducing the debt obligation payments from 5% to 10% of the offloaded value of the fish harvest in the fishery, including Pacific whiting, and also extending the loan buyback period for 15 more years.

Non-fishing Actions

Non-fishing activities that introduce chemical pollutants, sewage, changes in water temperature, salinity, dissolved oxygen, and suspended sediment into the marine environment pose a risk to all of the identified affected resources. Human-induced non-fishing activities tend to be localized in nearshore areas and marine project areas where they occur. Examples of these activities include, but are not limited to, agriculture, port maintenance, beach nourishment, coastal development, marine transportation, marine mining, dredging, and the disposal of dredged material. Wherever these activities co-occur, they are likely to work additively or synergistically to decrease habitat quality and may indirectly constrain the sustainability of the managed resources, non-target species, and protected resources. Decreased habitat suitability would tend to reduce the tolerance of these species to the impacts of fishing effort. Mitigation of this outcome through regulations that would reduce fishing effort could then negatively impact human communities. The overall impact to the affected species and their habitats on a population level is unknown, but likely neutral to low negative, since a large portion of these species have a limited or minor exposure to these local non-fishing perturbations.

In addition to guidelines mandated by the Magnuson-Stevens Act, NMFS reviews these types of effects through the review processes required by Section 404 of the Clean Water Act and Section 10 of the Rivers and Harbors Act, for certain activities that are regulated by Federal, state, and local authorities. The jurisdiction of these activities is in "waters of the United States" and includes both river and marine habitats.

For many of the proposed non-fishing activities to be permitted under other Federal agencies (such as beach nourishment, offshore wind facilities, etc.), those agencies would conduct examinations of potential impacts on the affected resources. NOAA's regulations implementing the Magnuson-Stevens Act (i.e. 50 CFR 600.930) impose an obligation on other Federal agencies to consult with the Secretary of Commerce on actions that may adversely affect EFH. The eight fishery management councils are engaged in this review process by making comments and recommendations on any Federal or state action that may affect habitat, including EFH, for their managed species and by commenting on actions likely to substantially affect habitat, including EFH.

In addition, under the Fish and Wildlife Coordination Act (16 U.S.C. §§ 661-67(e)), provides another avenue for review of actions by other Federal and state agencies that may impact resources that NMFS manages in the reasonably foreseeable future. The pertinent provision of the Act states that "whenever the waters of any stream or other body of water are proposed or authorized to be impounded, diverted, the channel deepened, or the stream or other body of water otherwise controlled or modified for any purpose whatever, including navigation and drainage, by any department or agency of the U.S., or by any public or private agency under Federal permit or license, such department or agency first shall consult with the U.S. Fish and Wildlife Service (USFWS), Department of the Interior, and with the head of the agency exercising administration over the wildlife resources of the particular state wherein the" activity is taking place (16 U.S.C. § 662).

In addition, NMFS and the USFWS share responsibility for implementing the ESA (16 U.S.C. §§ 1531 et seq.). In general, the ESA requires NMFS to designate "critical habitat" for any species it lists under the ESA (i.e., areas that contain physical or biological features essential to conservation, which may require special management considerations or protection) and to develop and implement recovery plans for

threatened and endangered species. The ESA also provides an avenue for NMFS to review actions by other entities within NMFS' jurisdiction when such actions may impact endangered or threatened species and their critical habitats.

4.4.5 Magnitude and Significance of Cumulative Effects

In determining the magnitude and significance of the cumulative effects, the additive and synergistic effects of the proposed action, as well as past, present, and reasonably foreseeable future actions, must be taken into account. The following section discusses the effects of these actions on each of the managed resources.

4.4.5.1 Physical Environment, including Habitat and Ecosystem

Past, present, and reasonably foreseeable future actions that may impact habitat (including EFH) and the direction of those potential impacts, are listed in the table below. The direct and indirect negative actions described in Table 4-36 are localized in nearshore areas and marine project areas where they occur. Therefore, the magnitude of those impacts on habitat is expected to be limited due to a lack of exposure to habitat at large. Agricultural runoff may be much broader in scope, and the impacts of nutrient inputs to the coastal system may be of a larger magnitude, although the impact on habitat and EFH is unquantifiable. As described above (Section 4.4.4), NMFS has several means under which it can review non-fishing actions of other Federal or state agencies that may impact NMFS' managed resources and the habitat on which they rely prior to permitting or implementation of those projects. This serves to minimize the extent and magnitude of direct and indirect negative impacts those actions could have on habitat utilized by resources under NMFS' jurisdiction.

Past fishery management actions taken through the FMP process have had a positive cumulative effect on habitat and EFH. It is anticipated that the future management actions will result in additional direct or indirect positive effects on habitat through actions that protect EFH for federally-managed species and protect ecosystem services on which these species' productivity depends. These impacts could be broad in scope. All of the affected resources are interrelated; therefore, the linkages among habitat quality and EFH, managed resources and non-target species productivity, and associated fishery yields should be considered. For habitat and EFH, there are direct and indirect negative effects from actions which may be localized or broad in scope; however, positive actions that have broad implications have been, and it is anticipated will continue to be, taken to improve the condition of habitat. There are some actions, which are beyond the scope of NMFS and Council management such as coastal population growth and climate change, which may indirectly impact habitat and ecosystem productivity. Overall, the past, present, and reasonably foreseeable future actions that are truly meaningful to habitat have had a neutral to positive cumulative effect.

Table 4-36. Summary of the effects of past, present, and reasonably foreseeable future actions on habitat.

Action	**Past to the Present**		**Reasonably Foreseeable Future**
Original FMP and subsequent Amendments to the FMP	**Indirect Positive**		
Agricultural runoff	**Direct Negative**		
Port maintenance	**Uncertain – Likely Direct Negative**		
Offshore disposal of dredged materials	**Direct Negative**		
Marine transportation	**Potentially Direct Negative**		
Installation of pipelines, utility lines and cables	**Potentially Direct Negative**		
Offshore Energy Facilities (wind, tidal, etc.)	**Potentially Direct Negative**		
2013-2014 Biennial Harvest Specifications	**Potentially Direct Negative**		
Trawl Rationalization Trailing Actions			**Potentially Direct Negative**
Summary of past, present, and future actions excluding those proposed in this document	**Overall, actions have had, or will have, neutral to positive impacts on habitat, including EFH**		**Positive**

4.4.5.2 Biological Environment

The past, present, and reasonably foreseeable future actions, whose effects may impact Pacific whiting and the direction of those potential impacts, are summarized in Table 4-37 below. The indirectly negative actions described in Table 4-37 are localized in nearshore areas and marine project areas where they occur. Therefore, the magnitude of those impacts on the managed resources is expected to be limited due to a lack of exposure to the population at large. Agricultural runoff may be much broader in scope, and the impacts of nutrient inputs to the coastal system may be of a larger magnitude, although the impact on productivity of the managed resources is unquantifiable. As described above (Section 4.4.4), NMFS has several means under which it can review non-fishing actions of other Federal or state agencies that may impact NMFS' managed resources prior to permitting or implementation of those projects. This serves to minimize the extent and magnitude of indirect negative impacts those actions could have on resources under NMFS' jurisdiction.

Past fishery management actions taken through the FMP have had a positive cumulative effect on the managed resources. It is anticipated that the future management actions, described in Table 4-37, will result in additional indirect positive effects on the managed resources through actions that reduce and monitor bycatch, protect habitat, and protect ecosystem services on which Pacific whiting productivity depends. In addition, past fishery management actions taken through the FMP process have had a positive cumulative effect on ESA-listed and MMPA-protected species through the reduction of fishing effort (potential interactions) and implementation of gear requirements. It is anticipated that the future management actions will continue to result in additional indirect positive effects on protected resources. The impacts of these future actions could be broad in scope, and it should be noted the biological resources are often coupled in that they utilize similar habitat areas and ecosystem resources on which they depend. Overall, the past, present, and reasonably foreseeable future actions that are truly meaningful to the biological resources have had a positive cumulative effect.

Table 4-37. Summary of the effects of past, present, and reasonably foreseeable future actions on biological resources.

Action	**Past to the Present**		**Reasonably Foreseeable Future**
Original FMP and subsequent Amendments to the FMP	**Indirect Positive**		
Agricultural runoff	**Indirect Negative**		
Port maintenance	**Uncertain – Likely Indirect Negative**		
Offshore disposal of dredged materials	**Indirect Negative**		
Marine transportation	**Indirect Negative**		
Installation of pipelines, utility lines and cables	**Uncertain – Likely Negative**		
Offshore Energy Facilities (wind, tidal, etc.)			**Uncertain – Likely Indirect Negative**
2013-2014 Biennial Harvest Specifications			**Indirect Positive**
Trawl Rationalization Trailing Actions			**Uncertain – Likely Positive**
Summary of past, present, and future actions excluding those proposed in this document	**Overall, actions have had, or will have, positive impacts on the biological resources**		

4.4.5.3 Socioeconomic Environment

The past, present, and reasonably foreseeable future actions, whose effects may impact human communities and the direction of those potential impacts, are summarized in Table 4-38. The indirectly negative actions described in Table 4-38 are localized in nearshore areas and marine project areas where they occur. Therefore, the magnitude of those impacts on human communities is expected to be limited in scope. It may, however, displace fishermen from project areas. Agricultural runoff may be much broader in scope, and the impacts of nutrient inputs to the coastal system may be of a larger magnitude. This may result in indirect negative impacts on human communities by reducing resource availability; however, this effect is unquantifiable. As described above (Section 4.4.4), NMFS has several means under which it can review non-fishing actions of other Federal or state agencies prior to permitting or implementation of those projects. This serves to minimize the extent and magnitude of indirect negative impacts those actions could have on human communities.

Past fishery management actions taken through the FMP process have had both positive and negative cumulative effects by benefiting domestic fisheries through sustainable fishery management practices, while at the same time potentially reducing the availability of the resource to all participants. Sustainable management practices are, however, expected to yield broad positive impacts to fishermen, their communities, businesses, and the nation as a whole. It is anticipated that the future management actions, described in Table 4-38, will result in positive effects for human communities due to sustainable management practices, although additional indirect negative effects on the human communities could occur through management actions that may implement gear requirements and thus, reduce revenues. Overall, the past, present, and reasonably foreseeable future actions that are truly meaningful to human communities have had an overall positive cumulative effect.

Despite the potential for slight negative short-term effects on human communities, the expectation is that there would be a positive long-term effect on human communities due to the long-term sustainability of Pacific whiting. Overall, the proposed action in this document would not change the past and anticipated cumulative effects on human communities and thus, would not have any significant effect on human communities individually, or in conjunction with other anthropogenic activities (Table 4-38).

Table 4-38. Summary of the effects of past, present, and reasonably foreseeable future actions on human communities.

Action	**Past to the Present**		**Reasonably Foreseeable Future**
Original FMP and subsequent Amendments to the FMP	**Indirect Positive**		
Agricultural runoff	**Indirect Negative**		
Port maintenance	**Uncertain – Likely Mixed**		
Offshore disposal of dredged materials	**Indirect Negative**		
Marine transportation	**Mixed**		
Installation of pipelines, utility lines and cables	**Uncertain – Likely Mixed**		
Offshore Energy Facilities (wind, tidal, etc.)			**Uncertain – Likely Mixed**
2013-2014 Biennial Harvest Specifications			**Indirect Positive**
Trawl Rationalization Trailing Actions			**Uncertain – Likely Positive**
Summary of past, present, and future actions excluding those proposed in this document	**Overall, actions have had, or will have, positive impacts on human communities**		

4.4.6 Preferred Action on all of the Affected Resources

The Council has chosen the No Action alternative as the preferred action alternative (Section 2.1.1). The cumulative effects of the range of actions considered in this document can be considered to make a determination if significant cumulative effects are anticipated from the proposed action.

Table 4-39. Magnitude and significance of the cumulative effects; the additive and synergistic effects of the proposed action, as well as past, present, and reasonably foreseeable future actions.

Affected Resources	**Status in 2012**	**Net Impact of P, Pr, and RFF Actions**	**Impact of the Preferred Action**	**Significant Cumulative Effects**
Habitat	Complex and variable (Section 3.1)	Positive (Sections 4.4.4 and 4.4.5.1)	Neutral (Section 4.1)	**None**
Biological Resources	Complex and variable (Section 3.2)	Positive (Sections 4.4.4 and 4.4.5.2)	Neutral (Section 4.2)	**None**
Human Communities	Complex and variable (Section 3.3)	Positive (Sections 4.4.4 and 4.4.5.3)	Short-term negative individual to long-term positive overall (Section 4.3)	**None**

The magnitude and significance of the cumulative effects, which include the additive and synergistic effects of the proposed action, as well as past, present, and reasonably foreseeable future actions, have been taken into account throughout this section. The action proposed in this environmental assessment revisits a decision made in Amendment 20 in 2011.

The proposed action in this document, which is the same as the final preferred action under Amendment 20, would reinforce the past and anticipated positive cumulative effects on habitat, the biological resources, and socioeconomic resources, by achieving the objectives specified in the FMP and the objectives previously identified in Amendment 20. The alternatives discussed in this EA are entirely allocative in nature, changing the allocation among individuals within the shoreside whiting sector and within the at-sea mothership sector but not changing the overall allocations to each sector. Changing the distribution of fishing opportunities among individuals within a sector is not expected to affect total fishing effort using midwater trawl gear. Therefore, the proposed action and its alternatives would not have any significant effect on the physical environment, including habitat, individually or in conjunction with other anthropogenic activities.

As with the impacts to the physical environment, impacts on the biological resources are primarily a function of the areas fished, gear types used, and level of effort; and of these, area fished is the only factor that might be affected as a result of the reallocation of quota. The effect of the initial allocations on area of harvest is likely to be negligible, and over the long term, the amount of any shift in geographic distribution of harvest is likely to be small. Since the method of harvest, total harvests, and distribution of harvest are not likely to change the biological effects of the initial allocations on biological resources, there are no expected significant impacts on biological resources as a result of the proposed action and its alternatives.

The impact on net benefits generated for the nation as a whole is expected to vary minimally among the alternatives. The primary effects are distributional but are not expected to be significant as a result of the proposed action or its alternatives. The proposed action in the document and its alternatives may have short-term negative impacts to individuals but are expected to have long-term positive impacts on human communities as a whole. Such anticipated impacts would not change significantly the past and anticipated cumulative effects on revenues and the social well-being of fishermen and/or associated businesses individually or in conjunction with other anthropogenic activities.

Therefore, when this action is considered in conjunction with all the other pressures placed on fisheries by past, present, and reasonably foreseeable future actions, it is not expected to result in any significant impacts, positive or negative. Based on the information and analyses presented in these past FMP documents and this document, there are no significant cumulative effects associated with the action proposed in this document (Table 4-39).

4.5 Council's Rationale for Council Action

The Council is recommending that the status quo allocations be maintained (the No Action Alternative). The following provides an assessment of some of the main rationale presented during the reconsideration process. This summary is followed by an explanation of the final balance drawn by the Council.

4.5.1 Issues of Marginal Relevance – Conservation, Net Benefits, and Safety Impacts

There are a few important fishery management concerns that do not vary substantially among the alternatives. Included among them are conservation, net benefits and safety. Alternative distributions of allocations are not expected to impact these concerns but there may be adverse impacts on each if as a result of this action the Council's ability to issue credible control dates in the future is diminished. These potential longer-term impacts are discussed below. Conservation and safety are not affected by these choices because the amount, configuration, and distribution of fishing effort is not likely to be altered based on differences in the initial distribution of quota. Net benefits are determined at the national level and are a function of the overall efficiency of the industry. While the finances of individual entities may vary depending on the distribution of the initial allocations, the resulting industry efficiencies are not likely to change. Any payments by those who decide to acquire quota shares or pounds are termed "transfer payment," payments which represent an exchange of wealth between individuals (not a payment for goods or services). Because goods and services are not exchanged, from the point of view of the economy such payments represent only a transfer of wealth and are not counted as economic costs. [12]

4.5.2 Reasons to Allocate Based on More Recent Periods

The following sections explain the Council's rationale for choosing the No Action Alternative rather than adopting an alternative that includes more recent qualifying years.

4.5.2.1 Current Harvests, Investment, and Dependence

Current harvest, investment, and dependence are factors that Councils are required to consider in evaluating the fairness and equity of a LAP program (Section §303A(c)(5)(A)(i) of the MSA).

[12] The types of payments which count as costs for the purpose of assessing net benefits are payments for such things as fuel, labor, or equipment.

Allocations to Latent Permits but No Credit for Post-2003/2004 Harvest

Public comment has expressed concern about latent permits receiving an initial allocation. The analysis for Amendment 20 provided several figures which showed that a number of permits with no recent history would receive an allocation (Figures A-16, B-3, and B-9, Council 2010; "recent history" at the time data was finalized for the Amendment 20 analysis was 2004-2006).[13] During reconsideration of the whiting allocations, public comment pointed out that the current analysis shows that, of permits with some shoreside whiting fishery history, 21 have not been active in the shoreside whiting fishery since 2003 and would receive 10.2 percent of the initial allocation. At the same time, those first entering or increasing their level of participation after 2003 would receive no credit for that activity. Additionally, of permits with some mothership whiting fishery history, 13 have not been active in that fishery since 2003 and would receive 9.6 percent of the mothership sector CHA allocation. Similarly, two processors that have not been active since 2004 received allocations, while two that became active after 2004 received no allocations (Figure 4-14). Not including years after 2003/2004 in the allocation formula, while giving allocations to those permits that have not been recently active might seem on its face to be inequitable with respect to taking into account current harvest, investment, and dependence, considerations related to fairness and equity. However, there are many kinds of participation, investment, and dependence, and the Council is also mandated to take into account historic fishing practices. Permits are an asset, the investment recovery for which is highly dependent on the fishery, and a closer examination of the status of many of these latent permits reveals that they are likely held as part of a business strategy of active fishing enterprises. Permits clearly held by such enterprises accounted for the vast majority of allocations associated with the apparently latent permits.

Permit Ownership as a Highly Fishery Dependent Investment

Owning an LE permit is itself an investment in the fishery and, with the allocation of QS, the remaining value of the LE permit is expected to have declined substantially, with most of the value having been split off into the QS and CHA. LE permits have no alternative use outside of accessing the trawl fishery (as discussed in Chapter 5), therefore permit owners are entirely dependent on the trawl groundfish fishery for recovery of their investment in permits. Other fishing assets, such as vessels, have some value in alternative uses. The equal allocation and history-based QS and/or CHA allocation associated with every permit provides new entrants (and others who invest in permits) with the benefit of an initial allocation, whether they invested in a permit in 1994, 2003, or 2010.[14] Additionally, during deliberations over the trawl rationalization program permits, prices are reported to have been varying based on the strength of the 1994-2003 harvest history associated with the permit. Therefore, prices paid for permits during this period likely have some relationship to the amount of QS eventually issued.

Permit Ownership as Part of Portfolio that Supports Historic Practices of Business Entities Dependent on the Fishery

[13] The scale of Figure A-16 makes it possible to discern only that there were at least 13 such permits for the shoreside whiting sector and Figure B-9 shows that, when looking at the permits with at least 500 mt from 1997 through 2003 (45 permits), there were 15 that had no landings after 2003 (2004-2006). For the mothership sector, there were 9 permits receiving an allocation showing no post-2003 harvest history. (Differences between this EA and the Amendment 20 EIS in the counts of inactive permits are the results of some cleanup in the harvest records and license data that occurred after the Amendment 20 EIS and the inclusion in the EA of permits that harvested less than 500 mt.)

[14] Those needing CHA who acquire a permit that did not include a CHA allocation benefit from the equal allocation component of the shorside IFQ program (QS that can be sold or traded to facilitate acquisition of CHA).

Consideration of investment and dependence also requires taking into account historic fishing practices. Fishing enterprises often rely on a portfolio of fisheries to sustain their operations over the long term. Maintaining options is an important part of the business strategy for many fishing enterprises. Given such circumstances, any LE permit held by a fishing enterprise that is active in West Coast or Alaskan fisheries may be held as an investment in a fishing opportunities portfolio. For example, of the 21 permits with some activity in the shoreside whiting fishery but no post-2003 activity in that fishery, 4 were on vessels active in the mothership fishery (Table 3-6 and Table 4-8), and of the 13 permits with no post-2003 activity in the mothership fishery (Table 4-20) (14, if permits not meeting the 500 mt threshold are included, Table 3-6) 8 were on vessels active in the shoreside whiting fishery (9, if permits not meeting the 500 mt threshold are included). Therefore, in considering the question of dependence and allocating to permits that were inactive in a particular sector, the question of interest may be how many of these permits were associated with a fishing enterprise that was not active. Of the apparently inactive permits, only 15 permits were on vessels that showed no activity in any West Coast or Alaskan fisheries post-2003. Those 15 permits accounted for 4.3 percent of the QS and 1.5 percent of the CHA (Table 4-28). Six of the 15 permits were held by fishing enterprises that held other limited entry trawl permits that were active. Owners of multiple permits that have only one vessel cannot put those permits on that single vessel because such stacking is not allowed, thus such permits could be held in a status that makes them appear latent. So, for these six permits it is reasonable to expect that they were probably being maintained by active fishing enterprises as an investment to support their active fishing vessels. The expectation is supported by public testimony. Those six inactive permits held by active fishing enterprises account for 3 percent of the QS and 1 percent of the CHA. This leaves 9 permits that might be with fishing enterprises that are truly inactive. Those 9 permits are allocated 1.3 percent of the QS and 1 percent of the CHA. For those 9 permits, information is incomplete. For example, information on vessels not active in the trawl fishery was not included in the data set used for this analysis. An enterprise that shows up in this analysis as “inactive” might actually be an active fishing enterprise if the other vessel(s) it operate(s) do(es) not participate in the West Coast groundfish trawl fishery (e.g. enterprises owning West Coast fixed gear vessels, Dungeness crab vessels, or Alaskan vessels).

Allocation Based on More Recent Years Would Be Possible but there are Negative Effects to Consider

Regardless of the allocational status afforded to those permits and processors that have not been active in the fishery since 2003/2004, it would still be possible to give some credit for more recent years of harvest. Such credit for post-2003/2004 history might increase allocations to permits and processors with expanded harvests in more recent years, giving direct allocational credit for current harvests, a required fairness and equity consideration under the MSA. At the same time, such an adjustment would diminish the value (allocation to) other permits and processors, particularly those that have been latent after 2003/2004.[15] To the degree that harvest levels are reflective of levels of investment and dependence of a fishing/processing entity, providing credit for more recent years would also provide allocations more in line with most recent indicators of investment and dependence (investment and dependence being two other MSA-required fairness and equity considerations).[16] However, including more recent years in the allocation formulas would also have negative effects on the fishery, management, and perceptions of fairness and equity, as described in Section 2.2.3 and elsewhere in this section.

4.5.2.2 Changing Conditions in the Whiting Fishery

A number of conditions in the whiting fishery changed after 2003:

- The 2003 buyback program (implemented in December 2003) reduced the number of permits in the fishery.
- There was an increase in the whiting allowable catches and sector allocations (Table 3-1).
- Ex-vessel prices increased (spiking in 2008 and dipping in 2009) (Figure 3-11).
- Participation in the shoreside whiting fishery was on an upward trend (Figure 3-17).
- Participation in the mothership whiting fishery recovered from a downward trend that took the fishery to as few as about 10 participants from 2002-2004 (Figure 3-18).
- Season length in the shoreside whiting fishery declined (Table 3-1).
- Season length in the mothership whiting fishery increased (Table 3-1).
- Amendment 15 (implemented on an emergency basis in 2007) restricted the entry of new vessels.

For the processing sector, there were shifts in the markets:

- new markets became available for headed and gutted (H&G) whiting (Figure 3-7 and Figure 3-8)
- world supply of competing products declined (Figure 3-10)
- prices increased (Figure 3-9)

For communities, there was a shift in landings toward the north (Figure 3-28).

[15] However, credit for more recent harvest would also provide a different weighting of investment and dependence factors. For example, the status quo formula, by excluding post-2003 years from the allocation formula, places a heavy weight on the investment and dependence represented in the transactions and permit valuations that occurred based on an assumption that post-2003 harvest history would not influence allocations. A formula providing credit for more recent history would de-emphasize the importance of investments in permits and implicitly place more weight on investment and utilization of physical assets (e.g. vessels and processing equipment). As discussed above, permits have no alternative usage through which investments can be recovered, while physical assets generally have some next best use.

[16] At the same time it needs to be noted that there are types of investment and dependence which are not reflected by most recent harvests, as discussed in the previous paragraphs.

Assessment of Changes for Harvesters

It was suggested in public comment that important changes in the whiting fishery occurred after 2003 with respect to factors such as overcapacity, prices, and the amounts of fish available to harvest. An examination of these factors indicates that any changes in the whiting fishery were not exceptional relative to the trawl fisheries for other groundfish species.

Despite Changes, Overcapacity Situation Continues

It was suggested in public comment that between capacity reduction which occurred through the 2003 buyback program and an increase in the whiting harvest levels, there was not a substantial overcapacity problem in the whiting fishery.

As indicated in Section 3.6.2.4, while some conditions in the fishery changed, the basic condition of overcapacity did not change. In March 2000, the Council's SSC {SSC, 2000 #408}) reported that in the shoreside whiting fishery harvest capacity utilization was at 41 percent, implying that capacity was 2.44 times what was needed (i.e. 144 percent overcapacity). The SSC report did not evaluate the mothership sector because of an absence of availability of the needed data. The 2003 buyback program likely had limited impact on capacity in the whiting sector. While removing permits accounting for 43.6 percent of the harvest history of nonwhiting species, it removed permits accounting for only 7.2 percent of the shoreside sector whiting harvest history and 2.7 percent of the mothership sector whiting harvest history (PFMC 2010), Table A-60). The history of season durations for the shoreside and mothership sector indicates substantial overcapacity continues (Table 3-1, Figure 3-15 and Figure 3-16, and discussion in Section 3.6.2.4). An indicator of the degree of overcapacity and need for rationalization is provided by reauthorization of the MSA in 2006. Congress included in the reauthorized MSA a requirement that the Council provide a report to Congress containing a proposal and analysis for a rationalization program for the West Coast whiting fishery. Additionally, Amendment 15 to the groundfish FMP (first implemented by emergency regulation in 2007) placed a limit on new capacity (entry by new vessels). Amendment 15 expired with the implementation of this program (Amendment 20).

Changes in Whiting Prices and Allowable Harvests Were Not Exceptional

Public comment has suggested that changing market conditions are a reason for allocating based on more recent years. For harvesters, the changes in market conditions were not exceptional (e.g. the price paid to vessels for whiting did not increase any more than the price for sablefish over a similar period, Figure 3-11). Lingcod too had a similar price increase.

With respect to the amount of fish available for harvest, the change for lingcod was even greater than the change for whiting. While whiting allowable harvests increased by 14 percent, comparing the 2004-2010 average to the 1994-2003 average, lingcod harvests were up three-fold for similar comparison periods.[17] Even if years are excluded when harvest opportunity for lingcod was decreased due to depressed and overfished condition, there is more than a doubling of harvest opportunity (on average, 2007-2010 lingcod optimum yields (OYs) were 133 percent higher than 1995-1997 OYs, Table 4-3, Amendment 21, Council 2010b). Only by using the worst two years of whiting OYs (2001-2002) and comparing those to the best of the most recent years (2004-2008) can one start to reach a change in the whiting OY (an 87 percent increase) somewhat similar to that which occurred for lingcod. For any given species, the importance of any differences in total harvest opportunities after 2003 as compared to earlier years is diminished by the allocation formula's use of relative history (vessel history as a share of total fleet

[17] 1994 is omitted from the lingcod average because commercial harvest was not limited in that year.

harvest for a year) rather than absolute history (vessel history as a number of pounds harvested). The relative history approach was used to account for variation in fishing opportunity among years.

Changes in Participation Were Not Exceptional

Increased season length provided more opportunity for vessels that remained in the fishery for the entirety of that longer season, as compared to those that may have switched to other opportunities as they arose during the year. For the mothership sector, seasons were somewhat longer after 2003 as compared to the 1994-2003 season lengths (Table 3-1, and Figure 3-15). Season length in the shoreside sector was also longer in some years (Table 3-1, and Figure 3-16).

There will always be some fluctuation in fishing opportunities and vessel participation levels. However, relative to other fisheries, the increasing participation by some vessels in the whiting sector was not unusual. For example, while 30 permits showed some increase in their share of fleet revenue in the combined shoreside and mothership fisheries, 37 permits with whiting history showed an increase in the nonwhiting fishery.

Any additional investment or reliance on the whiting fishery that was developed after 2003 occurred in an environment in which it was widely known that a management change in the fishery was impending. The likelihood of such knowledge is evidenced by the publication of the 2003 control date in the Federal Register and Council newsletter: ongoing, open, and broadly-publicized Council deliberations on trawl rationalization (Section 1.4); and the Congressionally-imposed deadline for a Council proposal to rationalize the fishery (2006 reauthorization of the MSA).

Changes in the Non-whiting Fishery Were Exceptional – But No Credit Given for Post-2003 Harvest Levels

In contrast to the changes in the whiting fishery, which appear to be within normal fishery fluctuations, there was a substantial change in fishing opportunities in the nonwhiting fishery when the continental shelf was closed to most groundfish fishing with the imposition of rockfish conservation areas (RCAs). The non-whiting trawl groundfish is a mixed-species fishery. Imposition of the RCAs dramatically changed the fishing choices and species mixes facing the entire nonwhiting fleet. To allocate certain species based on fishing practices which no longer existed (shelf fishing) would have been disruptive, providing fishermen with a portfolio of QS in which the bycatch species QS was not well-matched with the QS allocated to other species. The allocation formula for bycatch species was changed to take into account this more recent change in fishing opportunities (bycatch species were allocated in a formula which partially relied on information about a vessel's fishing locations from 2003 to 2006). However, as is discussed in more detail below, the inclusion of information in the allocation formula that tried to account for the more recent development of RCAs did not allocate more fish to entities on the basis of increased post-2003 harvest levels (only the geographic distribution of harvest was considered, not the amount).

Regulatory changes in the nonwhiting fishery forced fishermen into different fishing strategies. While there have been some changes in the whiting fishery (longer seasons in the mothership sector, increased sector allocations, and price increases), fishermen have chosen to respond to those opportunities with full knowledge of the pending program and control dates, i.e. they have been on notice that one way or another (through the initial allocation or market) they would likely have to acquire quota in order to continue to participate if the program went into place (see Section 2.2.3.2 for further discussion of the notice provided). Regulatory changes did not force the whiting fishermen into different participation patterns or fishing practices.

Assessment of Changes for Processors

New Markets Developed, but Business Planning Likely Anticipated the Regulatory Changes

After 2003, both harvesters and processors experienced increases in the amounts of whiting available and prices. Some of the price differences may have been due to the development of new international markets (most notably in 2004-2006, Figure 3-8) but there were also general price increases (Figure 3-6 and Figure 3-9) which occurred concurrently with a one-third reduction in the world supply of hake/whiting/pollock and a reduction in the gap between whiting and pollock prices (2006-2009, Figure 3-10).

Companies investing in processing capacity and developing overseas markets were likely cognizant of the risks of operating in a highly regulated environment, and the control dates that had been announced for the trawl rationalization program that was under development. In deciding to make investments, good business practices would likely entail contingency planning to account for their dependence on recovering investments through participation in the fishery—plans which may have included trying to recover investments before the imposition of the new trawl rationalization program (cutting back on production once the program was implemented), maintaining production levels by paying a price sufficient to induce deliveries by vessels which had their own quota, or acquiring quota on the market once trading started. Another strategy used in contingency planning is multiuse investments. For example, the Council heard testimony that some of the substantial new investments in processing facilities used in the whiting fishery are multipurpose facilities for which it was not possible to associate specific capital costs with whiting (e.g. meal plant and freezing capacity). Another approach to helping these companies with their more recent investments would be for the government to provide allocation based on post-2003 levels of participation. However, such an allocation would have important negative repercussions, discussed in Section 2.2.3.

Overcapacity in Processing Was Still Present After 2003

It has been argued that overcapacity was not a problem after 2003, and therefore additional investment should be rewarded. As discussed above, the overcapacity problem among harvesters continued after 2003. Under a management system that controls harvest through season closures, overcapacity in the processing sector would be expected to parallel overcapacity in the harvesting sector, except to the extent that processing capacity (e.g. freezer space or mobile motherships) could be employed in alternative uses. Figure 3-15 illustrates the substantial harvest capacity peaks to which shoreside processors had to respond. Processors were believed to be in an ongoing situation of overcapacity. A major reason that the whiting processors asked for and the Council provided 20 percent of the initial allocation of QS to processors was because the case was made that whiting processors would be adversely affected because of the excess capacity that they had developed to match the peak fleet production levels experienced during a high-paced fishery ((PFMC 2010), p. 58). Allocations were not provided to nonwhiting processors because that fishery was managed to accommodate a relatively constant year-round harvest pace, and hence there was less probability of excess capacity for nonwhiting processing. Despite the presence of overcapacity and the announced control dates for the fishery (see Section 2.2.3.1) some companies continued to invest in more processing capacity. On the one hand, the MSA directs that investment and dependence be considered, and recent harvest is an indicator of investment and dependence. On the other hand, allocating based on more recent harvests rewards investment increases in a period of overcapacity.

Assessment of Changes for Communities

In general, there has been a northward shift in the landings distribution of shoreside whiting harvest among communities, from Oregon and California ports to Washington ports. As an example, the Westport share of the tonnage landed increased from an average of 5 percent in 1994-1998, to 19 percent in 1999-2005, and to 29 percent in 2006-2010. Ilwaco's share increased from around 4 percent in the earlier periods to 7 percent in 2006-2010. Among the alternatives, the maximum shift in allocation would occur for Westport, for which the share would increase from about 22 percent under status quo to about 27 percent under Alternative 4.[18] The relationship between the change in allocation and distribution of landings is tentative because of the fluidity of the fishery and multiple dynamics affecting geographic distributions.

Effects on communities will depend on how those receiving and not receiving an initial allocation of QS respond to the trawl rationalization program. Vessels are likely to move their activities based on the location of fishing opportunity, which varies by year, and relative profit opportunities in each port. Over the long term, it is expected that operations will move, or quota share or pounds will be traded, to the ports in which the highest profits can be earned, taking into account all forms of costs, such as distance to fishing grounds and catch rates. Regardless of how the quota is distributed over the longer term, there is likely to be some vessel mobility among ports every year. For example, the Council heard testimony that, due to high bycatch rates off of Newport in 2011, some vessels moved from Newport to Astoria for the whiting season. Non-processor QS permit owners are not necessarily likely to use their associated quota pounds in the port where they live/fish (if they own a vessel) – in fact, since many QS owners received QS for areas in which they might not fish (ex. Lingcod N and S or Minor Slope N and S), they are likely to sell/trade the QP for the geographic area where they do not fish (until such time that they can sell/trade their QS). Processors are likely to use their shares in the port in which their facilities are located, however, some processors have facilities in more than one port. Additionally, any entity increasing its investments after the 2003 control date (effectively announced for processors in 2004) likely had contingency plans to keep their operations in place in the eventuality that their allocation would not be commensurate with their recent levels of investment and dependence. For example, in 2011 some permits and processors that received allocations substantially below their recent history were able to maintain and substantially exceed their recent harvest and processing levels (Figure 3-23, Figure 3-25, Figure 3-27, Figure 4-13). Thus, the initial distributions of quota among vessels and processors may not be indicative of the ultimate distribution of activity among ports and impacts of the program on communities.

While there is reason to believe that the long-term effects of the initial allocations on geographic distributions will not be substantial, to the degree that there are some such effects, allocations which rely on more recent years (post-2003/2004) might result in less geographic redistribution of harvesting and processing activities than allocations reliant on earlier histories. Figure 4-24 displays the allocations to processors in each community under each alternative (scaled to 100 percent) in comparison to the historic fishery based on exvessel value of landings. More certain than the initial allocation's effect on long-term distribution of fishing activity among communities is the one-time distribution of wealth in the form of QS going to members of the communities and the secondary effects that this one-time distribution of wealth may have as it affects expenditures within the community.

4.5.2.3 Disruption

Providing allocations based on an entity's activities in more recent years (post-2003 history) might be considered less disruptive than excluding those years. An allocation based on more recent years would go to those who have most directly utilized the resource in recent years, and in doing so demonstrated some degree of dependence and investment in the fishery.

[18] Based on zip code assignments of permit owners and locations of processing facilities (with allocations for processors with multiple facilities distributed based on 2011 history).

Effects on Initial Distribution of Wealth – Transferability Mitigates Potential Disruptive Effects

In weighing the issue of disruption, it should be noted that the program does not prevent any entity from continuing to harvest at its most recent levels (regardless of the initial allocations). Figure 3-23 and Figure 3-25 show that a number of permits and entities that received allocations much lower than their 2007-2010 harvest levels were nevertheless able to meet and exceed those levels after the program was implemented (in 2011). To achieve those higher production levels, the permits and entities must have located alternative sources of quota. Thus, what is at stake in the initial allocation is not necessarily a disruption to what entities are able to harvest, but rather an initial allocation of wealth and, through the wealth represented by the QS/CHA, an augmented ability to make up any shortfalls through QS/CHA acquisitions in the market place.[19] In this regard, Table 4-27 shows that those who would be most benefited by the change from status quo were the greatest beneficiaries under status quo. Thus, those who would benefit the most from the reallocation alternatives were already granted the most wealth in the form of QS/CHA, and hence under status quo would have more collateral to use to finance purchases to make up for any shortfall they experience, lessening any potential disruption that might otherwise have been caused by the initial allocation.[20, 21]

Potential Disruption in Whiting Sector Balanced with Potential Disruption in Other Sectors

A second consideration with respect to disruption is that this action does not affect only those in the whiting fishery. There is a very real probability that not adhering to the control dates could disrupt future management processes and fishing activities for other fisheries (discussed Section 2.2.3.1).

Disruption to Management System Must Also Be Considered

Finally, a program with a poor balance of fairness and equity might also be considered disruptive to the integrity of the management system. In that regard, there are a number of reasons that going past the control date may not be viewed as fair and equitable (discussed in Section 2.2.3.2).

4.5.3 Reasons not to allocate based on more recent periods

4.5.3.1 Concern about Control Date

Importance of Control Date Integrity

At this point in the process, changing the end of the allocation period to a date closer to implementation would not directly harm *this* program, except as it affects perceptions of fairness and equity (see Section 2.2.3.2). However, changing the end date of the allocation period would decrease credibility of future control dates and could have substantial adverse effects on the development of future programs that attempt to rely on control dates. With respect to the importance of adhering to control dates, the court in Alliance Against IFQ v. Brown stated:

[19] Those receiving larger initial allocations, larger initial grants of wealth, will be better-positioned to finance or other wise make additional purchases of QS/CHA to make up for any shortfalls in their initial allocations.
[20] These amounts include QS given to them as part of the 43.6% of the nonwhiting species that were allocated equally among all permits.
[21] Anyone entering the fishery after 2010 has had to acquire all of their quota through lease purchases on the market.

> We further believe that the Secretary had good reason for disregarding participation in the fishery during this lengthy process [deliberations through final rule promulgation], because the alternative would encourage the speculative over-investment and overfishing which the regulatory scheme was meant to restrain . . . Had the Secretary extended the 1990 cutoff, the incentive to pour money and time into the fishery in order to get a bigger quota share, for those who could afford long-term speculations, would have been enormous. (Alliance Against IFQ v. Brown)

As will be discussed below, in the West Coast case more recent participation (post 2003/2004) is not disregarded, but rather is taken into account in a manner that would not reward individuals who increased their harvesting or processing after the end of the allocation period.

Consideration of not using the control date as the end of the allocation period begged the question of how the deliberations of this program could have been carried out if there had not been a credible control date. In this regard, a number of problems are readily identifiable. First, are the fishery management problems that might be expected. Fishermen testified to the Council regarding the incentives to increase their harvest and opportunities that were available to them had they not believed the control date was credible (e.g. vessels that continued to harvest in Alaska over the last decade could have leased their Alaska fishery quota to other vessels and increased their West Coast participation). When dealing with allocations valued in the millions of dollars, these incentives would have been substantial (Figure 4-26). Fishermen would have attempted to fish as hard as possible to develop history, pressing and attempting to exceed conservation limits and managers would have responded by protecting the resource with ever-decreasing season lengths. The increased intensity of effort seen in derby fisheries typically results in a race for fish, increasing harvest costs, bycatch rates, and safety hazards, while decreasing product quality. Some of these problems may have been magnified due to speculation by new entrants with little knowledge of the fishery (e.g. fishing in higher bycatch areas). In response to increases by some, other fishers would have had to increase their effort in order to defend their place in the fishery. Social conflict would have likely escalated with increasing animosity, suspicions, and resentment among fishers over each others' motives and allocational merits.

Second, are the problems which may have arisen if an aging control date forced the Council to bring its deliberations to a more rapid than prudent conclusion. The current program has been identified as one of the most complex in the country, involving over eighty species (managed in 30 IFQ units, as of 2013)[22], cross-participation among gears, 100 percent observer coverage, carryover provisions, intersector allocations, and substantial enforcement and data system modifications. If, as the years of development work passed, the Council's ability to rely on the original control date diminished, the Council may have been forced to make premature decisions (with less-complete analysis, less opportunity for informed public participation, and less careful deliberations resulting in decreased policy viability and increased risk of program failure); or faced respecification of the allocation formulas (potentially moving deliberations on the most contentious and time-consuming aspects of the program back to square one and further delaying ultimate implementation). Further, the perception that longer deliberations increased the probability of a control date change could result in obstruction and delay tactics by those participating in the Council deliberations who oppose the program (hoping it will collapse on the controversy of moving a control date) or those hoping to escalate their harvest and then gain a greater allocation with delay and a new control date.

Finally, the likelihood that success in the challenge of this program, whether that success comes as a result of the Council altering its decision, court action or an agency override of the Council's

[22] There were 29 units at the start of the program. A north/south split was created for lingcod effective in 2013.

recommendation to stay with allocation periods based on the control dates, will increase the probability that law suits will be filed against future programs.

The Council is convinced that it would have been untenable to develop this program without relying on a control date, and that vacating the control date for the trawl rationalization program will adversely affect the perceived fairness and equity of the program (see Section 4.5.3.2) and veracity of future control dates used by this Council, resulting in the attendant problems identified here. Additionally, the nationwide attention given to this case indicates that it may adversely affect other programs across the country in a similar manner.

Consistency in Relying on Control Date

Use of 2003-2006 for Bycatch Allocation – Does not Reward Increases in Post 2003 Effort

In Pacific Dawn v. Bryson, the court indicated a concern that for the nonwhiting fishery the Council considered post-2003 conditions and history for bycatch species allocation but that such considerations were not made for the whiting fishery. The inclusion of post-2003 years for part of the nonwhiting allocation may have also appeared to conflict with the Council stance that control dates should be a prime driver in determining the allocation period because of the deleterious impacts of counting post-control date harvest towards an allocation (see previous section).[23] Section 5.4.3.1 of the EA explains that the manner in which post-2003 harvest was considered for bycatch allocation placed no weight on the quantity of catch but only its distribution. The more recent information was used to determine areas fished for purpose of identifying bycatch needs, not for adjusting the target species allocation levels. For example, two permits with identical allocations of target species QS and with post-2003 harvest that were identically distributed geographically but vastly different post-2003 harvest levels would receive identical allocations. Therefore, consideration of post-control date history in that fashion would provide no strong incentive for vessels to increase their catch levels in the future, though it might provide incentive to change their distribution of harvest.

Use of 2004 for Processors – 2003 Date Was Not Applied to Processors in Early Announcements

The originally published notice of the 2003 control date did not indicate that the date applied to processors. Subsequent clarifications were published in the middle of the 2004 season and just prior to the start of the 2005 season. In the past, when there was a substantial error in the publication of a control date the Council has abandoned the control date to the extent required to correct the error. Use of the 2004 date for the end of the allocation period for processors, instead of 2003, is consistent with past Council action in this regard.

The first notice of the November 6, 2003 control date was posted in the *Federal Register* on January 9, 2004 and it is unclear in this notice whether or not the date applies to processors. That noticed stated

> The control date for the trawl IQ program is intended to discourage ***increased fishing effort*** in the limited entry trawl fishery based on economic speculation while the Pacific Council develops and considers a trawl IQ program. This control date will apply to any person potentially eligible for

[23] With respect to the consideration of post-2003 history for bycatch allocation, the court concern may be not only that the control date was relied on in some situations but not others, but also that the Council and NMFS "do not appear to have undertaken the same analysis for Pacific whiting" that they claim to have undertaken for overfished bycatch species. Section 2.2.2 provides a discussion of considerations with respect to more recent history of participants in the whiting fishery.

> IQ shares. Persons potentially eligible for IQ *shares* ***may include vessel owners, permit owners, vessel operators, and crew***. (Emphasis added, FR 69(6):1563-1564),

After the 2004 whiting season started, a second notice was published clarifying that the 2003 date applied to a potential individual processing quota (IPQ) program for processors that might be part of the trawl rationalization program. That notice stated

> At its November 2003 meeting, the Council voted to establish a control date of November 6, 2003 for the trawl IQ program, which may include individual fishing quotas (IFQs) and individual processor quotas (IPQs). The trawl IQ program, if adopted, will include IFQ but may or may not include IPQ . . . The control date for the trawl IQ program is intended to discourage increased fishing or processing effort based on economic speculation while the Pacific Council develops and considers a trawl IQ program. (Emphasis added, FR 69(123):37346-37347)

Even with that notice, some uncertainty regarding the status of processors under an IFQ program remained, leading to a third notice published May 24, 2005, just over a half month prior to the start of the 2005 shoreside whiting fishery. That notice stated, with respect to the 2003 control date:

> To clarify, the control date for the trawl IQ program does not preclude processors from being eligible to own quota in the trawl IQ program should the Pacific Council approve and NMFS implement a trawl IQ program. (FR 70(99):29173-29174).

The Council has one previous experience with failure to publish adequate notice of a control date. In that instance, the Council originally adopted a July 11, 1987 control date for the license limitation program. However, as noted in the introduction to groundfish FMP Amendment 6, in July of 1988: "because the previously adopted cut-off date [control date] had not been published in the Federal Register, the cut-off date was changed to August 1, 1988" {PFMC, 1992 #404}.

Thus, not relying on a control date that was inadequately noticed is consistent with previous Council policy. In this case, the applicability of the control date to processors was not fully clarified until during and after the 2004 whiting season.

History of Control Date Abandonment – Pacific and Other Councils Abandon Dates When Policy Work Stops for Substantial Periods

There are control dates the Council has published but not used, however, this has only occurred when there has been a substantial hiatus in policy development, or, after deliberation, the Council has decided not to move ahead with a limited access program. For example, the Council published a November 13, 1991 control date for consideration of IFQs. The Council immediately commenced work on a program but restricted the scope of the program to the fixed gear sablefish fishery. In October 1994 this program was formally tabled to await the development of Congressional development of a national policy on IFQ programs. That Congressional guidance came out in the reauthorized Magnuson-Stevens Act in the form of a moratorium on new catch share programs. A multiyear hiatus on the development of new programs ensued such that, when the Council resumed consideration of IFQs for the trawl fishery, a new control date was warranted. Similarly, a two-year hiatus in policy development is also described as part of the reason that Amendment 15, which limited entry to the whiting fishery beginning in 2007, did not use the original 1999 and 2000 control dates announced in conjunction with a policy to protect the whiting fishery from new effort from Alaskan vessels freed up by the American Fisheries Act (see discussion of control dates in Chapter 5 of the EA).

During public comment on whiting reallocation, the Council was presented with a number of examples of control dates that had been changed in other fisheries across the nation. These dates were provided to demonstrate that other Councils frequently change control dates. However, in each case a substantial lack of progression in the development of policy is one of the primary motivating factors for change. The following are the examples that were provided together with the additional information revealed through further investigation.

1. From public comment: Atlantic Mackerel: August 13, 1992, changed to September 12, 1997, and changed again to July 5, 2002 due to concern that "nearly five years have passed since the 1997 control date was published." (67 FR 44792)

Further investigation of this statement revealed that the 1992 date was formally rescinded by the SAFMC:

> This 1992 control date was rescinded for Atlantic mackerel on September 27, 1994 (59 FR 49235), because the Council and NMFS believed that information regarding biomass levels, fishing levels, fishing effort, and catch indicated that the Atlantic mackerel fishery would not require limited-entry management in the foreseeable future. (67 FR 44792)

The 1997 date was changed not only because of the five years that had passed but also because the Council had not been working on policy development during that period.

> A second control date of September 12, 1997 (62 FR 48047) (1997 control date), was established to discourage speculative entry into the Atlantic mackerel fishery while potential management regimes to control access into the fishery were discussed and possibly developed by the Council. The Council intended to consider a controlled access plan in an amendment to the FMP, however, subsequent amendments focused on other issues, including the need to address the requirements of the 1996 Sustainable Fisheries Act. (67 FR 44792)

It was in response to new incentives for entry into the fishery and the passing of five years during which there was no substantial policy development work relying on those dates that the new dates were established.

2. From public comment: New England small-mesh multispecies fishery: September 9, 1996 changed to March 25, 2003 because "conditions have changed sufficiently in this fishery to make the September 1996 control date an unreliable indicator of current participation." 68 FR 14388.

As with Atlantic Mackerel, a closer look at the FR notice announcing this change revealed substantial breaks in policy development:

> The Council used this control date to develop a proposed limited access program for this fishery included in Amendment 12 to the Northeast Multispecies Fishery Management Plan (FMP), a management program for small mesh multispecies that was implemented on April 28, 2000. The Amendment 12 limited access program for small mesh multispecies was later disapproved by NMFS because it was found to be inconsistent with some of the requirements of the Magnuson-Stevens Act. (68 FR 14388)

The new control date (2003) was established several years after the 2000 disapproval, when the Council renewed its consideration of the need to limit access to this fishery.

3. From public comment: South Atlantic Spanish Mackerel: July 2, 1993 changed to June 15, 2004. (70 FR 64459)

This date was changed because of a greater than five-year gap during which policy to limit entry was not undergoing active development (personal communication, Gregg Waugh, SAFMC, 9/18/12).

4. From public comment: Panaeid Shrimp: September 8, 2000 changed to December 10, 2003 (69 FR 10189)

   While two control dates have been announced, the SAFMC has not seriously engaged in policy work toward development of a program based on the control dates. (Personal communication, Gregg Waugh, SAFMC, 9/18/12).

5. From public comment: Snapper-grouper fishery: October 14, 2005 changed to September 17, 2010 "due to concern that the previous control date established for the snapper-grouper fishery was almost five years old." 76 FR 532576 FR 5325.

   After the initial control date was announced and policy development began, there was a two year period during which no work occurred. When the Council returned to its policy development work, it was informed by NOAA GC that because of the hiatus the original date was "stale" and a more current date should be selected (personal communication, Gregg Waugh, SAFMC, 9/18/12).

6. From public comment: Hawaiian offshore pelagic handline fishery: July 2, 1992 changed to February 15, 2001 out of a concern that the earlier control date was outdated. 66 FR 27623, 27624.

   After the Hawaiian control date was announced there was some policy work done, but there was not consistent progress toward development of an amendment and the Council never reached the point of taking final action. When the Council took the issue up again in 2001 it was decided that the control date was outdated and adoption of a new date would be appropriate (personal communication, Paul Dalzell, WPFMC, October 11, 2012).

In contrast to these examples, the Pacific Council, its advisory bodies, and staff worked continuously on the trawl rationalization program. From the fall of 2003 through the Council's final decision in 2008, trawl rationalization was addressed at 52 Council and separate advisory body meetings (an average of 10 meetings a year). This total does not include separate advisory body meetings held concurrently with Council meetings (e.g. SSC, GAP and GMT sessions at Council meetings).

Staleness of Date – "Alliance Against IFQs" is Situationally Distinct

The issue of "staleness" appears to be primarily one related to situations in which work on a particular program has stopped for a substantial period of time. There is also the issue of whether a control date adequately takes into account present participation as the amount of time between the end of the allocation period (the control date) and the initial allocation increases.

Alliance Against IFQs v. Brown partially addresses this issue. The Alaskan halibut and sablefish IFQ program challenged in that case was purported to take into account present participation in that it provided credit for harvests up through 1990, three years prior to the implementation of the program in 1994. However, in Alliance Against IFQs v. Brown it was alleged that the Secretary of Commerce had failed to take into account present participation because the program was not implemented until 1994 and "a person who last fished in 1988 would get a qualifying share but someone who had fished only in 1991, 1992, and 1993 would not" (Alliance Against IFQ's v. Brown, 84 F.3d 343, 344, 9th Cir. 1996). The court in that case, finding against the plaintiffs, noted "While the 'participation' that the Council actually

considered was admittedly in the 'past' judged from the time when the final regulations were promulgated, it was roughly 'present' with the time when the regulations were first proposed." The court also noted that "while the length of time between the end of the participation period and the promulgation of the rule pushed the limits of reasonableness, we are unable to characterize use of a 1988-1990 period as so far from 'present participation' when the regulation was promulgated in 1993 as to be 'arbitrary or capricious.'"

In contradistinction to the claims made for the Alaskan halibut and sablefish IFQ program, for the West Coast groundfish trawl rationalization program, it is not claimed that 2011 (the year of implementation) is roughly contemporaneous with 2003. Under the Alaskan program, present participation was taken into account only through an entity's own harvest history. As stated above, under the Alaskan program someone who had fished in 1988 would qualify for an initial allocation while someone who had fished in 1993, the year before implementation, would not. Under the West Coast program, present participation is taken into account based on current investment in a permit (as of the time of quota issuance in 2010). A harvester entering in 2010, the year before full program implementation, would receive a full allocation based on the fact of being an owner of a permit (the situation would be similar to that in Alaska if the exiting entity that the new entrant bought the permit from were given the allocation).[24] Through the mechanism of the permit, recent harvester investment and dependence is taken into account, up through the year just prior to program implementation.

Since the time of the "Alliance Against IFQ" case, the considerations required under the MSA have been expanded to include considering recent harvests with respect to fairness and equity, which might be construed differently from taking into account current participation, to the degree that the new requirement references relative harvest levels rather than the fact of being a participant. In this regard, it should first be noted that a number of permit owners acquired additional permits prior to initial allocation, and in doing so were able to better match their initial allocations to recent harvests. Thus, under this program, just as fishermen were able to acquire an allocation by acquiring a permit, attentive fishermen engaged in business planning had an opportunity to make adjustments in their permit holdings to better match their initial allocations to recent harvests. While the MSA required considering recent harvests, it does not require that a weight be given to them in the allocation formula. In the following section, explanation is provided for why not giving any weight to post 2003/2004 harvests might be considered a fair and equitable outcome.

Before turning to that section, it should be noted that unlike harvesters new processors entering into or increasing their investments in the fishery were not required to displace an existing processor (i.e. not required to buy a processor permit and thereby lay claim to the previous history of another entity). However, at the same time these processors were on notice about the pending program. In this environment, any business deciding to increase investment should have been aware of the risk that their increasing investment and production levels would not necessarily be accompanied by an increased allocation. Those who were concerned that their initial allocations would not give them the level of security they desired for their new investments had at least two options: to secure initial allocations through the acquisition of harvester permits (a number of processors chose this route) or to build up liquid capital in order to purchase QS once they were issued and became tradable.

[24] The allocation for a permit allocation would include an equal allocation component (43.6% of all nonwhiting groundfish and 7.2% of the shoreside whiting were allocated equally among all permits), plus an allocation based on the harvest history of the permit up through 2003. In public comment it was reported that, because it was widely known that the Council was working on this program, particularly after the final recommendation was made in 2008, permit buyers were often careful to take into account permit history in negotiating their transactions.

4.5.3.2 Concern about Fairness and Equity

Distribution of Wealth – Action Alternatives Increase Concentration of Wealth for Harvesters

The trawl rationalization program allocated transferable privileges. This transferability allows entities to adjust their initial allocations as needed, either changing the mix of species they received or acquiring more total allocation, as needed. Data for the 2011 fishery show that a number of permits and entities that received less initial allocation than their recent (2007-2010) harvest levels were able to acquire additional quota pounds to maintain their recent participation levels (Figure 3-23 and Figure 3-25). Those with the greatest total wealth are likely to be most able to adapt to shortages in the quota they own by acquiring additional quota, if necessary using assets as collateral to obtain the needed financing. The equal allocation component of the IFQ allocation for vessels ensured that no permit would receive quota with an exvessel value equivalent of less than $200,000 (Figure 4-27). Given that quota in these programs often trade at ratios of several times exvessel value (Tamm, et. Al., 2010), it seems likely that no entity received an initial allocation valued at less than a half million dollars. Examination of Figure 4-26 shows that those who would lose the most under the action alternatives received medium levels of allocations under status quo and that those who would gain the most received some of the greatest allocations under status quo (over a million dollars in exvessel value equivalents).

For processors, losers and winners are more evenly dispersed among the range of levels of initial allocations received (Figure 4-14). Those who received the first and third most initial allocation would gain the most from an increase in emphasis on more recent years, and the processors receiving the second and fourth most would lose the most.

Advance Knowledge and Speculation

There was widespread knowledge in the industry that the Council was developing a trawl rationalization program. The Council's 2000 strategic plan for the groundfish fishery was developed with broad publicity and through an open process that spanned multiple meetings. The program called for "the development of a comprehensive IFQ program for the limited entry trawl fishery" as an intermediate to long-term goal, subject to the lifting of the Congressionally-imposed moratorium on new IFQ programs.[25] Soon after the moratorium was lifted, the Council announced its 2003 control date, published it in the *Federal Register*, and immediately began work to develop a trawl rationalization program in an open and well-publicized process. The high public profile of the Council's efforts is illustrated by the fact that the program was discussed on the floor of Congress and included in the 2006 reauthorization of the MSA, along with a requirement for a proposal and analysis to be provided by January of 2009. When the Council developed Amendment 15, implemented by emergency regulations in 2007, it made clear that the Amendment did not change its commitment to the 2003 control date and that the trawl rationalization program, when implemented, would replace the limit on entry by new vessels imposed through Amendment 15. All business investment has a speculative characteristic, and such speculation is generally carried out by entities that seek to know as much as possible about the environment in which they are speculating, particularly in an industry as heavily regulated as fisheries are. Given the knowledge that this policy process was in progress, any prudent person increasing their investment or reliance on the fishery likely did so in full knowledge that the allocation formulas that were eventually adopted might not recognize their activity. It is likely that such entities would have contingency plans that took into account this possible eventuality.

[25] Permit stacking was put forward as a stop-gap alternative given the Congressional moratorium on new IFQ programs.

Allocating for Activities Running Counter to Policy Objectives

The control date put individuals on notice that participation after that date might not qualify a person for additional initial allocation. As discussed in Section 2.2.3.1, in order for the Council to consider and develop new limited entry policies in an orderly fashion it is vital that these control dates be announced and taken seriously by industry. Rampant disregard for the control date would run counter to the Council's objective of developing a program that controls capacity and limits disruption. Once the program development work is completed, the Council is then faced with the choice of adopting a program which uses the control date as the basis for the end date of the allocation period or using a later date. Using a later date would reward with larger allocations those who undertook activities that countered the Council management objectives—activities the contingent status of which had been noticed through the control date publication—and would take allocation away from those who had not increased their participation after the control date—away from those whose activities were in line with Council policy objectives. Regardless of the motivations that contributed to a course of action for any particular entity, decreasing allocations to those whose activities appear to be in line with and in due consideration of fishery management policies, while increasing allocations to those whose activities ran counter to management objectives and notices regarding contingent status of those activities, would be expected to detract from the perceived fairness of the program.

Current Harvests, Investment and Dependence

Section 2.2.2.1 and the Section 2.2.3.1 section on staleness of control dates discuss how allocations to permits take into account current participation in the fishery because the investment most vulnerable to diminishment of value and most dependent on the fishery for recovery of the investment is the permit. Allocations were given to the current owners of permits as of the date of the initial allocation, and all permits received a substantial initial allocation due to the equal allocation component of the allocation formula.

The situation was different for processors in that there was not a license limitation program for processors. However, processors were on advance notice about the pending changes to the fishery management program and were able to acquire harvester permits if they wanted to secure a greater initial allocation, as some did.

Double-dipping

Using different allocation periods for different sectors could result in a double-dipping effect. The allocation period part of the allocation formula takes a snapshot of fishing activities during that period. If different allocation periods are used for fisheries under the same program, then entities whose activity levels change with the change in allocation periods could potentially receive some double credit (entities that moved between the snapshots are able to "occupy two positions"). Using different time periods for any of the catcher vessel harvesting sectors covered by the trawl rationalization program (the nonwhiting, shoreside whiting, or mothership sectors) might allow this double-dipping and the accompanying perceptions of unfairness. Because of the potential for this to occur between the two whiting sectors, the Council decided in June 2012 that whatever its final decision would be in September 2012, the same allocation period would be used for the shoreside and mothership sectors. There were seven permits which, after 2003, reduced their share of harvest in the nonwhiting fishery while increasing their share in the whiting fishery. Using an allocation period other than status quo would result in some degree of a double-dip effect between the nonwhiting and whiting fisheries.

Fairness to Other Fisheries

As discussed in Section 2.2.3.1, failure to maintain the integrity of the control date for this program may adversely impact other fisheries that might be considered to have an "innocent bystander status." This impact is due to the reduced veracity that a control date might have in the context of deliberations on rationalization programs for those fisheries.

Industry Agreements

Broadly agreed-to agreements among affected parties are likely to entail a fair and equitable outcome with respect to the views of the agreeing parties. The presence of the agreement alone is not sufficient decision basis and should be presented along with a rationale for why the agreement both meets management objectives and is a fair and equitable result for all affected parties. The information on the agreement then needs to be weighted together with all other relevant factors and a determination made as to whether objectives are met and the alternative is fair and equitable to all affected interests. The reconsideration covered in this document is intended to remedy the previous shortfall in presentation.

4.6 Rationale for NMFS Action

NMFS has determined that the Council's recommendation to maintain the existing initial whiting allocations (No Action Alternative) is consistent with the MSA, the Groundfish FMP, the court's order in Pacific Dawn, and other applicable law. This determination is based on NMFS' review of the entire record, including the Council's record and NMFS' consideration of comments received on the proposed rule. After considering the required statutory factors and the goals and objectives of the trawl rationalization program and the Groundfish FMP, NMFS has determined that the existing initial whiting allocations provide for a fair and equitable allocation to the shorebased IFQ program and the mothership coop program. These initial allocations of whiting take the form of QS for both harvesters and processors in the shorebased IFQ program, and CHA for harvesters in the mothership fishery. For the purposes of this action, "quota" is used to describe allocations of both CHA and QS to harvesters in the shorebased IFQ and mothership fisheries, as well as to describe allocation of QS to shoreside processors.

In the context of the relatively narrow remand ordered by the court in Pacific Dawn, NMFS has determined that many MSA factors show no or minimal differences between the alternatives under consideration. Additionally, where there are differences, they are tempered by the relatively modest shifts in quota among the various alternatives and other relatively minor variations that result. For example, comparing the No Action Alternative to the alternative most favoring recent history (Alternative 4) reveals overall modest shifts in quota from status quo holders to others (17% for shorebased harvesters, 3% for shoreside processors, and 18% for mothership harvesters) and generally modest shifts among most individual permits holders and processors. This is principally the result of a majority of participants in the whiting fishery having generally long and continuous participation in the fishery. Given this and in balancing the various factors in this decision (including control date, investment and dependence, disruption, efficiency, employment, current and historic participation, communities), NMFS has concluded that the reasons supporting maintaining the existing allocations for the shorebased IFQ and mothership whiting fisheries (e.g., taking in to account the intent of the 2003 control date and the policy goals of Amendment 20, not rewarding speculative behavior) outweigh the reasons supporting alternatives that favor more recent history (e.g., reflection of the market and fishery conditions, providing greater amounts of quota to the recent fishery participants to support their fishery investments and potentially reduce future leasing or acquisition costs). More detailed discussion on the specific statutory factors under MSA section 1853a(c)(5)(A) and related provisions is set forth in the preamble to the proposed rule (78 FR 72, January 2, 2013).

Maintaining the initial whiting allocations, including the use of qualifying years of 1994-2003 for whiting harvesters and 1998-2004 for whiting processors, supports the Council's and NMFS' efforts to reduce

overcapitalization and end the race for fish by not rewarding increases in harvesting or processing that occurred after the end of the qualifying periods (i.e., after the 2003 control date). The existing whiting allocations also support the importance of the control date for this and future rationalization programs, minimize the concentration of harvester quota, and provide for a wider initial geographic distribution of the program benefits and costs along the coast and the corresponding fishing communities.

Importance of the control date

Two fundamental purposes of Amendment 20 were to reduce overcapitalization in the groundfish fishery and to end the race for fish. The Council adopted and announced the 2003 control date to further these purposes, seeking to discourage speculative capitalization and discourage effort by putting participants on notice that any fishing history earned beyond 2003 may not count towards a future allocation system. Since the original notice of the 2003 control date in the Federal Register on January 9, 2004 (69 FR 1563), there has been continuous and systematic work to develop the trawl rationalization program. Throughout the reconsideration, many participants testified or provided written comment with respect to how the announcement of the control date affected their business decisions. NMFS acknowledges that a control date is not a guarantee that any specific period will count toward initial allocations. NMFS believes, however, that recognition of the business and investment decisions made by participants who interpreted the control date as signaling the likely end of the qualifying period is consistent with the fundamental purposes of Amendment 20. While no mechanism exists to separate speculative from non-speculative effort after the control date, maintaining the control date for harvesters does not reward any speculative behavior after the control date and does not penalize those who honored the control date. Additionally, an important signal is sent for future programs (nationally as well as on the Pacific Coast)—the use of control dates is still a valid tool to deter increases in effort or capitalization that would undermine conservation and management goals pending development of a limited access privilege program.

Moreover, for processors, the record establishes valid reasons to end the qualifying period for processors one year after the 2003 control date, including accounting for processor investments that took place prior to the announcement of the control date but that did not begin to earn processing history until 2003 and 2004. In addition, the purpose of applying control dates to onshore processors while important is not necessarily as significant as for harvesters, who have a greater ability to move into and out of various fisheries to gain potential fishing history. These factors, in addition to the fact that it was not clear until 2005 that the 2003 control date potentially applied to processors, support the decision that a one year shift, to 2004, was a reasonable cutoff date for processors.

While maintaining the end of the qualifying periods necessarily excludes providing credit for more recent participation, publication of the control date and the continuous and active deliberation of the Council provided notice to all participants that this was a possibility. Thus, those participants who did increase their investments or effort in the fishery were on notice that any history established in later years might not count towards initial allocations. Additionally, participants had the opportunity to purchase permits from others to bolster their catch history totals to potentially reflect their increased investments and effort (as the record reflects did occur). The fairness of maintaining the initial cut-off dates also is reflected in the public comments of participants that supported No Action Alternative despite the fact that they would receive higher levels of quota if an alternative favoring more recent history were adopted.

Minimize concentration of quota

The record reflects that basing initial whiting allocations on alternatives that include more recent history would generally have the effect of concentrating quota for harvesters in fewer hands, creating fewer winners and more losers compared to maintaining the existing allocations (see EA, Section 4.5.3.2 and

FRFA). Moreover, when viewed in context of the trawl rationalization program as a whole, moving the end date of the qualifying period to a more recent year could have the effect of creating "double-dip" gains and losses for certain participants due to having different allocation periods for whiting compared to some non-whiting species. For example, there were seven permits that, after 2003, reduced their share of harvest in the non-whiting fishery while increasing their share in the whiting fishery (see EA, Section 2.2.3.2). Using an allocation period other than the No Action Alternative would benefit those participants with more whiting history in recent years because they would receive an amount of non-whiting quota allocated under a 2003 cut-off while simultaneously receiving increased whiting quota (i.e., double-dipping) if a later end year was used for whiting allocations, creating inequities in the allocation of target species.

Wider geographic distribution of the initial benefits and costs of the program

The record reflects that maintaining the existing allocations would provide a more even distribution of initial whiting allocations along the coast and to the corresponding fishing communities. Shifting to alternatives favoring more recent history could contribute to a northward shift in initial quota distribution, and accordingly any benefits stemming from that initial allocation (see EA, Section 4.3.3). The northward shift is expected to be relatively small (less than 8 percent of the total quota—2 percent for processors and 6 percent for harvesters between the No Action Alternative and Alternative 4) and the analysis shows whiting landings have been shifting northward in recent years (due to fish availability and investments in ports). Although relatively modest, NMFS believes maintaining the initial whiting allocations supports historic fishing communities in more southern locations and creates a wider geographic distribution of the initial wealth associated with allocations. Maintaining initial whiting allocations would further support one of the guiding principles in the development of Amendment 20 (see Am 20 EIS, Section 1.2.3)—to minimize negative impacts resulting from localized concentrations of fishing [and processing] effort. For processors, in addition to the distribution of wealth associated with initial allocations, the wider distribution of initial allocation of whiting QS may provide some additional influence over where deliveries are made along the coast than if the initial allocation were based on more recent qualifying years that would shift allocations and potentially landings northward.

CHAPTER 5 CONSISTENCY WITH THE WEST COAST GROUNDFISH FMP AND MSA NATIONAL STANDARDS AND REQUIREMENTS

The Council prepared this document, in part, to focus on the whiting allocation alternatives in the context of its interpretations of legal and policy guidance related to allocation decisions. In this chapter, impacts are summarized by the topic areas covered by these criteria. The NOAA LAP program guidelines point out that "There are literally an infinite number of allocation formulae that are acceptable under the MSA." ((Anderson and Holliday 2007), p. 71). There are a variety of competing and conflicting criteria against which the allocation formulae must be assessed. These criteria are specified in the MSA and other applicable law. The management challenge is to select an alternative based on an appropriate balance of these criteria, given the expected performance of the fishery under each allocation alternative. Regardless of how the balance is ultimately drawn, the choice must be fair and equitable. The criteria to be assessed are primarily derived from the MSA, including those contained in the FMP. Those criteria include:

- MSA
- MSA National Standards
- NMFS National Standard Guidelines
- Goals and Objectives of FMP
- Goals and Objectives of Amendment 20 to the FMP (Trawl Rationalization)
- Other Council Statements of Intent.

Many of the requirements of the MSA and National Standard Guidelines are already achieved by the trawl rationalization program as a whole and are not affected by the different alternatives considered here.

5.1 Conservation

5.1.1 Policy Guidance

The following are some of the main conservation criteria in the MSA that directly pertain to the establishment of a catch shares program.

> SEC. 301. NATIONAL STANDARDS FOR FISHERY CONSERVATION AND MANAGEMENT. (a) . . . . national standards for fishery conservation and management: . . . . (4) If it becomes necessary to allocate or assign fishing privileges among various United States fishermen, such allocation shall be . . . (B) reasonably calculated to promote conservation…
>
> 303A I REQUIREMENTS FOR LIMITED ACCESS PRIVILEGES.— (1) IN GENERAL.—Any limited access privilege program to harvest fish submitted by a Council or approved by the Secretary under this section shall—(A) if established in a fishery that is overfished or subject to a rebuilding plan, assist in its rebuilding;. . . . (C) promote—. . . (ii) fishery conservation and management; . . .

With respect to conservation and management and the allocation of fishing privileges, the National Standard Guidelines state:

> Numerous methods of allocating fishing privileges are considered "conservation and management" measures under 303 of the Magnuson-Stevens Act. An allocation scheme may promote conservation by encouraging a rational, more easily managed use of the resource. Or, it may promote conservation (in the sense of wise use) by optimizing the yield in terms of size, value, market mix, price, or economic or social benefit of the product. (Section 600.325I(3)(ii))

The Council's Allocation Framework (Section 6.3.1 of the groundfish FMP) requires that when recommending the direct allocation of resources that the Council consider "Potential biological yield of any species or species complex affected by the allocation."

5.1.2 Relation of Rationalization Program Provisions to Policy

The trawl rationalization program assists the Council in meeting conservation and management objectives in a number of ways, including:

- providing a greater disincentive for harvest of overfished species.
- providing a disincentive for bycatch waste.
- rationalizing the fishery so it can support the costs of 100 percent monitoring of catch.
- eliminating the continual erosion of management measures based on input control, which occurs as fishers try to increase harvests by finding ways around the input controls.

5.1.3 Analysis of Effects of Alternatives

Modifying the trawl rationalization program by reallocating QS among vessels and processors is not expected to change total removals; nor alter the gears used, selectivity, harvest areas, or targeting strategies. On this basis, a change in allocations would likely not impact the performance of the management system in meeting conservation objectives.

Therefore we find the proposed action will have no impact on the conservation objectives of the MSA, FMP, and other applicable law.

5.2 Net Benefits and Efficiency

5.2.1 Policy Guidance

The following are some of the main economic benefit criteria in the MSA that directly pertain to establishing of a catch shares program.

> SEC. 301. NATIONAL STANDARDS FOR FISHERY CONSERVATION AND MANAGEMENT. (a) . . . national standards for fishery conservation and management: . . . . (5) Conservation and management measures shall, where practicable, consider efficiency in the utilization of fishery resources; except that no such measure shall have economic allocation as its sole purpose.
>
> 303A I REQUIREMENTS FOR LIMITED ACCESS PRIVILEGES.— (1) IN GENERAL.— (B) if established in a fishery that is determined by the Secretary or the Council to have over-capacity, contribute to reducing capacity; . . . . (C) promote— . . . . (iii) social and economic benefits;

The Council's Allocation Framework (Section 6.3.1 of the groundfish FMP) requires that, when recommending the direct allocation of resources, the action should achieve at least one of a number of benefits, among which is included: "increase economic yield."

In addition, the groundfish FMP includes the following related general goals and objectives.

> Goal 2 – Economics. Maximize the value of the groundfish resource as a whole.
>
> Objective 6. Within the constraints of the conservation goals and objectives of the FMP, attempt to achieve the greatest possible net economic benefit to the nation from the managed fisheries.

Similar goals and objectives were included in Amendment 20.

> Goal: Create and implement a capacity rationalization plan that **increases net economic benefits,** creates individual economic stability, provides for full utilization of the trawl sector allocation, considers environmental impacts, and achieves individual accountability of catch and bycatch.
>
> Objectives:
> 2. Provide for a viable, profitable, and efficient groundfish fishery.
> 6. Promote measurable economic and employment benefits through the seafood catching, processing, distribution elements, and support sectors of the industry.

5.2.2 Relation of Rationalization Program Provisions to Policy

Rationalization programs (including Amendment 20) are designed to increase net benefits for the nation and increase industry efficiency while at the same time achieving management and conservation objectives.

5.2.3 Analysis of Effects of the Alternatives

The goals related to efficiency, net economic benefits, etc., discussed above will be achieved under any of the alternatives. The expectation is those quota shares allocated to the least-efficient harvesters will be traded to those who are able to generate greater profits from the QS. Some alternatives may achieve these goals more quickly than others if, for example, the majority of quota shares are allocated to those who are relatively more efficient as opposed to holders who are less efficient. However, given the absence of information on the relative efficiency of harvesters, there is no explicit way to determine which of the alternatives leads to the best long-term situation most quickly.

Therefore we find the proposed action will have no long-term effect on net benefits and efficiency. However, information is not available to discern differences in short-term effects.

5.3 Excessive Shares

5.3.1 Policy Guidance

In a catch share program, control over an excessive proportion of shares by any one entity can have negative impacts on both net benefits to the nation, and fairness and equity. The following are the MSA criteria on excessive shares that directly pertain to the establishment of a catch shares program.

> SEC. 301. NATIONAL STANDARDS FOR FISHERY CONSERVATION AND MANAGEMENT. (a) . . . . national standards for fishery conservation and management: . . . . (4) . . . . If it becomes necessary to allocate or assign fishing privileges among various United States fishermen, such allocations shall be .... (C) carried out in such a manner that no particular individual, corporation, or other entity acquires an excessive share of such privileges.
>
> 303A I REQUIREMENTS FOR LIMITED ACCESS PRIVILEGES.— (5) ALLOCATION.—In developing a limited access privilege program to harvest fish a Council or the Secretary shall— . . . . (B) consider the basic cultural and social framework of the fishery, especially through— . . . (ii) procedures to address concerns over excessive geographic or other consolidation in the harvesting or processing sectors of the fishery; . . . (D) ensure that limited access privilege holders do not acquire an excessive share of the total limited access privileges in the program by— (i) establishing a maximum share, expressed as a percentage of the total limited access privileges, that a limited access privilege holder is permitted to hold, acquire, or use; and (ii) establishing any other limitations or measures necessary to prevent an inequitable concentration of limited access privileges;…

Additionally, Amendment 20 specified as a program constraint in developing the program: “Avoid excessive quota concentration” (Constraint 6).

5.3.2 Relation of Rationalization Program Provisions to Policy

The Council has accumulation limits for QS and QP to prevent the acquisition of excessive shares in the fishery by any one entity. These limits are likely sufficiently constraining to prevent antitrust violations and achieve other socioeconomic goals related to the prevention of excessive concentration of shares. Following the initial allocation, any individuals receiving QS in excess of the accumulation limits for QS are required to divest themselves of the excess QS by the end of calendar year 2014.

5.3.3 Analysis of Effects of Alternatives

The alternatives considered here would not change the accumulation limits, but could result in greater or lesser degrees of QS concentration, possibly affecting existing initial allocations in excess of the accumulation limits. Any change in the amount allocated in excess of the accumulation limits to an entity would be a short-term effect owing to the requirement to divest of QS in excess of the limits by the end of 2014. However, preliminary analysis suggests that no entity would receive an initial allocation in excess of the QS accumulation limits for any QS species. We find that a short-term impact may result if there is a change in the amount of quota held in excess of the accumulation limits (divesture down to the limits is required by December 31, 2014). None of the alternatives would allocate amounts in excess of QS control limits (see Sections on Accumulation Limits in Sections 4.3.1.1, 4.3.1.2, and 4.3.2.1).

5.4 Fairness and Equity

Evaluating the fairness and equity involves weighing numerous countervailing criteria. Deriving measures for these factors and their relative importance is very difficult. Unlike the economic criterion of "efficiency," for which there are standard, generally agreed-upon, quantitative measures that can be objectively evaluated, there is little consensus regarding choice of criteria for evaluating fairness and equity, and even less agreement on yardsticks for measuring those criteria. The fairness and equity issue concerns decisions determining who receives a valuable asset (initial allocations of QS and CHA) versus who must, like all other future entrants, lease or purchase quota in order to participate. Those receiving initial allocations may be placed at a competitive advantage over new entrants or existing participants who must purchase more QS if they desire to maintain their recent harvest levels.

The following contain the primary legal and policy guidance on fairness and equity.

The National Standards in the MSA address fairness and equity issues:

> SEC. 301. NATIONAL STANDARDS FOR FISHERY CONSERVATION AND MANAGEMENT. (a) . . . . national standards for fishery conservation and management: . . . **(4)** Conservation and management measures shall not discriminate between residents of different States. If it becomes necessary to allocate or assign fishing privileges among various United States fishermen, such allocations shall be (A) fair and equitable to all such fishermen; (B) reasonably calculated to promote conservation; and (C) carried out in such a manner that no particular individual, corporation, or other entity acquires an excessive share of such privileges.

Items (B) and (C) of this national standard are addressed in Sections 5.1 and 5.3, respectively. The remaining criterion (Item (A)) of this standard are addressed in this section.

The guidelines for National Standard 4 on fairness and equity state that

> An allocation of fishing privileges should be rationally connected to the achievement of OY or with the furtherance of legitimate FMP objectives. Inherent in an allocation is the advantaging of one group to the detriment of another. The motive for making a particular allocation should be justified in terms of the objectives of the FMP; otherwise, the disadvantaged user groups would suffer without cause. (600.325I(3)(i)(A)).

There is also an MSA requirement for the consideration of fairness and equity in the development of any limited access programs, which includes LAPPs such as the trawl rationalization program.

> 303 (b) DISCRETIONARY PROVISIONS.—Any fishery management plan which is prepared by any Council, or by the Secretary, with respect to any fishery, may—. . . (6) establish a limited access system for the fishery in order to achieve optimum yield if, in developing such system, the Council and the Secretary take into account— (A) present participation in the fishery; (B) historical fishing practices in, and dependence on, the fishery; (C) the economics of the fishery; (D) the capability of fishing vessels used in the fishery to engage in other fisheries; I the cultural and social framework relevant to the fishery and any affected fishing communities; **(F) the fair and equitable distribution of access privileges in the fishery;** and (G) any other relevant considerations.

With respect to LAP programs in particular, Section 303A of the MSA provides additional more specific guidance on factors to be considered to ensure that allocations are fair and equitable:

> I(5) ALLOCATION.—In developing a limited access privilege program to harvest fish a Council or the Secretary shall—
>
> (A) establish procedures to ensure fair and equitable initial allocations, including consideration of—
>
> (i) current and historical harvests;
> (ii) employment in the harvesting and processing sectors;
> (iii) investments in, and dependence upon, the fishery; and
> (iv) the current and historical participation of fishing communities;

Both 303(b)(6) and 303A(c)(5) include concepts such as harvests, participation, dependence, and current and historical activities as part of fairness and equity considerations. Other parts of the MSA (other parts of 303(b) in particular) also mention some of these concepts as considerations to be taken into account, without specifically linking them to fairness and equity.

Additionally, Section 303A includes the concept of participation specifically in the context of allocation.

> (c)(5) ALLOCATION.—In developing a limited access privilege program to harvest fish a Council or the Secretary shall— (E) authorize limited access privileges to harvest fish to be held, aIired, used by, or issued under the system to persons who substantially participate in the fishery, including in specific sectors of such fishery, as specified by the Council.

The objectives of the groundfish FMP re-enforce the importance of equity in the development of management measures:

> Objective 12. When conservation actions are necessary to protect a stock or stock assemblage, attempt to develop management measures that will affect users' equitably.

Amendment 20 contains additional guidance in the form of a constraint on action related to fairness and equity: "Avoid provisions where the primary intent is a change in marketing power balance between harvesting and processing sectors" (Constraint 5).

5.4.1 Allocations and Imposition of Hardships

5.4.1.1 Policy Guidance

Guidelines for National Standard 4 state:

> An allocation may impose a hardship on one group if it is outweighed by the total benefit received by another group or groups. An allocation need not preserve the status quo in the fishery to qualify as "**fair and equitable,"** if a restructuring of fishing privileges would maximize overall benefits. The Council should make an initial estimate of the relative benefits and hardships imposed by the allocation, and compare its consequences with those of alternative allocation schemes, including the status quo. (Section **600.325**(c)(3)(i)(B))

5.4.1.2 Relation of Rationalization Program Provisions to Policy

The program as a whole is generating substantial conservation and economic benefits for the nation (PFMC 2010), and some initial allocation must be in place in order to continue to achieve those benefits. As described in the National Standard Guidelines at 50 CFR 600.325(c)(3)(i)(B): "Inherent in an allocation is the advantaging of one group to the detriment of another."

5.4.1.3 Analysis of Effects of the Alternatives

The analysis in Section 5.2 indicates that there is no substantial difference between the alternatives with respect to the expected generation of net benefits. Regardless of which alternative is selected, there will be some group that is advantaged over another. Those who are advantaged and disadvantaged by the alternatives are described in Chapter 4. Overall, the benefits of the program are sufficient to justify an allocation that may impose relative hardships on certain participants.

We find that all the alternatives considered here are part of an essential element of a program that generates sufficient benefits to warrant the imposition of unavoidable hardships on one group over another in order to achieve the greater overall benefit.

5.4.2 Investment and Dependence

5.4.2.1 Policy Guidance

In the development of LAP programs, the MSA relates investment and dependence to fairness and equity (303AI(5)(A)(iii), see page 179). With respect to investment and dependence and the development of limited access systems (of which a LAPP is a type), the MSA requires that the Council take into account historical fishing practices in, and dependence on, the fishery as well as the capability of fishing vessels used in the fishery to engage in other fisheries 303(b)(6)(B)&(D), see page 179). The NOAA LAPP guidelines ((Anderson and Holliday 2007)) include among the attributes that may be used in allocation formulas:

> various measures of dependence on the fishery including percent of revenue or opportunities to participate in other fisheries, and inter-relations with other fishery related business especially with respect to employment. (p. 62)

Prior to the most recent reauthorization of the MSA, formal allocations to fishing communities (FCs) and participation by regional fishing associations (RFAs) were not covered in the MSA. NOAA LAPP

guidelines begin to address the allocation complexities potentially created by adding FCs and RFAs into the mix of participants by first outlining the factors considered in initial allocations. The following discussion from the NOAA LAPP guidelines addresses issues related to investment and dependence and relates them to disruption.

> Given the laws and accepted views on who were potential recipients, historically the main concern was to set up an allocation that would change the fishery from the *status quo* to an IFQ fishery with a *minimum disruption of the current distribution* between the recipients. When that was the goal, the question became what sorts of things could be used to quantitatively compare allocations among the potential recipients? Looking at participation characteristics was a good way to do this. *Catch histories are a way to compare the relative success of various participants. Comparing the financial investments shows, albeit imperfectly, relative commitments to a fishery*, and at the same time, relative differences in amounts that will have to be earned to support the capital equipment. It is interesting to note that the two measures will provide different rankings. A smaller older boat operated by a high-liner could have a very good catch record but could be way low on the financial investment ladder. Which measure is best? That is a judgment call. At the same time, others may not like either of these measures and would argue for years of participation. Finally, others would suggest that the notion of maintaining the existing distribution is not appropriate and would argue for an equal distribution. The allocation formulae actually used in U.S IFQ programs were usually based on more than one of these measures. (Emphasis added, (Anderson and Holliday 2007), pp. 63-64)

This discussion indicates that consideration of investment and dependence is a way to minimize disruption, but that the balance of emphasis between investment and dependence is a judgment call. While not explicitly evaluating amounts of financial investment, the allocation formulas do take financial investments and related dependence into account as described below. After describing in general how investment and dependence are taken into account, the analysis will assess how the alternatives may vary in terms of the weight placed on dependence and investment.

5.4.2.2 Relation of Rationalization Program Provisions to Policy

Harvesters: Allocation to Vessel Limited Entry Permits

Harvesters in the Shoreside Whiting Fishery

In the analysis of the decision to allocate QS to harvesters on the basis of permits (rather than allocating on the basis of vessels or other types of investments in harvesting) it was noted that "limited entry permits are highly specific assets, the value of which is likely to decline substantially with the implementation of an IFQ program" ((PFMC 2010), p. A-74). Because permits only have value when used in the limited entry groundfish fishery, the owners of the permits are entirely dependent on that fishery for recovery of their investment. Other harvesting capital assets, such as vessels, usually have some degree of mobility and alternative uses in other fisheries, though in worst case scenarios that alternative use might be only for scrap metal. The decision to allocate shoreside QS and mothership catch history assignments to permit owners emphasizes the specificity of these investments and their dependence on the fishery. The equal allocation component of the shoreside QS allocation formula ensures some protection of that investment in that current ownership of the permit alone (without regard to its level of participation) will be sufficient to garner a substantial portion of the allocation based on the equal sharing of the buyback history (43 percent of the nonwhiting QS and 7 percent of the whiting QS is shared equally among all

permits), regardless of the level of fishing activity associated with the permit.[26]

Under all alternatives considered here, the decision to allocate to harvesters based on permit ownership and the amount of QS equally divided among permit owners would remain unchanged. Calculation of the allocation made to permits based on their landing history varies by the alternatives being considered and is discussed below.

Harvesters in the Mothership Sector Whiting Fishery

For catcher vessel permits in the mothership fishery, a threshold amount of participation in the fishery is required in order for the permit to qualify for an initial allocation. The assignment under status quo of catch history for mothership permits requires that a permit qualifying for a mothership endorsement must have at least 500 mt of deliveries to motherships during the 1994-2003 allocation period (see discussion Section 2.1). If the endorsement requirement is modified to match the new allocation periods, some permits with pre-2004 catch history that did not meet the threshold might qualify for an endorsement and allocation under the alternative allocation period. Conversely, some permits that received an allocation under status quo may not meet the qualifying threshold if some of the earlier years of the allocation period were eliminated (Alternative 4). This change would further increase the emphasis on more recent years of harvest.

Processors: Allocation to Buyers (Processors) as Recorded on Fish Tickets

The decision to allocate 20 percent of whiting QS to processors relates to processors' dependence and investment. For the whiting fishery, there was concern that the switch from the derby fishery to the IFQ program would substantially reduce demand for peak processing, thereby resulting in some processing capacity becoming redundant ((PFMC 2010), p. 58). Lengthening the season would result in some capacity being used more intensely and other capacity being completely unemployed. The effects on investment recovery would depend on the distribution of landings among processors and whether or not all processors were able to maintain enough product flow to recover their investment over the long term. The allocation to processors was intended to increase the probability that whiting processors would be able to maintain some product flow and their ability to recover their investment in whiting-specific plants and equipment.

For the nonwhiting fishery, the Council found that while processors are dependent on and invested in the fishery, that dependence and the security of their investments were not contingent on receiving an initial allocation of quota. Prior to IFQs, management of the nonwhiting groundfish fishery was under bimonthly cumulative limits which effectively distributed the harvest of nonwhiting species throughout the year. Therefore there was not the same degree of overinvestment in processing equipment to meet peak demand as occurred in the whiting fishery, and hence not the same concern about stranded processing capacity in the nonwhiting fishery.

Another reason for allocating QS to processors in the whiting fishery but not the nonwhiting fishery was the difference in the expected balance of market power between these two fisheries. There are substantially fewer harvesters in the whiting fishery than in the nonwhiting fishery; therefore it was anticipated that an initial allocation of QS solely to whiting harvesters might be more disruptive of the balance of market power between processors and harvesters than would be the case in the nonwhiting

[26] Permits that participate primarily or only in the at-sea whiting fishery also receive a portion of the shoreside equal allocation of QS, providing value to the permit owner which may be sold or traded to acquire allocations in the sector in which it participates.

fishery.[27] A 20 percent allocation of whiting QS to processors was believed to be appropriate to address the issues of surplus investment in the processing sector and the market power concerns. Under all alternatives considered here, the decision to allocate 20 percent to processors based on receiving history (with recognition for successors in interest) would remain unchanged.

Criteria for evaluating investment and dependence of specific processors are more difficult to construct than for harvesters. The first challenge is simply identifying the entity that would qualify. There is no limited entry permit requirement for processors and there may be multiple parties with interest in the processing assets (e.g. the owner of the land and buildings used by the processing company may differ from the owner of the processing company). The Council decided that the entity listed as the buyer on state fish tickets should receive the initial allocations, as opposed to, for example, the entity that actually owns the processing facility land and buildings (in many cases these belong to the port). The specific criteria used for attributing history to processors are discussed below in the section "Investment and Dependence of Recent Entrants – Processors."

Length of Allocation Period and Level of Participation

One indicator of the degree to which a fishing operation is dependent on a particular fishery is its level of participation on a continuing basis. Fishing operations that participate sporadically and/or at low levels are likely to be less dependent on the fishery than ones participating at higher levels over long periods. Moreover, major investments are generally made and based on long-term participation levels rather than temporary fluctuations that occur over the course of a few years. Therefore, counting participation over a longer allocation period may tend to provide a better, albeit imperfect, measure of dependence than focusing on shorter allocation periods does.[28] However, a long allocation period does not address the investment and dependence that may be established by entities entering toward the end of or after the allocation period but before implementation of the initial allocation. As the number of years between the end of the allocation period and implementation of the initial allocation increases, the degree to which the allocation period alone gives weight to current participation and harvests diminishes (as discussed above, there are other program provisions that also address current participation).

Investment and Dependence of Recent Entrants – Harvesters

Longer allocation periods may fail to measure dependence for fishing operations that have very recently invested in and entered the fishery. For harvesters, this situation is compensated for by allocating to current participants who have purchased trawl permits, and thereby made a highly specific investment in the groundfish fishery. As discussed above, just by virtue of owning a permit, harvesters received an equal share of a significant portion of the total QS allocated: roughly 43 percent of nonwhiting groundfish QS and 7 percent of whiting QS. The equal share allocation provided substantial value to all those who had invested in a permit, regardless of the participation of the permit owner or the landings history underlying the permit. Thus, even though the equally-divided portion of whiting QS was relatively small, permits that participated primarily in the whiting fishery also received a substantial allocation of nonwhiting species QS. Equally-allocated QS provided substantial value to all participants which, once QS trading starts, can be used to tailor QS portfolios for their particular operations.

The remainder of the QS was allocated based on permit landings history. Using permit history as the basis for the allocations rather than a fisherman's or a vessel's history provided a second means by which the

[27] The issue of stranded capital is one of compensating for loss, whereas the balance-of-power issue takes into account fishery dependence and affects the security of investment going forward into the future.
[28] The drop year provision (e.g., drop two or three worst years) was intended to take into account operations which, due to mechanical or personal difficulties, may have had low levels of participation for a limited period of time.

investments of recent entrants were taken into account. The requirement to hold a limited entry permit meant that any new entrant must displace an existing participant. This creates a chain of events by which a recent entrant in the fishery can be linked back to the history of the entity it displaces, and the new entrant assumes credit for the historical landings of the displaced entity. Using permits as the basis for allocation thus places some weight on investment and dependence by entities that recently entered the fishery just before or after the end of the allocation history period and up until the time of initial allocation (in 2010).

Finally, the Council's precedent of allocating quota based on permit history (e.g., the fixed gear sablefish program, (PFMC 1996)) and the allocation options developed early on in the Amendment 20 process, which were also based on permit history (PFMC 2010), resulted in permit prices in the years leading up to the implementation of the program being affected by permits' landings histories. Thus, following through with the allocation to permits based on permit landings history also took some account of investment and dependence by current participants in the fishery (including recent entrants) up through the time the initial allocation process started in mid-2010.

The formula used for assigning catch history to vessel permits in the mothership sector is similar to the one used in the shoreside fisheries, except that there was no equal allocation element for the mothership sector catch history assignments. However, owners of catcher vessel permits participating in the mothership sector also received an allocation of the portion of shoreside fisheries QS that was equally divided among all permits. Thus, although a permit entering the mothership sector toward the end or after the allocation period did not receive a minimum allocation in the mothership fishery (e.g., an equally-shared portion of the mothership sector catch history), the permit did receive some compensation in the form of an allocation of the equally-shared portion of shoreside QS.

Another way to account for more recent entry (current harvest) is to allocate based on periods that include years very close to the year the initial allocation is made. However, even including in the allocation period the year immediately prior to when the allocation was implemented may not place much emphasis on recent investment and dependence without the additional provisions that take into account recent investments. For example, absent opportunity to acquire credit for earlier years of harvest through acquisition of an existing permit, a harvester entering in the last year of the allocation period would receive credit for only one out of the many years of the allocation period. Nevertheless, including more recent years of harvest history would tend to scale the allocations toward the level of harvest of a more recent entrant (whether that level is greater or lesser than that of the harvester the new entrant displaced).

Investment and Dependence of Recent Entrants – Processors

For processors, it is more difficult to take into account investments and dependence established just before the end or after the allocation period. In contrast to harvesters, the entry of one processor is not necessarily linked to the exit of another. There is also no key asset, such as a limited entry permit, whereby one processor can be traced to its predecessor, and hence there is no systematic way to link a current processor to its predecessors' histories. Furthermore, it is difficult to identify a specific act which marks the investment of a new processor in a particular fishery, since many of a processor's assets may serve multiple purposes. The only consistent and definitive signal for entry of a processor into the groundfish fishery is the purchase of groundfish as documented on landings receipts or state fish tickets. Despite these challenges, Council policy included a provision for recognizing a "successor in interest" for processing businesses in cases where successorship could be clearly established (but this occurred in only one instance).

The absence of a requirement for new entrants to displace existing participants and the limited number of cases in which successorship allocation rules created a situation where use of the same allocation history

period for both processors and harvesters led to differential effects with respect to the importance the allocational approach places on current investment and dependence.[29] For harvesters, allocations went to current participants at the time the allocation was implemented (as defined by permit ownership). For processors, a processing company which had exited the whiting fishery (not received whiting since the allocation period) would still receive an allocation, while a company that began receiving and processing whiting after the end of the allocation period would not receive any allocation. Therefore, as the time between the allocation period and initial allocation increases, a greater disjunct between initial allocation recipients and current participation is created for processors than is the case for harvesters.[30]

The decision to allocate to processors means that those who receive an initial allocation will be at a competitive advantage over those that do not receive an initial allocation. Those who entered after the allocation period but prior to the initial allocation will be on par competitively with entities seeking to enter as processors after the initial allocations are completed.

5.4.2.3 Analysis of Effects of Alternatives

As discussed above, the alternative allocation formulas for harvesters take into account dependence and investment by crediting permit ownership and historical landings, while the formulas for processors takes dependence and investment into account almost solely[31] by including purchase history criteria throughout the allocation period. The action alternatives vary in the number and recency of the years included in the allocation formulas.

Relationship between Dependence and Inclusion of More Recent Years' Harvest

Given an allocation based on participation levels and a period of sufficient length to demonstrate reliance on the fishery, the more recent the years of harvest included in the allocation formula, the more likely it is that allocations will reflect current dependence on the fishery. Elimination of earlier years in the allocation period (Alternative 4) increases the influence of more recent years' history on the initial allocations.

Inclusion of more recent years' landings in the allocation formula would have a greater effect on the initial allocations for processors than for harvesters. As described in the introduction to this section, for harvesters, recent entry and related dependence and investment are accommodated by linking the initial allocation to permit ownership, while for processors, entry just prior to the end or after the allocation history period is accommodated only in situations where there is a clear successor in interest, i.e., when a newly-entering processor purchased and replaced an existing facility operated by a prior owner. Thus, allocation periods that include more recent years would have a greater effect in aligning the allocation

[29] Amendment 6 (license limitation) provides an example of another way in which investments made just prior to the end of an allocation period have been taken into account. Under Amendment 6, vessels were given a permit based on landing history. Investments made prior to the end of the qualification period which were not yet operational were given an opportunity to "prove-up" via a provisional permit system. For example, if an individual had recently laid a keel they could qualify for a permit by completing vessel construction within a certain time frame and then meeting certain minimum participation requirements over a number of years.

[30] For processors, the situation is more akin to that which occurred with the sablefish and halibut IFQ program in Alaska. In that program, allocations were given to the entities that owned the vessels at the time of harvest. As the time between the allocation period and implementation of the program increased, the relevance of the allocation period to current participation decreased. Since the allocation period was the primary way that current participation was taken into account, this raised questions as to whether the program had adequately accounted for current participation.

[31] The exception being the single instance in which a processing company qualified for delivery history through the successor-in-interest provision.

with current investment and dependence for processors than would be the case for catcher vessels or permits.

The following table displays the allocation formula alternatives in order of increasing weight placed on current or recent levels of investment and dependence:

Table 5-1. Alternatives ordered from least to most emphasis on current investment and dependence.

Initial Allocation Group	Years Used for Allocation Formula				
	Alt 1: 2003	**No Action**	**Alt 2: 2007**	**Alt 3: 2010**	**Alt 4: More Recent**
Shoreside Harvesters	1994-2003	1994-2003	1994-2007	1994-2010	2000-2010
Shoreside Whiting Processors	1998-2003	1998-2004	1998-2007	1998-2010	2000-2010
Mothership Catcher Vessels	1994-2003	1994-2003	1994-2007	1994-2010	2000-2010

Actual Effect – Projected Alternative Allocations in Comparison to Levels of Investment and Dependence. Effects under the allocation alternatives are analyzed by comparing resulting allocations against participation and dependence during comparison periods (percent of revenue or purchases from West Coast groundfish trawl fisheries). These comparisons are provided for harvesters and processors in Chapter 4.

The threshold level of involvement required to qualify for an assignment of mothership sector catch history (i.e., qualify for an endorsement) is 500 mt. That threshold has been applied to each of the allocation periods. There are two permits that do not meet the 500 mt threshold under any of the alternatives. Under Alternative 4, permits that only have earlier history are eliminated, reducing the total number of permits receiving an allocation by 10 compared with other alternatives, however no permits with history from 2000-2010 were eliminated due to failure to meet the 500 mt threshold.

5.4.3 Harvests and Participants – Current and Historic

5.4.3.1 Policy Guidance

The MSA provides the following direction regarding considering current and historical participation and harvests when developing a limited access program, including limited access privilege programs.

> **[**Any FMP may] establish a limited access system for the fishery in order to achieve optimum yield if, in developing such a system, the Council and the Secretary take into account—
> (A) present participation in the fishery;
> (B) historical fishing practices in, and dependence on, the fishery;
> (MSA Section 303(b)(6))

> I(5) ALLOCATION.—In developing a limited access privilege program to harvest fish a Council or the Secretary shall—
> (A) **establish procedures to ensure fair and equitable initial allocations, including consideration of—**
> **(i) current and historical harvests;**
> **(iv) the current and historical participation of fishing communities;**

> I authorize limited access privileges to harvest fish to be held, acquired, used by, or issued under the system to persons who substantially participate in the fishery, including in specific sector of such fishery, as specified by the Council.
>
> (MSA Section 303A)

5.4.3.2 Relation of Rationalization Program Provisions to Policy

In subsections below, current and historic harvests and participation are considered separately. A determination must be made as to the manner and degree of emphasis that each will be given in the approach to allocation. The following excerpt from the Amendment 20 EIS discusses the consideration of current and historic participation, the trade-offs between the two, and mitigating provisions of the shoreside IFQ program.

> This section [of the Amendment 20 EIS] will focus on the relevance of history during the allocation period to the current needs of participants in the fishery and customary standards for establishing resource allocations. To the degree that the QS allocation deviates from the current needs of participants, there is likely to be more disruption, which may also affect the distribution of job opportunities on vessels and possibly the distribution of activity among communities. Greater disruption decreases the likelihood that the allocation will be considered fair and equitable. At the same time, longtime participants in the fishery may view it as appropriately fair and equitable that they should receive recognition for the seniority of their participation and thus claim the privilege to use the resource. Seniority of use is often a factor considered in deliberation over who should have claim to future use of a resource (e.g., issues of "beneficial use" and "first-in-time" related to how surface and ground water use rights are assigned) (National_Research_Council 1999). Additionally, the MSA requires consideration of both current and historic harvests in determining the initial allocation of QS (MSA 303AI(5)(A)(i) and (iv).
>
> Longer allocation periods take more account of seniority and reduce the need for consideration of hardship provisions. At the same time, use of a longer allocation period implies reliance on long-term averages. If there has been a trend in the change from the start to the end of the allocation period, then the average will not reflect recent conditions in the fishery as well as would a shorter period of more recent years. Additionally, in a changing fishery, the amount of change that the initial allocation will induce will increase as the time between the allocation period and the actual allocation increases. Certain features of the IFQ program will mitigate some of these concerns. They include dropping worst years to address hardship (Section A-2.1.3.a, "Drop Years Provision"), using relative history to address changing fishery conditions across time (Section A-2.1.3.a, Relative History"), and the attribution of landing history to a permit to facilitate entry and exit and reduce the disruption that might otherwise occur through the initial allocation (Section A-2.1.1.b).
>
> Longer allocation periods help to address hardships. Temporary circumstances may interfere with a particular vessel's operations such that its harvests over a certain period do not reflect its level of investment and dependence on the fishery. There are number of ways to deal with such hardship circumstances. One is to provide hardship exceptions and an appeals process, another is to allow vessels to drop their worst years, and a third is to provide a longer period of time over which level of involvement and dependence is determined. The Council's [F]PA relies on a combination of the latter two mechanisms (the opportunity to drop worst performance years and a long period across which to demonstrate performance).

> In the context of a longer allocation period, relative history helps adjust for the variation in fishing opportunity among years. When a longer allocation period is used, it is more likely that it will encompass changes in the fishery such that conditions at the end of the period may vary substantially from those at the start as well as from the average over the period. The use of "relative history" is intended to adjust for changes in the fleet harvest opportunity by measuring each year's landing history for a permit as a percent or share of the total for the fleet rather than in pounds caught (also termed "catch over catch"). This compensates for changing opportunity across time but does not address changes in participants.
>
> The long allocation period and associating the allocation with the permit provides for "seniority" of use, while at the same time new entrants receive an allocation that helps protect their more recent investment. By attributing and accruing landing history to a permit, those who have made investments to enter the fishery more recently do not necessarily lose out to those who made their investments earlier in time. This also allows longtime participants to receive more value for the business that they have built, if they choose to leave the fishery before a privilege system such as IFQs has been developed.
>
> A shorter allocation period would provide less credit for seniority in use while still allocating to those who have invested more recently, according to their level of participation. A shorter period would potentially raise more issues of hardship by making it more difficult to allow an entity to drop enough years to cover hardship issues. Some may experience no hardships during the allocation period while others may have circumstances that affect production for a number of years. Allowing permits to drop any more than their one worst year from a four year allocation period would substantially dampen the amount of QS received by those with a consistent participation history (evening out the allocation). On the other hand dropping the worst 2 or 3 years from an 11-year allocation period can be done with much less impact on the allocation to those with consistent participation. ((PFMC 2010), pp. A-150 – A-151).

5.4.3.3 Current Harvest and Current Community Participation

Policy Guidance

Current harvest level is one of several participation criteria which must be considered and may be used in the initial allocation of quota shares. Other participation-related criteria that must be considered includes historic harvests, employment, and investment and dependence (MSA Section 303AI(5)).

The NOAA LAPP guidelines do not discuss "current harvest" very much in relation to allocation.[32] However, they make passing reference to current harvest distribution with respect to LAP programs that do not include FCs and RFAs:

> ... the main concern was to set up an allocation that would change the fishery from the *status quo* to an IFQ fishery with a minimum ***disruption of the current distribution*** between the recipients. When that was the goal, the question became what sorts of things could be used to quantitatively compare allocations among the potential recipients? Looking at participation characteristics was a good way to do this. Catch histories are a way to compare the relative success of various participants. (Anderson and Holliday, p. 63, emphasis added)

Here, it is inferred that the goal of taking current harvest levels into account is to minimize disruption in

[32] Twice when directly quoting the act and once when discussing an auction approach to initial allocation and the need to take into consideration current harvests. (Anderson and Holliday, 2007, p. 65).

the fishery as measured against the current distribution of harvest among participants.

Relation of Rationalization Program Provisions to Policy

The allocation formulas directly reflect the distribution of current harvests to the degree that more recent years are included in the allocation formula (years that are reasonably construed to be "current" for purposes of allocation).

Harvesters

Current *participation* of harvesters is taken into account by the allocation to current owners of permits (as of 2010) based on the assumption that current permit owners are current participants. Current *harvest* is taken into account indirectly, again based on the assumptions that those with permits are currently harvesting in the fishery (see Section 5.4.2 for a detailed description of the link between permit ownership and the QS allocation that an individual will receive). While some current permit owners may not take part in the fishery, from a perspective of economic rationality, the expectation is that, on average, those owning permits will have sought to use them in order to earn a return on their investments. At the same time, the scale of an entity's current harvest directly determines the initial allocation only to the degree that current years are included in the allocation formulas.

One of the substantial changes occurring in the fishery in more recent years is the imposition of management measures to eliminate targeting on overfished species. Trip limits were reduced substantially in 2000 when five stocks were declared overfished. By 2002, a total of seven stocks were declared overfished. In that year, rockfish conservation areas were implemented to close the continental shelf to bottom trawling. This substantially altered harvest patterns beginning in 2002.

To address these changes, the program includes an allocation adjustment based on post-2002 harvests, but only with respect to the allocation of overfished species to permits in the shoreside fishery (allocations of nonwhiting species' QS are not provided to processors, and the permits in the mothership fishery are assigned catch history only for whiting and not other species). The post-2002 data used was geographic harvest pattern data, not data on actual harvest levels. Permit harvest level information from 1994 through 2003 was used to determine the allocations for all non-overfished species, including the amounts allocated equally (shapes 1 and 2 in Figure 5-1). QS for overfished species was allocated proportionally to the allocation of non-overfished species QS (shape 3). The proportional allocation was achieved using fleet average bycatch rates by area for 2003-2006 (shape 4). The average rates used for any particular permit were determined based on the areas where that permit fished during 2003-2006 (shape 5). These elements of the allocation formula then combine (shape 6) to result in the QS allocation for overfished species (Shape 7).

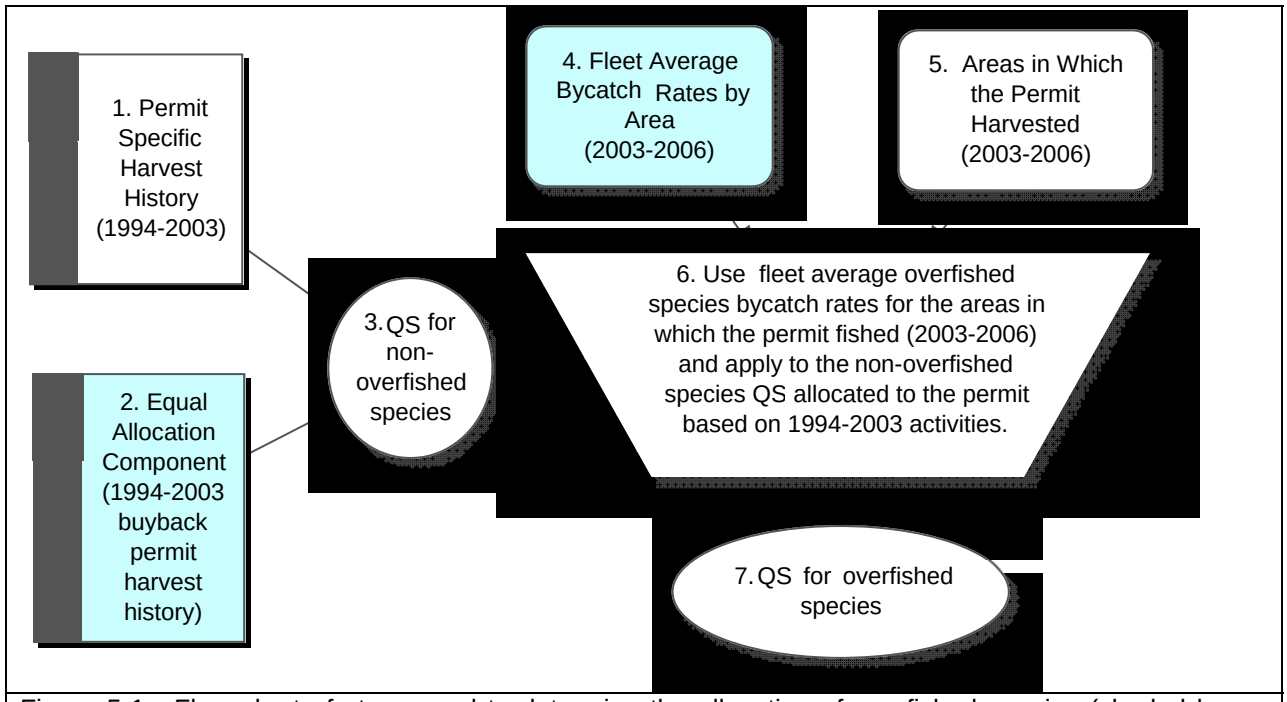


Figure 5-1. Flow chart of steps used to determine the allocation of overfished species (shaded boxes indicate the use of fleet-wide data, unshaded boxes indicate permit-specific data and calculations.

Some examples of the distinction between the way 1994-2003 information was used in the allocation for non-overfished species and the way 2004-2006 information was used in the allocation for overfished species are:

- If two permits had identical 1994-2003 history, but after 2003 (2004-2006) one landed 1,000,000 pounds and the other only 1,000 pounds, the two permits could receive identical allocations of overfished species as long as the latitudinal and depth distribution of their 2003-2006 harvests were the same.
- If two permits had 2003-2006 history that was identically distributed geographically, but one permit had 10 times the 1994-2003 history of the other permit, then (due to the QS allocated based on permit history) one permit would generally receive 10 times the allocation of overfished species of the other permit.
- Regardless of how much a permit harvested from 2004 through 2006, if it had no 1994-2003 history it would receive no allocation of overfished species QS except for those portions derived indirectly from equal allocations of target species plus a direct equal allocation of canary rockfish from the allocation formula for that species.

Thus, using 2004-2006 history in this manner did not reward higher levels of 2004-2006 harvest with increased QS allocations.

The Amendment 20 EIS also discusses the fact that the buyback program implemented in 2003 would have substantial effects on patterns of harvest in the fishery, which would not be picked up in allocation formulas that did not take into account harvest levels after 2003.

> One of the major factors that will result in differences between the pattern of initial QS allocation and the patterns of fishery harvest in more recent years will be the effects of the buyback program. The buyback program occurred just after the 2003 control date. It substantially expanded fishing opportunity for all vessels, as reflected by higher trip limits, and initially

> resulted in a change in the proportional distribution of permits along the coast. The most effective way to address these changes would be to include years after 2003 in the allocation period. However, doing so 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. ((PFMC 2010), A-151)

As indicated in this paragraph, at that time, the Council considered the post-2003 conditions created by the buyback program but chose not to make a change to the allocation period for the indicated reasons.

Chapter 3 documents changes which have occurred in the whiting fishery after 2003. One of the purposes of this EA is to assist the Council in considering shifts in the fishery that occurred after 2003 and determining whether or not those shifts warrant a change in the allocation period to include more recent years (Alternatives 2 and 3) and potentially increase the emphasis on those later years (Alternative 4).

Processors

The MSA identifies the need to consider current and historic harvests for allocations to harvesters; however, for allocations to processors, the emphasis placed on current participation is less clear. Processing history is not mentioned *per se* but processing employment, investment and dependence, and the current participation of communities (of which processors are a part) are directly mentioned. Together, given that allocations are being made to processors, these factors might indicate that current participation levels for processors (e.g., purchasing or processing activity) have relevance for decisionmaking. For a processor entering the whiting sector after the allocation period, the only ways to qualify for an initial allocation are through buying out an existing processor (i.e., becoming a successor in interest)[33] or through the acquisition of a limited entry permit (accessing a portion of the initial allocation to harvesters). A whiting processor with history during the initial allocation period that expands operations after the initial allocation may increase its share of the allocation through similar avenues. However, as with harvesters, the scale of a processor's current activities directly determines initial allocations only to the degree that current years are included in the allocation formulas.

Under the alternatives to status quo, in addition to changing the allocation period, the recent participation requirement may also be shifted. For status quo, the recent participation period included the seven years of the allocation period. For each alternative, the recent participation period has been re-specified to cover the last seven years of the allocation period, or six years in the case of Alternative 2 (1998-2003). As a result, some processors that may have qualified based on their earlier years of activity may be eliminated, thereby increasing the allocation going to those processors with more recent activity.

Communities

No separate allocation is made to communities. Current community participation is taken into account via the allocations to harvesters and processors that are community members. In the Chapter 4 analysis, information on current participation is presented for communities and the initial allocations to entities in the communities, in order to allow decision-makers to assess the likely impacts of the initial allocations on currently-participating communities. The dependence of communities on the viability of the entities receiving the initial allocations is indicated by displaying the amount of fishing activity (processing and harvesting) supported by those entities involved in the directed whiting fishery as compared to those entities not involved.

[33] Only in one instance did a processor qualify for initial allocation based on the successor in interest provision.

Analysis of Effects of Alternatives

Disruption to Current Activities

As was discussed in Section 5.4.2 on investment and dependence, as the time between the end of the allocation period and the initial allocation increases, there is increased potential for disconnect between the distribution of activity in years immediately prior to the allocation and the distribution of the initial allocation. This disconnect creates a potential for disruption of current activities. There are two program features that help to reduce the degree of disruption that occurs as a result of the initial allocation (whether the time between the end of the allocation period and the distribution is a few months or many years): (1) the January 2004 advance notice of proposed rulemaking announcing the November 6, 2003 control date, and (2) allocation to current owners of permits based on history of the permit. Opportunities to acquire a share of the initial allocation through acquisition of a limited entry permit provided all participants with an opportunity to plan and adjust for the initial allocation.[34] These mitigating factors affect the amount of potential disruption of current activities; nevertheless, the amount of potential disruption would decrease as more recent (current) years are included in the initial allocation period.

One measure of disruption is the difference between the initial QS allocation and the distribution of harvest during comparison periods. Three comparison periods were considered: 2004-2006, 2007-2010, and 2011. At issue in this analysis is whether or not the 2011 allocation (status quo) should have been implemented. The appropriateness of using the 2011 baseline for assessing disruption should be considered in this light. Measures of the differences between the comparison periods and the allocations for each entity receiving an allocation are provided in Section 4.3.1.1 (shoreside harvesters), 4.3.1.2 (mothership catcher vessels), and 4.3.2.1 (shoreside processors). One measure of the total amount of disruption is the difference between entities' shares of the comparison period harvests and their initial allocations (i.e., the sum of the absolute values of the differences). The greater this sum, the greater the degree of disruption relative to the baseline.

Table 5-2 summarizes the number of entities not qualifying for any allocation and their amount of history (average annual shares of activity) during the three comparison periods for shorebased whiting catcher vessel permits, catcher vessels delivering to whiting motherships, and shorebased processors (for processors, at least one metric ton of whiting deliveries is required for it to be included in this table).

[34] This opportunity is similar to that afforded new entrants after the program is implemented (i.e., the opportunity to buy quota).

Table 5-2. For entities active during comparison periods, the number receiving no allocation and total whiting deliveries or receipts by those entities during the comparison periods.

	Alternatives				
Comparison Periods	**No Action**	**Alt 1: 2003**	**Alt 2: 2007**	**Alt 3: 2010**	**Alt 4: More Recent**
Catcher Vessel Permits – Shoreside History					
2004-2011	All permits received some initial allocation---				
Whiting Processors – Shoreside History					
2004-2006	6 (3.7%)	6 (3.7%)	1 (0.3%)	1 (0.3%)	1 (0.3%)
2007-2010	9 (13.2%)	9 (13.2%)	4 (1.2%)	5 (6.7%)	2 (0.2%)
2011	5 (19.8%)	5 (19.8%)	3 (0.0%)	4 (11.6%)	2 (0.0%)
Catcher Vessel Permits – Mothership History					
2004-2006	0 (0.0%)	0 (0.0%)	0 (0.0%)	0 (0.0%)	0 (0.0%)
2007-2010	1 (0.1%)	1 (0.1%)	1 (0.1%)	1 (0.1%)	1 (0.1%)
2011	0 (0.0%)	0 (0.0%)	0 (0.0%)	0 (0.0%)	1 (2.2%)

Note: Permits with no allocation but with history in 2011 acquired in-season transfers of whiting quota pounds from initial allocation recipients.

Recent Participation Requirement

Recent participation requirements for shorebased processors screen out some entities that may otherwise qualify for allocations. The number of processing entities screened out by recent participation requirements under each alternative and their share of whiting buying history is shown in Table 5-3. The table also shows the number of processors and their initial allocations under the No Action Alternative (status quo) that would be screened out by the recent participation criteria under the four action alternatives.

Table 5-3. Processing entities screened by recent participation requirements, by alternative.

	Alternatives				
	No Action-1998-2004	**1: 1998-2003**	**2: 1998-2007**	**3: 1998-2010**	**4: 2000-2010**
Recent Participation requirement (RP) - received at least one mt in each of two years during: 1/	**1998-2004**	**1998-2003**	**2001-2007**	**2004-2007**	**2004-2010**
Total Processors during the Period	20	19	23	23	23
Number Screened Out by RP	8	7	8	9	6
Share of History Screened Out	0.29%	0.05%	3.7%	7.03%	1.28%
Number of Processors Meeting RP Criterion	12	12	15	14	17
Number of Processors Receiving an Initial Quota Share Allocation 2/	10	10	15	14	17
	Effects on Status Quo (SQ) Quota Share Recipients				
Number of SQ Quota Share Recipients Screened Out	-	0	0	1	0
Total Amount of No Action Allocation Screened Out	-	0%	0%	2%	0%

1/ Only whiting processors with at least one mt in a single year during the period under consideration are included. Processors receiving less than one mt are considered to be receiving incidentally caught whiting, for which this allocation does not apply.
2/ Two processors that met RP requirement under No Action did not apply for initial allocations. It is assumed these two processors would also not receive initial allocations under Alternative 1. These two processors failed to meet RP requirements under Alternatives 2, 3 and 4.

The recent participation period under Alternative 3 (2004-2007) does not go through the end of the allocation period (1998-2010). The effect of not including 2008-2010 compared to an earlier version of Alternative 3 in which the recent participation period extended through 2010 is to eliminate three processors that together would have qualified for 1.4 percent of the quota shares. Eliminating history for these three processors results in a 7.4 percent increase in the QS allocations to the 14 qualifying processors.

Some communities depend on whiting processors to serve not only the whiting fishery, but also other fisheries that support the community. Chapter 3 provides information on the dependence of communities on processors handling whiting. If the allocation to processors is such that some are significantly disadvantaged and, as a result, go out of business, and if no other buyers move in to take their place, then other fisheries in the community and the community as a whole may be adversely impacted. Section 4.3.3 provides estimates of how quota may be distributed among communities at the time of initial allocation, and Section 5.8.3 discusses the how the initial allocation might affect economic activity in a community.

5.4.3.4 Historic Harvests and Historic Community Participation

Policy Guidance

At the start of Section 5.4.3, the MSA provisions relevant to historic participation are listed. Historic fishing practices and dependence are relevant in the development of limited access systems (MSA 303(b)(6), see page 179) and with respect to LAP programs, historical harvests and historical participation by communities are cited as being particularly relevant to the fairness and equity of the programs (MSA 303A(c)(5)(A)(i) and (iv), see page 179). One reason for the pertinence of historic harvest to fairness and equity may be our culture's historic reliance on "seniority of use" as "a factor considered in deliberation over who should have claim to future use of a resource (e.g., issues of 'beneficial use' and 'first-in-time'

related to how surface and ground water use rights are assigned)" ((National Research Council 1999), as cited in (PFMC 2010), p. A-150).

Historic harvests and participation are also important from other economic and social perspectives. From an economic perspective, fishing handling and support businesses and infrastructure are developed and positioned based on long-term patterns of activity. Concurrent with the development of the economic relations and infrastructure are the development of the social networks and infrastructure. Historic patterns are therefore an indicator of structures in the human environment which are deeply embedded and difficult to evaluate but nevertheless important to the quality of human life.

Relation of Rationalization Program Provisions to Policy

The existing allocation formulas give a weight to historic participation by extending the allocation period back to 1994 for vessels and to 1998 for processors. The period goes back to 1994 for permits because it is the first year of the license limitation period, which started a new era, changing related delivery patterns and who was able to participate in the fishery (see (PFMC 2010) p. 148). For processors there is no limit on new entry. The whiting processor allocation period starts with 1998, the first year after the establishment of the whiting allocation framework which established a three-way split in the whiting allocation (shoreside, mothership, and catcher-processor sectors) and a framework for modifying the allocation. The allocation among these sectors has not changed since that time.

With respect to the importance of historic harvest from other social and economic perspectives, on the one hand, allocation formulas that rely on longer time periods may better-reflect some of the patterns within the industry and communities that are established based on long-term conditions in the fishery. On the other hand, recent developments in the fishery may cause major disruptions in those patterns. If policy adjustments are made that incorporate recent developments, then short-term patterns may be able to survive over the long term; or they may disappear, and attempts to support them may result in further disruption. Assessing these patterns and their dynamics is difficult. The existence of physical infrastructure is amenable to some degree of documentation, but the economic and social relations built around the fishery are difficult to document and summarize in a manner and with timeliness that is helpful to decision-makers. Further, the effects of a particular allocation on relational patterns and infrastructure that are indirectly related to fishing are difficult to project in the context of other constantly changing social and economic conditions. This paucity of information creates a challenge in assessing the appropriate balance of emphasis between current and historical participation and harvests in developing allocation formulas.

Analysis of Effects of Alternatives

For the portion of the QS allocation formula related to individual permit history, Alternative 1 emphasizes entirely historic years (current as of the control date). For processors, No Action (status quo) includes one post-control date year in the allocation period. Other alternatives include more recent years and decrease the emphasis on earlier years in the allocation period. Alternative 4 places the most emphasis on recent years by eliminating the earlier years of the allocation periods (1994-1999). The relative emphasis on each year of the allocation period and different historically important segments is shown in Table 5-4. For example, it is shown that the pre-AFA-implementation years have a relative weighting of 50 percent under No Action, 29 percent under Alternative 3, and 0 percent under Alternative 4. Conversely, it is shown that post-AFA-implementation years receive a weighting of 30 percent under status quo, 59 percent under Alternative 3, and 91 percent under Alternative 4.

Table 5-4. Relative weighting of selected historic periods by allocation alternative for permits.

Alternatives:		**No Action**	**Alt 1**	**Alt 2**	**Alt 3**	**Alt 4**
Allocation Period:		1994-2003	1994-2003	1994-2007	1994-2010	2000-2010
Number of years in the allocation period.		10	10	14	17	11
Weight Per Year		10%	10%	7%	6%	9%
Pre AFA Years	(1994-1998)	50%	50%	36%	29%	0%
AFA Implementation Years	(1999-2000)	20%	20%	14%	12%	9%
Post AFA Years – Pre-buyback	(2001-2003)	30%	30%	50%	59%	91%
Post Buyback Years	(2004-2010)	0%	0%	29%	35%	55%

Note: The allocation formula uses a relative measure of landings history. Under a relative measure, individual history for any particular year is measured as a share of all history in that year. Consequently, performance in any given year is measured in comparison to other participants during the year and not affected by changes in total harvest or the OY.

Table 5-5. Relative weighting of selected historic periods by allocation alternative for processors.

Alternative:		**No Action**	**Alt 1**	**Alt 2**	**Alt 3**	**Alt 4**
Allocation Period:		1998-2004	1998-2003	1998-2007	1998-2010	2000-2010
Number of years in the allocation period.		7	6	10	13	11
Weight Per Year		14%	17%	10%	8%	9%
Pre AFA Years	(1994-1998)	14%	6%	10%	8%	0%
AFA Implementation Years	(1999-2000)	29%	33%	20%	15%	9%
Post AFA Years	(2001-2010)	57%	50%	70%	77%	91%
Post Buyback Years	(2004-2010)	14%	0%	40%	54%	64%

Note: The allocation formula uses a relative measure of landings history. Under a relative measure, individual history for any particular year is measured as a share of all history in that year. Consequently, performance in any given year is measured in comparison to other participants during the year and not affected by changes in total harvest or the OY.

Community historic participation in the shoreside whiting fishery is documented in Chapter 3. Section 4.3.3 provides estimates of how whiting quota may be distributed among communities at the time of initial allocation as well as additional information on community dependence and involvement in the fishery, and Section 5.8.3 discusses the how the initial allocation might affect economic activity in a community.

5.4.3.5 Employment (processing and harvesting)

The MSA requires consideration of employment in the harvesting and processing sectors when establishing initial allocations for LAP programs. In general, the provisions have been developed to account for current and historic participation in the fishery, while at the same time transitioning to a rationalized fishery. Rationalization inevitably implies a change in the nature and patterns of employment in the processing and harvesting sectors. There is no reason to believe that allocation to certain harvesters or certain processors is more likely to result in more stable or higher employment than would allocating to other harvesters or processors. Consequently, account is taken of processing and harvesting labor by

distributing allocations based on the current and historic harvest patterns in the fishery. As discussed in the previous sections, both current and historic harvest patterns are relevant to existing economic and social networks, and the labor force is positioned within these networks. It is also difficult to predict the effect on labor because of the post-implementation quota trading and consolidation that is likely to occur under rationalization. Overall, as discussed in previous sections, it is likely that allocations that are least disruptive to harvesters and processors would also be the least disruptive to employment.

5.4.4 Discrimination between Residents of Different States

MSA National Standard 4 requires that management measures not discriminate between residents of different states. While the alternatives may result in differing distribution of initial allocations among the states (see Section 5.4.3), none of the allocations explicitly discriminate in favor of or against residents of a particular state.

5.4.5 Stability and Minimizing Disruption – Fairness and Equity Considerations

5.4.5.1 Policy Guidance

Section 303(a)(c)(5)(A) of the MSA requires that the Council "establish procedures to ensure fair and equitable initial allocations" and then it lists a number of specific factors related to fairness and equity that should be included in the Council's considerations (see page 179 for the list of factors cited in the section). There are other fairness and equity considerations to be taken into account, including those related to "arbitrary and capricious" actions. In this section, stability and disruption are considered as a fairness and equity issue directly related to concerns about arbitrary and capricious actions. In the following section, other issues related to stability and disruption are addressed.

The introduction to the goals and objectives of the groundfish FMP states:

> The Council is committed to developing long-range plans for managing the Washington, Oregon, and California groundfish fisheries that will promote a ***stable*** planning environment for the seafood industry, including marine recreation interests, and will maintain the health of the resource and environment. (Emphasis added, (PFMC 2011), p. 7)

The LAPP guidelines (Anderson and Holliday 2007) draw connections between requirements to take into account investment and dependence in a fairness and equity context and minimize disruption, specifically with respect to allocations among current participants (see page 181). Objective 14 to the groundfish FMP also addresses disruption: "When considering alternative management measures to resolve an issue, choose the measure that best accomplishes the change with the least disruption of current domestic fishing practices, marketing procedures, and the environment." The issue of recognizing seniority of use also engages fairness and equity sensibilities. The concept of deference to "seniority of use" in allocation decisions (discussed in the Policy Guidance section of Section 5.4.3.4) is also one that tends to reduce disruption (depending on the context in which it is applied) and provide stability.

The concepts of stability and disruption are also closely related to the terms "arbitrary and capricious." The definitions of "arbitrary" which may apply in the current contexts are "based on or determined by individual preference or convenience rather than by necessity or the intrinsic nature of something" and "existing or coming about seemingly at random or by chance as a capricious and unreasonable act of will." The relevant definitions of "caprice" may be **"**a sudden, impulsive, and seemingly unmotivated notion or action" and "a sudden usually unpredictable condition, change, or series of changes." Decisions

that are not based on necessity, and that are random, sudden, seemingly impulsive, and unpredictable are likely to be destabilizing and disruptive.

5.4.5.2 Relation of Rationalization Program Provisions to Policy

Issues related to stability and disruption as reflected in considerations of current and historic participation have been addressed in previous sections. This section focuses on other fairness and equity-related aspects of destabilizing or disruptive effects of the alternatives under consideration, as well as other fairness and equity issues.

In this regard, one of the primary issues of concern to participants and fishery managers concern the announcement of control dates whenever consideration of a new limited entry program is announced. Legally, these control date announcements are intended to reduce the chances of a takings argument, i.e., that those who do not receive an initial allocation and who can only enter by acquiring permits from others will argue that they had an established right of access which was denied them without compensation. A concern from a management perspective is that the act of considering a limited access system can exacerbate management problems in the fishery during the period the system is under consideration. These problems can arise either from new entry (where limited entry programs do not already exist or do not prevent shifts between sectors within a program, e.g., a shift from nonwhiting harvest to whiting harvest within the groundfish program), or from an expansion of effort by participants already in the program. Given that control dates have been used in the past and are likely to be used in the future, there are a number of fairness and equity concerns around their use. Particularly, if a control date is announced but not relied on (i.e., fishing activities after the control date are allowed to augment allocations):

- those who increased their investments and activities despite the caution provided by the control date are rewarded to the disadvantage of those who refrained from increasing investments or activities,
- participants in other segments of the fishery or in other fisheries will be penalized because, in the absence of a credible control date, their fisheries may be destabilized if the Council considers managing those fisheries with a limited access system.

The degree of destabilization caused by implementing a program which abandons a control date depends on whether participants in other fisheries believe that the abandonment of a date for one program indicates a precedent for future deliberations on other programs.[35] If a fishery is destabilized as a result of the consideration of a limited access system, then the act of consideration itself increases the likelihood that the system will be implemented. Such a result would likely seem unfair to those who may oppose the new system. Additionally, this type of dynamic may result in new systems that might not otherwise have been necessary, or in premature implementation of such systems.

For processors, the effect of control dates is different than for harvesters. While a Council is considering implementing a limited access program, a processor interested in increasing its allocation might offer higher prices than it would otherwise in order to attract a greater share of deliveries. On the one hand, the direct effect would be beneficial to harvesters. On the other hand, such gaming the system could have adverse effects. First, offering higher prices might have a predatory pricing effect, weakening other processors and inhibiting entry of new processors. Second, higher prices might encourage more activity on the part of harvesters despite the control date, undercutting the effectiveness of the control date with respect to fishery participation.

[35] This effect could be cross-regional to the degree that fishermen in other regions believe the action taken here sets a precedent that will be followed elsewhere.

When the Council implements a new limited access system it generally relies on announced control dates. The history of use of such control dates is shown in Table 5-6.

Table 5-6. Qualifying dates and control dates for rationalization programs announced in the Federal Register.

Program	Related Program Provision and date	Announced Control Date
Amendment 6, Groundfish License Limitation Program (**Implemented 1994**)	End of qualifying period – **August 1, 1988** (allocations to current owner of vessel based on vessel history)	**August 1, 1988**
Amendment 6, Vessel Construction Cutoff (**Implemented 1994**)	For newly constructed vessels, fishing must commence by **September 30, 1990** in order to qualify for a license. (allocations to current owner of newly constructed vessel)	**September 30, 1990**
Amendment 9, Fixed Gear Sablefish Endorsements (**Implemented 1997**)	End of allocation period – **December 31, 1994** (allocations to current owner of permit based on permit/vessel history)	**June 29, 1995** (there was no substantial fixed gear sablefish fishery between December 31, 1994 and June 29, 1995 therefore the earlier date was used for the end of the allocation period)
Fixed gear sablefish tier assignments. (**Implemented 1998**)	End of allocation period – **December 31, 1994** (allocations to current owner of permit based on permit/vessel history)	**June 29, 1995**
Limitation on new entry into the whiting fishery. (Amendment 15)	End of qualifying period December 31, 2006 (designation based on vessel history)	**a/**

a/ Amendment 15 was originally formulated under the authority provided by the American Fisheries Act but later implemented solely under the Council's MSA authority. Initially, AFA-related control dates were announced: September 16, 1999 (for vessels) and June 29, 2000 (for permits). The Council tabled action on Amendment 15 in 2001 and did not resume action until the fall of 2006—a four-year hiatus during which the November 6, 2003 trawl rationalization control date was announced and work on the trawl rationalization program began. At its June 2007 meeting, the Council rejected taking action on Amendment 15 under the direction provided by the AFA and relied instead on its authority under the MSA. "By rejecting action under the AFA, the Council also rejected participation dates relative to the AFA control dates previously specified by the Council (64 FR 66158 and 65 FR 55214) or the passage of the AFA (1999)" (PFMC and NMFS 2007, pg. 20). The Council took final action on Amendment 5 in September 2007 and the program was implemented beginning in 2009. During Council presentations, public testimony and in description of its actions, the Council made clear that Amendment 15 would be superseded by Amendment 20 with its 2003 control date (e.g., Vessels that qualify for whiting fishery participation under Amendment 15 were not guaranteed future participation or inclusion in the Pacific whiting fishery under Amendment 20 http://www.pcouncil.org/groundfish/ fishery-management-plan/fmp-amendment-15/).

The Council has also announced some control dates that have not lead to recommendations to implement programs:[36]

- Allocating between and within commercial and recreational fisheries – April 9, 1998
- Limiting Entry to the Open Access Groundfish Fishery – November 5, 1999 and September 13, 2006
- Highly Migratory Species – March 9, 2000
- Spiny Dogfish – April 8, 2005

[36] Other control dates have been announced for activities other than fishing. For example, the fixed gear sablefish program used November 1, 2000 as a date afterwhich any new permit acquisition in excess of permit ownership limits would not be grandfathered in when the program was implemented.

While there are fairness and equity reasons for relying on a control date (as well as other reasons, see following section), there are also reasons for not relying on a control date. In the current program, the Council explicitly did not rely on the control date with respect to the allocation period for processors. Information was also used from post-control date activities for the allocation of overfished species to permits participating in nonwhiting trips. The reasons for using the post-control date activities for allocation of overfished species are discussed on page 179. The Council discussion of the use of a post-control date qualifying year for allocation to processors included that the year 2004 was used because it was part of an industry group compromise to recognize more recent capital investment while staying as close as possible to the control date.[37] Section 5.4.3.3 discusses consideration of current participation and harvest. This information is fully presented in Chapters 3 and 4, including a summary of changes in the fishery occurring since 2003 (see Section 3.3.1.2).

5.4.5.3 Analysis of Effects of the Alternatives

The No Action alternative, by using 2004 as the end of the allocation period for processors, does not incorporate the control date in the final allocation criteria. This creates fairness and equity issues for those who, based on the control date, chose not to enter or invest in the fishery and thus may degrade the effectiveness of any future control dates, thereby creating fairness issues *vis a vis* other sectors of the groundfish fishery or other fisheries. Additionally, it raises a concern of fairness with respect to those who entered the fishery after 2004 and questions the rationale for extending to 2004 but not beyond.

Alternative 2 uses allocation periods that end with the control date for all sectors, thereby imposing a heavy weight on the importance of the control date with respect to discouraging speculative increases in participation. However, Alternative 2 still leaves in place the use of the 2004-2006 permit catch distributions for the purpose of determining the spatial distribution of effort for allocation of overfished species quota share. While the use of this post-2003 harvest information does not reward increased participation, it does alter initial allocations depending on how an entity's harvesting effort was distributed geographically, thereby potentially rewarding participants who increased their targeting activity in areas of higher contact with overfished species (again, regardless of the actual level of that harvest).

Alternatives 3, 4 and 5 place progressively more importance on recent participation at the expense of adhering to the control date in determining the allocations that participants receive. Specifically, increasing credit is given for more recent years of participation. The effect is to decrease fairness and equity with respect to factors discussed in this section, but there might also be an increased perception of fairness and equity with respect to factors discussed in other sections.

5.5 Stability and Minimizing Disruption – Other Considerations

5.5.1 Policy Guidance

If a control date is abandoned, future control dates may not have sufficient credibility to make them effective. Under such circumstances, numerous instabilities and disruptions may develop in the fishery. Groundfish FMP objective 2 states that the desired outcome is a fishery that is diverse, *stable*, and profitable (emphasis added ((PFMC 2011), p. 7). As mentioned previously, Objective 14 to the groundfish FMP addresses stability from the standpoint of minimizing disruption: "When considering

[37] Concern was also expressed that there had been some very poor years at the end of the allocation period which limited the opportunity to establish history. However, it should be noted that the relative share approach to allocation measures each entity's performance relative to all others active in that year, reducing the significance of between-year variation in participation levels.

alternative management measures to resolve an issue, choose the measure that best accomplishes the change with the least disruption of current domestic fishing practices, marketing procedures, and the environment." The goal of Amendment 20 includes "create individual economic stability." While an objective in itself, stability (minimizing disruption) contributes to other FMP objectives related to total economic benefits and community and sector health, as well as equity (discussed in the previous section).

5.5.2 Relation of Rationalization Program Provisions to Policy

With respect to stability and minimizing disruptions, the effects pertaining to the current action discussed here relate to adopting an allocation period that does not rely on the control date. Other issues related to stability and minimizing disruption, such as changes imposed on the fishery in 2011 relative to conditions just prior to program implementation and changes from the 2011 allocation (No Action) to a different allocation (Alternatives 2-5) are addressed in the section on current participation and harvest (Section 5.4.3.3).

As discussed in the previous section, not using a control date may create more potential for future disruptions in this and other fisheries if the development of additional limited access systems are considered. These disruptions are not only important with respect to the fairness and equity considerations previously discussed but may have other adverse effects as well, depending on the management system in place. In general, conservation objectives will be met regardless of the amount of fishing effort, but in the absence of a credible control date an influx or increase of effort may require increased attention on the part of fishery managers, thereby detracting from the resources available to consider proposals for new limited access systems or to address other needs of the management system. Additionally, constantly changing and increasingly restrictive management measures could have adverse affects on the industry and communities. For programs where effort is controlled primarily through two-month cumulative limits (such as the open access groundfish fishery), heightened fleet effort would be economically disruptive, with the increased effort reducing cumulative limits and thereby reducing profitability of current participants. For a program controlled with season closures, safety concerns might arise with shorter seasons and increased crowding on the fishing grounds. Product quality could suffer as well. Instability and disruptive impacts in the harvest sector would affect overall sector health and reverberate to processors and communities.

5.5.3 Analysis of Effects of Alternatives

As discussed in the previous section, only Alternative 1 incorporates the control date into the qualifying periods for all participants. No Action incorporates the control date for harvesters but not for processors, for which the end of the allocation period is 2004. Alternatives 3, 4, and 5 do not incorporate the control date in the allocations periods and are differentiated based on other factors having to do with the recency of the years included. These effects are described above in Section 5.4.3. The effects of not incorporating the control date into the allocation period are discussed in Section 5.5.2.

5.6 Sector Health

The following objectives from the groundfish FMP have been categorized as relating to sector health.

> Provide for a viable, profitable . . . groundfish fishery (Amendment 20, Objective 2)
>
> Promote measurable economic . . . benefits through the seafood catching, processing, distribution elements, and support sectors of the industry (Amendment 20, Objective 6)

Maximize the value of the groundfish resource as a whole (Groundfish FMP Goal 2)

Promote year-round marketing opportunities and extend those opportunities as long as practicable during the fishing year (Groundfish FMP Objective 7)

Avoid unnecessary adverse impacts on small entities (Groundfish FMP Objective 15)

Include measures to assist… entry-level and small vessel owner-operators, … through set-asides of allocations… or economic assistance in the purchase of quota. (MSA – 303AI(5)I)

In general, long-term overall health of the sectors is not expected to be substantially affected by a redistribution of QS and CHA within the ranges considered here.

5.7 Labor

5.7.1 Policy Guidance

The following MSA sections and objectives from the groundfish FMP have been categorized as relating to labor interests.

Include measures to assist… captains, crew… through set-asides of allocations… or economic assistance in the purchase of quota. (MSA – 303AI(5)I)

Amendment 20. Promote measurable… employment benefits through the seafood catching, processing, distribution elements, and support sectors of the industry (Amendment 20, Objective 6)

Promote the safety of human life at sea (MSA – National Standard 10,
Groundfish FMP Objective 17)

5.7.2 Relation of Rationalization Program Provisions to Policy

The trawl rationalization program is expected to result in fewer but more stable job opportunities and a possible shift in the nature of compensation to crew members (traditionally compensation is based on crew shares). Additionally, a number of new jobs have been generated for observers. Safety in the shoreside non-whiting trawl fishery was not expected to be substantially affected (because that segment of the fishery was previously managed under two month cumulative limits), but a safety benefit for the whiting components of the fishery was expected (since those fisheries were managed as a “derby” or a race to catch fish). Some safety benefits were also expected to the degree that the fishery is more profitable and more money is put into vessel maintenance. The ultimate geographic distribution of jobs was uncertain given the tradability of quota and uncertainty about which ports and vessels the quota would flow toward over time.

5.7.3 Analysis of Effects of Alternatives

The initial allocations might impact the geographic distribution of processing employment opportunities over the short term and could have some impact on the income available from employment on vessels (increasing income on some while decreasing income on others). See sections 3.3.2, 4.3.1, 4.3.2, and 4.3.3 for descriptions of the expected distributional effects on vessels, processors, and communities. The total number of jobs and total levels of payments to labor are not expected to be affected by the

alternatives for reallocation of quota. The reallocation of quota among permits and among processors is not expected to impact safety.

5.8 Communities

5.8.1 Policy Guidance

The following MSA sections and objectives from the groundfish FMP have been categorized as relating to community interests.

> Consider importance of fishing to communities in order to provide sustained participation and to minimize adverse impacts (MSA – National Standard 8, Groundfish FMP Objective 16, Amendment 20 Objective 5)
>
> (B) Consider basic cultural and social framework of the fishery through
> (i) the development of policies to promote sustained participation of… fishing communities that depend on the fisheries, including regional or port-specific landing and delivery requirement;
> (ii) procedures to address concerns over excessive geographic or other consolidation in the harvesting or processing sectors of the fishery
> I Include measures to assist, when necessary and appropriate… fishing communities through set-asides of harvesting allocations… or economic assistance in the purchase of quota (MSA, 303AI(5))
>
> Minimize negative impacts resulting from localized concentrations of fishing effort (this constraint is also listed under "Conservation") Groundfish FMP, Amendment 20 Constraint 3

5.8.2 Relation of Rationalization Program Provisions to Policy

The trawl rationalization program is expected to affect communities through a variety of mechanisms. On the one hand, it is expected to make the fishing and processing activities associated with communities more stable and safe. On the other hand, the commoditization of fishing opportunities into tradable harvesting privileges was expected to result in increased flexibility, and there has been much uncertainty about where the quota would eventually be landed. A number of provisions were intended to encourage a broader geographic distribution (accumulation limits) and allow communities to participate to a greater degree in their own economic futures (e.g., communities are allowed to own quota). Additionally, 10 percent of the nonwhiting QS for the shoreside fishery was set aside for use in possible incentive programs (the Adaptive Management Program) to compensate for any unexpected undesirable consequences of the program; and 20 percent of the QS was allocated to whiting processors, in part because of the higher levels of overcapitalization in that sector due to the fact that the fishery was managed as a derby. Because 20 percent of whiting QS was allocated to processors, who tend to be more tied to specific communities than are harvesters, there was not a set aside of shoreside whiting QS for the adaptive management program.

5.8.3 Analysis of Effects of the Alternatives

The effects of the initial allocations on the distribution of fishing among communities over the short- and long-term are difficult to predict. Quota is tradable and highly divisible, so that it will likely move toward those ports where profit margins tend to be the highest, regardless of the initial allocations. Additionally, the ports where fish are landed are at least partially determined by the distribution of the fish in the ocean in any particular year. As an example, in 2011, deliveries to Astoria increased substantially more than

would have been expected based on the allocations going to entities associated with the port. Indicators of the shifts in geographic distribution of QS are provided in Section 4.3.3.

Effects on communities will depend on the responses to the trawl rationalization program of those not receiving and of those receiving initial allocations. Thus there are two significant considerations in determining the effects of the shifts in allocation on communities. First, "What actions would members of the communities take in the absence of receiving an initial allocation?" Would processors and harvesters in a particular community cease or reduce their activity, continue at a similar level but at lower profitability (i.e., lease quota pounds), or acquire quota share on the market to make up for shortfalls. In the latter case, the impact on the communities would be a reduction in profit and spending in the community amounting to at most the cost of the QS/QP purchased. The second closely related consideration is "What is the effect of QS trading on the geographic distribution of QS and landings?" It is very likely that market forces will affect the distribution of QS over the long-term, relatively independent of the initial allocation. At the same time there is likely to be some "stickiness" in the initial allocations (i.e., a tendency for allocations to stay put until incentives to trade are great enough to cause movement). This stickiness is due to factors such as sunk costs (costs that are not recoverable by an existing entity that a new entity will also have to incur), and transaction costs (costs and risks of seeking exchange partners, executing QS transactions, or physically moving).

CHAPTER 6 CONSISTENCY WITH THE NATIONAL ENVIRONMENTAL POLICY ACT

6.1 Existing NEPA Analyses: the RAW 1 CE and Amendment 20 EIS

At its September meeting, the Council chose the final preferred alternative contained in this document (No Action). The Council also recommended: (1) revisions to the moratorium on quota share trading, (2) a delay in the beginning of severability for the mothership whiting CHA/whiting endorsements, (3) and delay in the start of the divestiture. Essentially, QS trading in the shoreside sector and ability to sever mothership endorsement and its associated CHA from a limited entry permit (LEP) in the mothership sector have been delayed due to the *Pacific Dawn* litigation. Those participants holding QS or CHA in excess of the accumulation limits have not been able to divest since there has been a moratorium on trading and severability has not been allowed. Therefore, this action will reinstate QS trading beginning January 1, 2014, and severability beginning September 1, 2014. The divestiture periods will extend for two years from each of those dates, such that excess QS must be divested by November 30, 2015, for the shoreside sector, and excess CHA must be divested by August 31, 2016, for the mothership sector. The only exception is that the moratorium on transfer of widow rockfish QS remains in place indefinitely pending final action on the reallocation of quota for this species. This action is expected to have no additional impact beyond those covered in the RAW 1 CE and the Amendments 20 & 21 EISs because the no action alternative was selected and no reissuance of quota will occur, and this action only reinstates original provisions of Amendments 20 and 21, within a necessarily delayed timeline. The RAW 1 CE covered extension of the moratorium on QS trading in the shoreside IFQ program, as well as further delaying severability in the mothership sector, and divestiture periods in both sectors. This action was administrative in nature and concurs with the recommendations of the Council.

6.2 Finding of No Significant Impact (FONSI)

National Oceanic and Atmospheric Administration Administrative Order 216-6 (NAO 216-6) (May 20, 1999) contains criteria for determining the significance of the impacts of a proposed action. In addition, the Council on Environmental Quality regulations at 40 C.F.R. 1508.27 state that the significance of an action should be analyzed both in terms of "context" and "intensity". Each criterion listed below is relevant in making a finding of no significant impact and has been considered individually, as well as in combination with the others. The significance of this action is analyzed based on the NAO 216-6 criteria and CEQ's context and intensity criteria.

These include:

(1) Can the proposed action be reasonably expected to jeopardize the sustainability of any target species that may be affected by the action?

The proposed action is not expected to jeopardize the sustainability of the target species—Pacific whiting—because the proposed action is anticipated to allow members of industry greater flexibility in attaining their target catch by reinstating: (1) QS trading (except for widow rockfish QS) in the shoreside IFQ program; (2) severability in the MS sector; and (3) divestiture periods such that permit holders with quota in excess of accumulation limits must divest within approximately two years from the start of trading. Impacts on target species are primarily a function of the areas fished, gear types used, and level of effort; and, of these, area fished is the only factor that might be affected as a result of the reallocation of quota (see Sections 4.1 and 4.2 for additional discussion). Since the No Action alternative is being implemented by this action, and no change is being made to the initial allocation of quota, this action is not expected to jeopardize the sustainability of the target species.

(2) Can the proposed action be reasonably expected to jeopardize the sustainability of any non-target species?

This action cannot reasonably be expected to jeopardize the sustainability of any non-target species because as mentioned above, the proposed action is anticipated to allow members of industry greater flexibility in attaining their target catch. Additionally, since area fished is the only factor that might be affected as a result of the reallocation of quota (see Sections 4.1 and 4.2 for additional discussion), and no change is being made to the initial allocation of quota, this action is not expected to jeopardize the sustainability of non-target species.

(3) Can the proposed action be reasonably expected to allow substantial damage to the ocean and coastal habitats and/or EFH as defined under the Magnuson-Stevens Fishery Conservation and Management Act and identified in FMPs?

As discussed in Sections 4.1 and 4.2, the action proposed cannot reasonably be expected to allow substantial damage to the ocean and coastal habitats and/or EFH as defined under the Magnuson-Stevens Fishery Conservation and Management Act and identified in the FMP because the action is merely reinstating components of the original program and no change is being made to the initial allocation of quota.

(4) Can the proposed action be reasonably expected to have a substantial adverse impact on public health or safety?

This action is not expected to have substantial adverse impacts on public health or safety because the program as implemented in 2011 provides fishermen with increased flexibility in determining when, where, and how to fish. This is expected to reduce incentives to fish in unsafe conditions. Some safety benefits were also expected to the degree that the fishery is more profitable and more money is put into vessel maintenance. Less efficient vessels are expected to leave the trawl fishery, which may eliminate older, less safe vessels. NMFS' decision to maintain the initial whiting allocations and the regulatory changes in the final rule do not change the original program impacts described above and are not expected to directly affect safety of human life at sea.

(5) Can the proposed action be reasonably expected to adversely affect endangered or threatened species, marine mammals, or critical habitat of these species?

The proposed action cannot reasonably be expected to adversely affect endangered or threatened species, marine mammals, or the critical habitat of these species because the activities to be conducted under the proposed action are within the scope of the FMP and do not change the basis for the determinations made in previous consultations. Impacts of this action on these resources were assessed in Sections 4.2 and 4.4 of this document. The proposed action makes no changes to the initial allocation years and therefore, the action is not expected to adversely affect endangered or threatened species, marine mammals, or the critical habitat of these species. Trading of whiting QS and severability of CHAs in the MS sector are expected to have minimal, if any, impacts on the biological environment, including but not limited to the following categories of potentially impacted resources: groundfish (including overfished species), ESA-listed salmon, other protected species, or other fish resources.

(6) Can the proposed action be expected to have a substantial impact on biodiversity and ecosystem function within the affected area (e.g., benthic productivity, predator-prey relationships)?

The proposed action cannot be expected to have a substantial impact on biodiversity and ecosystem function within the affected area because, as described in Chapter 4, minimal, if any, impacts are expected from implementation of the No Action Alternative and trading of QS in the shoreside IFQ program and severability in the MS sector.

(7) Are significant social or economic impacts interrelated with significant natural or physical environmental effects?

As discussed in Chapter 4 of this EA, there are no significant social or economic impacts interrelated with significant natural or physical environmental effects because the implementation of the proposed action will not result in significant natural or physical environmental effects. The proposed action makes no changes to the initial allocation years and therefore, the action's potential social and economic impacts are expected to be minimal, as discussed in the EA (Section 4.3).

(8) To what degree are the effects on the quality of human environment expected to be highly controversial?

The effects of the proposed action on the quality of human environment are not expected to be highly controversial because this action is allocational in nature and thus, is not expected to have any scientific controversy associated with it.

(9) Can the proposed action reasonably be expected to result in substantial impacts on unique areas, such as historic or cultural resources, park land, prime farmlands, wetlands, wild and scenic rivers or ecologically critical areas?

The Pacific coast groundfish fishery is not known to take place in any unique areas such as historic or cultural resources, park land, prime farmlands, wetlands, wild and scenic rivers, or ecologically critical areas. Therefore, the proposed action is not expected to have a substantial impact on any of these areas.

(10) Are the effects on the human environment likely to be highly uncertain or involve unique or unknown risks?

The effects of the proposed action on the human environment, which are described in Chapter 4 of the EA, are not likely to be highly uncertain or involve unique or unknown risks because the action is not expected to significantly alter fishing methods or activities that would have a significant impact on the human environment.

(11) Is the proposed action related to other actions with individually insignificant, but cumulatively significant impacts?

The proposed action, together with past, present, and reasonably foreseeable future actions, is not expected to result in significant cumulative impacts on the biological and physical components of the environment or on human communities because the proposed action makes no changes to the initial allocation years and allows transfer of QS and severability of CHAs. This proposed action is not related to any other actions that could, together, have cumulatively significant impacts (see Cumulative Effects Summary in Section 4.4).

(12) Is the proposed action likely to adversely affect districts, sites, highways, structures, or objects listed in or eligible for listing in the National Register of Historic Places or may cause loss or destruction of significant scientific, cultural or historical resources?

The proposed action will not affect districts, sites, highways, structures, or objects listed in or eligible for listing in the National Register of Historic Places or cause the loss or destruction of significant scientific, cultural, or historical resources because the Pacific coast groundfish fishery does not take place in the vicinity of any of these areas or resources.

(13) Can the proposed action reasonably be expected to result in the introduction or spread of a non-indigenous species?

The proposed action cannot reasonably be expected to result in the introduction or spread of a non-indigenous species because the activities under the proposed action will not involve the transport of non-indigenous species. The fishing vessels participating in the proposed action would not increase the risk of introduction through ballast water or hull fouling. Disposition of the catch does not include any translocation of living marine resources, nor use of any nonindigenous species as bait.

(14) Is the proposed action likely to establish a precedent for future actions with significant effects or represents a decision in principle about a future consideration?

This action is not likely to establish any precedents for future actions with significant effects, nor does it represent a decision in principle about a future consideration because this action reconsiders a previous decision and proposes nothing new.

(15) Can the proposed action reasonably be expected to threaten a violation of Federal, State, or local law or requirements imposed for the protection of the environment?

This action is not expected to alter fishing methods or activities such that they threaten a violation of Federal, State, or local law or requirements imposed for the protection of the environment because this action is not expected to alter fishing methods in any way except to change the level of catch or landings that are permitted for the fishery as a whole.

(16) Can the proposed action reasonably be expected to result in cumulative adverse effects that could have a substantial effect on the target species or non-target species?

As detailed in Section 4.4, the proposed action is not expected to result in cumulative adverse effects that could have a substantial effect on the target species or non-target species because the proposed action is anticipated to allow members of industry greater flexibility in attaining their target catch by reinstating: (1) QS trading (except for widow rockfish QS) in the shoreside IFQ program; (2) severability in the MS sector; and (3) divestiture periods such that permit holders with quota in excess of accumulation limits must divest within approximately two years from the start of trading. Impacts on target and non-target species are primarily a function of the areas fished, gear types used, and level of effort; and, of these, area fished is the only factor that might be affected as a result of the reallocation of quota (see Sections 4.1 and 4.2 for additional discussion). Since the No Action alternative is being implemented by this action, and no change is being made to the initial allocation of quota, this action is not expected to jeopardize the sustainability of the target or non-target species.

DETERMINATION

In view of the information presented in this document and the analysis contained in the supporting Environmental Assessment, it is hereby determined that the proposed action will not significantly impact the quality of the human environment as described above and in the Environmental Assessment. In addition, all beneficial and adverse impacts of the proposed action have been addressed to reach the conclusion of no significant impacts. Accordingly, preparation of an Environmental Impact Statement for this action is not necessary.

for Regional Administrator, Northwest Region, NMFS

March 8, 2013
Date

6.3 List of Persons and Agencies Consulted

This action is a Council-recommended action that includes all interested and potential cooperating agencies, such as US Fish and Wildlife Service, tribal government representatives, and state representative for WA, OR, ID, and CA.

Main authors:

Jim Seger, Pacific Fishery Management Council
LB Boydstun, Contracting Fishery Biologist – Sections 3.1 and 3.2
Steve Freese, National Marine Fisheries Service – Section 3.3
Ed Waters, Contracting Economist – Data Summary and Document Review

Other contributers:

Kit Dahl – Geographic Analysis and Document Review
Kim Merydith – Proofing and Editing

The following people were also consulted or were involved in reviewing early drafts of the document:

Sarah Biegel, NMFS NWR, NEPA Coordinator
Ariel Jacobs, NMFS NWR, Groundfish Section
Mariam McCall, NOAA GC, Attorney
Sarah Towne, NMFS NWR, Groundfish Section

Copies of this Environmental Assessment and Magnuson-Stevens Act Analysis and other supporting documents for this document are available from Ariel Jacobs, National Marine Fisheries Service, 7600 Sand Point Way NE, BIN C15700, Seattle, WA 98115-0070

CHAPTER 7 LITERATURE CITED

Agostini, V. N., R. C. Francis, A. B. Hollowed, S. D. Pierce, C. Wilson, and A. N. Hendrix. 2006. The relationship between Pacific hake (Merluccius productus) distribution and poleward subsurface flow in the California Current system. Can. J. Fish. Aquat. Sci. 63:2648-2659.

Ainley, D. G., L. Spear, C. Tynan, J. Barth, S. Pierce, R. G. Ford, and coauthors. 2005. Physical and biological variables affecting seabird distributions during the upwelling season of the northern California Current. Deep Sea Research Part II: Topical Studies in Oceanography 52:123-143.

Anderson, L. G. and M. C. Holliday, editors. 2007. The Design and Use of Limited Access Privilege Programs. U.S. Department of Commerce, National Oceanic and Atmospheric Administration, National Marine Fisheries Service, NOAA Technical Memorandum NMFS-F/SPO-86.

Anonymous. 2010. Whiting fishers tie up their boats. The Daily Astorian.

Asche, F. 2001. Fishermen's Discount Rates in ITQ Systems. Environmental and Resource Economics 19:403-410.

Bailey, K. M., R. C. Francis, and E. R. Stevens. 1982. The life history and fishery of Pacific whiting, *Merluccius productus*. Calif. Coop. Oceanic Fish. Invest. Rep. 23:81-98.

Bakun, A. 1996. Patterns in the ocean: ocean processes and marine population dynamics. California Sea Grant College System in cooperation with Centro de Investigaciones Biol¢gicas del Noroeste, La Jolla, Calif.

Benson, A. J., G. A. McFarlane, S. E. Allen, and J. F. Dowler. 2002. Changes in Pacific hake (*Merluccius productus*) migration patterns and juvenile growth related to the 1989 regime shift. Can. J. Fish. Aquat. Sci. 59:1969-1979.

Harvey, C. J., K. Gross, V. H. Simon, and J. Hastie. 2008. Trophic and fishery interactions between Pacific hake and rockfish: effect on rockfish population rebuilding times. Marine Ecology-Progress Series 365:165-176.

Hickey, B. M. 1979. The California Current System- hypotheses and facts. Progress in Oceanography 8:191-279.

Hubbs, C. L. 1948. Changes in the fish fauna of western North America correlated with changes in ocean temperature. Journal of Marine Research 7:459-482.

Mann, K. H. and J. R. N. Lazier. 1996. Dynamics of Marine Ecosystems. Blackwell, Cambridge.

Mendelssohn, R., F. B. Schwing, and S. J. Bograd. 2003. Spatial structure of subsurface temperature variability in the California Current, 1950-1993. Journal of Geophysical Research 108:doi:10.1029/2002JC001568.

National Research Council. 1999. Sharing the Fish:Toward a National Policy on Individual Fishing Quotas. The National Academies Press.

NMFS (National Marine Fisheries Service). 2006. Supplemental biological opinion on the Pacific Coast groundfish fishery management plan (consultation #2006/00754). NMFS Northwest Region, Sustainable Fisheries Division, Seattle, WA.

Parrish, R. H., C. S. Nelson, and A. Bakun. 1981. Transport mechanisms and reproductive success of fishes in the California Current. Biological Oceanography 1(2):175-203.

PFMC (Pacific Fishery Management Council). 1996. Amendment 9 to the Fishery Management Plan for Pacific Coast Groundfish (Limited Entry Fixed Gear Sablefish Endorsement) Including Environmental Assessment, Regulatory Impact Review, Initial Regulatory Flexibility Analysis, and Fishing Impact Statement. Pacific Fishery Management Council, Portland (OR), September 1996.

PFMC (Pacific Fishery Management Council). 1997. Pacific Whiting Allocation and Seasons; Environmental Assessment and Regulatory Impact Review of the Anticipated Biological, Socal and Economic Impacts of a Proposal to Allocate Pacific Whting Among Non-Tribal Sectors and to Establish a Framework for Modifying Season Opening Dates. Pacific Fishery Management Council, Portland (OR), February 1997.

PFMC (Pacific Fishery Management Council). 2008a. Final environmental impact statement for the proposed acceptable biological catch and optimum yield specifications and management measures for the 2009-2010 Pacific Coast groundfish fishery. Pacific Fishery Management Council, Portland, OR.

PFMC (Pacific Fishery Management Council). 2008b. Status of the Pacific Coast Groundfish Fishery: Stock Assessment and Fishery Evaluation; Volume 1 Description of the Fishery Pacific Fishery Management Council, Portland, Oregon.

PFMC (Pacific Fishery Management Council). 2010. Rationalization of the Pacific coast groundfish limited entry trawl fishery [FMP Amendment 20] Final Environmental Impact Statement. Pacific Fishery Management Council and National Marine Fisheries Service, Portland, OR.

PFMC (Pacific Fishery Management Council). 2011. Pacific Coast Groundfish Fishery Management Plan as Amended through December 2011, Portland (OR), December 2011.

PFMC and NMFS (Pacific Fishery Management Council and National Marine Fisheries Service). 2007. Amendment 15 to the Fishery Management Plan for Pacific Coast Groundfish (A Limited Entry Program for the Non-tribal Sectors of the Pacific Whiting Fishery) Including Environmental Assessment, Regulatory Impact Review, and Initial Regulatory Flexibility Analysis. Pacific Fishery Management Council, Portland, OR.

PFMC and NMFS (Pacific Fishery Management Council and National Marine Fisheries Service). 2011. Proposed Harvest Specifications and Management Measures for the 2011-2012 Pacific Coast Groundfish Fishery and Amendment 16-5 to the Pacific Coast Groundfish Fishery Management Plan to Update Existing Rebuilding Plans and Adopt a Rebuilding Plan for Petrale Sole, Final Environmental Impact Statement. National Marine Fisheries Service, Northwest Region, Seattle, February 2011.

PFMC and NMFS (Pacific Fishery Management Council and National Marine Fisheries Service). 2012. Proposed Harvest Specifications and Management Measures for the 2013-2014 Pacific Coast Groundfish Fishery and Amendment 21-2 to the Pacific Coast Groundfish Fishery Management Plan, Final Environmental Impact Statement. National Marine Fisheries Service, Northwest Region, Seattle, September 2012.

Phillips, A. J., S. Ralston, R. D. Brodeur, T. D. Auth, R. L. Emmett, C. Johnson, and coauthors. 2007. Recent pre-recruit Pacific hake (*Merluccius productus*) occurrences in the northern California current suggest a northward expansion of their spawning area. CalCOFI Reps. 48:215-229.

Ressler, P. H., J. A. Holmes, G. W. Fleischer, R. E. Thomas, and K. C. Cooke. 2007. Pacific hake, Merluccius productus, autecology: a timely review. Mar. Fish. Rev. 69:1-24.

Schwartzlose, R. A., J. Alheit, A. Bakun, T. R. Baumgartner, R. Cloete, R. J. M. Crawford, and coauthors. 1999. Worldwide large-scale fluctuations of sardine and anchovy populations. South African Journal of Marine Science 21:289-347.

Stewart, I. J., R. E. Forrest, C. Grandin, O. Hamel, A. Hicks, S. J. D. Martell, and coauthors. 2011. Status of the Pacific Hake (Whiting) stock in U.S. and Canadian Waters in 2011, March 17, 2011.

Tamm, E., E. Backus, M. Mackey, and A. Scholz. 2010. Fair Catch: Ten ways to improve the catch share proposal for the West Coast trawl fishery. Ecotrust, Portland, OR.

CHAPTER 8 APPENDIX - AMENDMENT 20 EIS DISCUSSION OF RATIONALE FOR ALLOCATION PERIODS

Allocation Periods

Rationale and Options Considered But Not Included

The Council's final preferred alternative specifies 1994 to 2003 as the period for allocating QS based on landings history for processors (1994 to 2004 for shoreside whiting processors). This allocation period for permits runs from the inception of the license limitation program (1994) through the year of the Council's control date (2003). The 10-year span for the IFQ allocation is similar in length to the fixed gear sablefish tier program that used 1984 to1994, an 11-year period. When adopting its final preferred alternative for shoreside whiting processors, based on a compromise arrived at during industry negotiations, the Council extended the allocation period to 2004.

The allocation period that would most likely minimize dislocation and the attendant costs would be the few years just prior to the initial allocation. That period is not used, in part, because of issues related to the need to establish credible control dates to effectively manage the fishery while deliberations on new LE programs are underway.

A number of different periods were considered for different parts of the trawl rationalization program and different sectors (Table A-63). At its November 2007 meeting, the Council narrowed the options and standardized the periods to end in 2003. However, as noted above, the Council extended the period used for the shoreside whiting processors to 2004. The periods are detailed in Table A-64. For many sectors, there is a qualifying period to determine eligibility and a period on which the amount of the allocation is based. The primary purpose of this section is to focus on the periods used for the trawl IFQ program, however, the section also covers the rationale for each year considered as a start date or end date for all of the periods considered for both IFQ and co-op management.

Table A-63. Rationale for periods considered for various qualifying and allocation period provisions during development of the IFQ and co-op alternatives.

Time Period	Sector and Provisions (permit qualification/recent participation and allocation)	Summary of Rationale
1994-1999	IFQ – QS allocation, all sectors.	Emphasizes status of fishery prior to constraints to protect overfished species.
1994-2003	IFQ - QS allocation, all sectors. Co-op – Shoreside and mothership CV permits and allocations.	From the beginning of L (1994) to the control date (2003).
1994-2004	IFQ – Shoreside processor QS allocations. Co-op – Shoreside CV permits and allocations. Mothership CV allocations.	From the beginning of LE (1994) to a year that includes more recent participation, as compared to a period ending in 2003. For shoreside processors 2004 was included as a compromise that developed during negotiations leading to an industry consensus.
1997-2003	IFQ – Mothership processor recent participation and QS allocation. Co-op – Shoreside and mothership CV permits and allocations. Mothership processor permits. Catcher-processor endorsements.	A block of years that starts with the period in which there was a 3-way split of the whiting allocation and ends with the control date.
1997-2004	Co-op – C/P endorsement.	A block of years that starts with the period in which there was a 3-way split of the whiting allocation and adds a year beyond the control date to include more recent participation.
1998-2003	IFQ – Recent participation, all sectors. Co-op – Shoreside CV permits and allocations. Mothership CV allocations.	A block of years that reflects the fishery before and the disaster declaration in 2000, and acknowledges the control date (2003).
1998-2004	IFQ – Mothership recent participation qualification. Shoreside processor recent participation and allocation. Co-op – Shoreside and mothership CV permits and allocations. And Mothership processor permits. Shoreside processor permits.	A block of years that reflects the fishery before and after the disaster declaration in 2000, and adds a year beyond the control date (to include more recent participation). For shoreside processors 2004 was included as a compromise that developed during negotiations leading to an industry consensus.
1999-2004	IFQ – Recent participation, all sectors.	A block of years that includes one year just before the disaster declaration and an end date that includes more recent participation (increases emphasis on post disaster conditions relative to periods with earlier start dates)
2000-2003	IFQ – Recent participation, all sectors. QS allocation, all sectors.	A block of years starting with the year of the groundfish disaster declaration and covering four years (a period length similar to LEP allocation period).
2001-2003	IFQ – Allocation period, all sectors. Co-op – Shoreside CV permit.	A block of years that most closely reflects the current conditions for the fishery and at the same time acknowledges the control date (2003).

CV = Catcher Vessel.

Table A-64. Periods used in various qualifying and allocation provisions that remain as options in the trawl rationalization program alternatives.

Sector	Qualifying for Participation		Allocation	
	IFQ Recent Participation	Co-op Alt Endorsement/ Permit	IFQ Allocation	Co-op Landing history
Catcher Vessel Permit Owners				
o Nonwhiting Shoreside Catcher Vessels	None	N/A	'94-'03 (drop 3 worst years)	N/A
o Whiting Shoreside Catcher Vessels	None	'97-'03 (>500 mt)	'94-'03 (drop 2 worst years)	97-'03 (drop worst year)
o Whiting Mothership Catcher Vessels	None	Options: 1) 94-'03 (>500 mt) (FPA) 2) 97-'03 (>500 mt)	'94-'03 (drop 2 worst years)	Options: 1) 97-'03 (drop worst year) 2) 94-'03 (FPA) (drop 2 worst years)
Catcher-Processor Permit Owners	None	97-'03 (at least 1 delivery)	'94-'03 (drop no years)	N/A
Mothership	'97-'03 (>1,000 mt in 2 yrs)	97-'03 (more than 1,000 mt in each of 2 years)	97-'03 (drop no years)	N/A
Shoreside Processing Companies	Qualifying Period Options: 1) '98-'03 2) '98-'04 (FPA) Options for shoreside nonwhiting: 1) 1 delivery option, and 2) 6 mt in each of 3 years, Options for shoreside whiting 1) 1 delivery of any size 2) 1 mt of whiting in any 2 of years (FPA).	98-'03 (more than 1,000 mt in each of 2 years)	Allocation Period Options: 1) '94-'03 2) '98-'04 (FPA) (drop 2 worst years)	N/A

N/A = Not applicable
FPA = Council final preferred alternative.

1994. The earliest year for the allocation period options was set at 1994 because this was the first year of the license limitation program, which substantially changed participation in the fishery and altered delivery patterns. If the program is to allocate based on permit history, there would be no permit history before 1994 unless it is determined that permit history includes vessel history prior to that time. 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.[38] An initial year of 1994 implies a long allocation period. An allocation period from 1994 to 2003, 10 years, would not be unprecedented. The fixed-gear sablefish tier program used 1984 to 1994 as the allocation period, an 11-year period. An initial allocation covering this long 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 may have made their investment in more recent years.

1997. The first year in which there was a fixed allocation among the three whiting sectors was 1997. The co-op portion of the rationalization program initially used 1997 to 2004 as the qualifying allocation period for catcher-processors, but using a start date of 1999. For the nonwhiting vessels, the choice of 1997 as

[38] For example, LE permits were issued to vessels that replaced qualifying vessels prior to the start of the license limitation program. Additionally, for vessels under construction or conversion LE permits were granted on a par with vessels that qualified based on 1984 to 1988 landings history. The use of vessel landings history prior to 1994 may be viewed as inequitable for those that qualified for permits in 1994 based on having a vessel construction or conversion, as compared to those that qualified for permits based on 1984 to 1988 landings history, the former having had no opportunity to establish landings history prior to the completion of work on their vessels.

the start of an allocation period would decrease the emphasis on conditions prior to the declaration of a groundfish disaster in 2000, as compared to an allocation period that started in 1994. A start date of 1997 and an end date of 2003 would include three years prior to declaration of disaster conditions in the groundfish fishery and four years after that declaration.

1998. This year is used to start an allocation period that would run from 1998 to 2003 or 2004. In considering 1998 as the start for an allocation period, the Council would have to determine whether six or seven years is a period of sufficient length to allow vessels to demonstrate their level of activity and landings mix without needing to include special hardship provisions. Excluding 1994 to 1997 puts more emphasis on more recent participation patterns. A six-year period starting in 1998 would include landings history two years prior to the 2000 disaster declaration and four years from 2000 and after. Using 1998 as a start date for the allocation period covers a greater variety of fishing strategy opportunities than a period that starts in 1999, but not as much as one going back to 1997 or earlier.

1999. While a disaster was not declared until 2000, the first reductions in response to the discovery that some groundfish species were overfished began in 1999. An allocation period starting in 1999 would include the period after the disaster declaration as well as the one-year prelude to those more severe restrictions.

2000. In response to the discovery that a number of groundfish species were overfished, a disaster was declared for the 2000 fishery, and a number of severely constraining management measures were imposed. Using 2000 as the start of an allocation period would base the allocation entirely on fishermen's opportunities and choices under conditions present after the disaster declaration. Regulations prior to 2000 allowed extensive use of large footropes on trawl gear. In 2000, restrictions on the use of large footropes were used to shift trawl effort away from reef and rocky bottom substrates. Additionally, large closures on the shelf (rockfish conservation area closures) were imposed at that time. This substantially changed fishing opportunities and the mix of species landed. The year 2000 was used to start a four-year allocation period option that was considered (2000-2003). Four years is the period used to qualify vessels for the license limitation program. The use of the shorter qualifying period puts more emphasis on more recent conditions in the fishery but also increases the need to take into account short-term hardships.

2003. In order to prevent speculative effort and the consequent exacerbated management problems, a control date of November 6, 2003 was announced. This announcement put fishery participants on notice that fishing after 2003 would not be counted toward qualifying for IFQ. Since there was little fishing opportunity in the last two months of 2003, all of 2003 is being included in the allocation period.

2004. Using 2004 instead of 2003 as the final year for the qualification period would allow entities with more recent participation and less longevity in the fishery to have one additional qualifying year. It would include in the allocation period one year of fishing after the buyback program implementation, a year in which all remaining vessels had greater fishing opportunity. It would also violate the Council's 2003 control date and may adversely affect the Council's future ability to credibly use control dates to prevent vessels from racing for participation status.

CHAPTER 9 APPENDIX - TRANSCRIPT OF PUBLIC COMMENT FROM THE SEPTEMBER 2012 COUNCIL MEETING

Pacific Fishery Management Council
Reconsideration of Initial Catch Share Allocations
in the Mothership and Shoreside Pacific Whiting Fisheries
September 2012

Agenda Item H.7.c: Public Comment

9.1 List of Those Testifying and Supplemental Written Comment Provided with Testimony

AUDIO FILE: 9-17-12pm2Copy.mp3
Mr. Mike Hyde, American Seafoods, Seattle Washington.
Mr. Tim Hobbs, Attorney for Midwater Trawlers Cooperative and Environmental Defense Fund.
Mr. Todd Whaley, F/V Miss Sarah, Brookings Oregon presented Agenda Item H.7.c, Supplemental Public Comment (Letter from Todd Whaley).
Mr. James Walsh, Davis, Wright & Tremayne, LLP, San Francisco, California
[Council adjourned for the evening at 4:53 PM]

AUDIO FILE:9-18-12am1Copy.mp3
[Council reconvened on Tuesday, September 18, 2012 at 8:08 AM and continued with agenda item D.1 prior to continuing with H.7.c, Public comment]
[Council reconvened this agenda item at 9/18/2012 8:14 AM]

Mr. Pierre Marchand, Jessie's Fish Company, Ilwaco, Washington
Mr. Marion Larkin, Fisherman, Mt. Vernon, Washington
Mr. Brad Pettinger, permit holder, Brookings, Oregon.
Mr. Jim Seavers, Agenda Item H.7.c, Supplemental Public Comment (Letter from Jim Seavers, Newport, Oregon).
Mr. Mike Stone, F/V Arctic Fury, Seattle, Washington.
Mr. David Jinks, Agenda Item H.7.c, Supplemental Public Comment (Mr. David Jinks, Midwater Trawlers Cooperative, Newport, Oregon) and Agenda Item H.7.c, Supplemental Public Comment (Midwater Trawlers Cooperative PowerPoint).

[Council went on break at 9:39 AM to 9:55 AM]

AUDIO FILE:9-18-12am2Copy.mp3
Ms. Donna Parker, Arctic Storm, Seattle, Washington, (public comment letter?)
Mr. Chris Kayser, Mr. Richard Carroll and, Mr. Dennis Rydan, Ocean Gold Seafood. presented Agenda Item H.7.c, Supplemental Public Comment 4 (Mr. Christopher Kayser, Larkins Vacura LLP, Portland, Oregon) and Agenda Item H.7.d, Supplemental Public Comment PowerPoint (Ocean Gold).
Mr. Steve Hughes, Attorney for Plaintiff Catcher Vessel, Natural Resources Consultants, Inc, Seattle, Washington; presented Agenda Item H.7.c, Supplemental Public Comment Letter).
Mr. Mike Storey, F/V Pegasus, Warrenton, Oregon presented Agenda Item H.7.c, Supplemental Public Comment (Letter)
[Council went on break from 11:05 AM to 11:18 AM]

AUDIO FILE:9-18-12am3Copy.mp3
Mr. Robert Smith, F/V Raven, Newport, Oregon presented Agenda Item H.7.c, Supplemental Public Comment Letter
Mr. Mark Cooper, Toledo, Oregon presented Agenda Item H.7.c, Public Comment with regards to Pacific Challenger
Mr. Shems Jud, Environmental Defense Fund, West Linn, Oregon
Mr. Tom Libby, Point Adams Packing Company,
Mr. Craig Urness and Mr. Mike Okoniewski, Pacific Seafood Group
[Council went on break from 12:01 PM to 1:05 PM]

AUDIO FILE:9-18-12pm1Copy.mp3
Mr. Joe Plesha, Trident Seafoods, Seattle, Washington.
Mr. Brent Paine, United Catcher Boats, Seattle, Washington.
Mr. Craig Cross, Aleutian Spray Fisheries, Seattle, Washington.
Mr. Jeff Lackey, F/V Seeker Inc, Newport, OR
Ms. Heather Mann, Siletz, Oregon and read letter from Mike Retherford Agenda Item H.7.c, Supplemental Public Comment (Letter from Mike Retherford, F/V Excalibur, Toledo, Oregon).

9.2 AUDIO FILE:9-17-12pm2Copy.mp3

CHAIRMAN: The first speaker is Mike Hyde.

HYDE: Good afternoon members of the council. My name is Mike Hyde. I'm with American Seafoods Company. You caught me by surprise there. I've never been the first speaker, so I may be a little less complete than I had hoped. We own the vessel the Ocean Rover. That's a mother ship processor. We also own the permit of the Pacific Prince that, if you look at the documents in the environmental analysis, is the permit that always shows up in the mother ship sector as having the highest allocation. I'd like to explain just a little bit why that is. We, historically, have conducted an operation that's a little bit

different than some of the other mother ships. It's primarily been a single mother ship with a single catcher vessel, occasionally supplemented by others. As a result of this, the Ocean Rover and the Pacific Prince have a significantly higher allocation than the average permit. In the different alternatives you look at, what you'll see is that, under status quo, that permit has a little less than 10% of the mother ship allocation, under alternatives two and three, it goes up to about 12%, and under alternative four, it goes up to about 14%. To me, I don't look at that as a windfall, I look at that as an opportunity to get closer to what we were doing for ten years prior to implementation of this program. If you look at table 4.21 in your book, you will see that in the period that Jim identified as 2004 to 2006, that single vessel was actually harvesting roughly 20% of the mother ship quota. So when this program went into implementation, our allocation was reduced in half and totally changed the nature of our operation. Getting to the merits of the case, the Environmental Assessment is filled with language from the Magnuson Act, the LAPP guidelines, Pacific Coast Groundfish FMP, talking about the issue of current participation or recent participation. I'll read a couple of them. Guidelines for National Standard 4, an allocation may impose hardship on one group if it is outweighed by the total benefits received by other groups, but, as noted in the EA, contrary to what the GAP told you, there is an analysis of this issue, and it says the analysis is provided in section 5.2 and indicates there is no substantial difference between the alternatives with respect to the generation of net benefits. Policy guidance. The main concern is to set up an allocation that would change the fishery from the status quo to an IFQ fishery with a minimum disruption of the current distribution between recipients. Another quote. This is from the Policy Guidance and LAPP guidelines. When considering alternative management measures to resolve an issue, choose the measure that best accomplishes the change with the least disruption of current domestic fishing practices, marketing procedures and the environment. So what is the standard that the council needs to apply here? Obviously, the judge has sent this back for reconsideration. The requirement is that

the council must consider current participation, but we don't have a lot of guidance to what that term means. Consider, I think on one hand it clearly means more than just give lip service to current participation. On the other hand, it is something less than you have to use those years. I think the proper interpretation is that those years should be included in the allocation unless you have compelling reasons to not include them. And so let's look at what the reasons are that have been announced or discussed why you would not include those years. The first one, the primary one I hear, is the control rule. It was adopted in 2003. What I look at is did anybody change their behavior as a result of that control – or ignoring that control rule that would provide them with a benefit if we go to years beyond 2003. I'm less familiar with the shore side operations, but in the mother ship sector, there's not a single instance of somebody doing something contrary to the spirit of the control rule to increase their percentage. The reason that people have higher percentages is because other people decided they didn't want to participate in the fishery anymore. And you can see that illustrated by another one of the tables, figure 3-18, which shows the number of permits that had fished for 15 years out of the years that we're talking about here, and every alternative, two, three and four, would increase the allocations of those permits, and it would decrease the allocation of the permits that have fished less than that. To me, that's consistent with what this council should be trying to do. It's rewarding consistent participation. The status quo doesn't reward consistent participation, it rewards those people that actually dropped out of the fishery. The second argument I've heard today is that the status quo is better because it creates more winners than losers. That's not one of the standards that should be applied in this case. The guidelines, again, say what the council should do is make sure that no single company or individual has an undue amount of the resource, we set accumulation caps, we set usage caps. There's no allocation scheme being considered here today that would create a concern under those allocation caps, and there is no guidance that says looking at the individual numbers of winners or losers is a policy that this

decision can be based on. Disruption. That's the one that I'm really amazed at, because people say if we - if we change from the status quo now, it will be disruptive, but that absolutely ignores that the allocation scheme that we have in place today, until the court invalidates, that was the most disruptive that we could have. Because if you look at the numbers of vessels that are shown in the EA that got significantly less quota than they had been harvesting in the past ten years, those are the vessels that are disrupted. The Ocean Rover is the prime example. It lost somewhere between 30 and 50% of the amount of harvest that it had been catching in recent years. In summary, the law requires us to consider recent catch history. The GAP statement says that we have to do that. It says we have to balance catch, the current history with – or current participation with past history, and yet there is no balance in the scheme in front of us today, the status quo. I urge the council to pick an alternative that balances both recent participation and past participation and adopt an alternative that will withstand legal scrutiny. Thank you very much.

CHAIRMAN: Thank you, Mike. Questions of Mike Hyde? Steve Williams.

WILLIAMS: Thank you, Mr. Chair. Mike, when did the Ocean Rover enter the fishery? You may have said it and I missed it. When did it enter into the whiting fishery?

HYDE: It is one of the vessels that has been in the fishery ever since the fishery was created. I mean it is one the longest term participants in the fishery. It is, I think, out of the years that Jim lists there, I think there are four boats that have fished 17 out of 17 years, and that’s one of them.

WILLIAMS: Okay, thank you.

CHAIRMAN: Phil Anderson.

ANDERSON: Thank you for your testimony, Mike. So I'm trying to follow the change in behavior piece, and so my question is did fishing pattern/fishing behavior for the vessel that was fishing this permit change since 2003?

HYDE: No, it didn't change. What happened, because we always had an Olympic fishery, the vessels would go out and they would fish until

the quota was done, and in those earlier years that we're talking about, that quota would disappear fairly quickly. In some of the later years, because the number of vessels, for whatever reason, chose not to participate, the Pacific Prince had an opportunity to catch a higher percentage of the fish because we would just keep on fishing as long as the quota was out there. We didn't change behavior, we just didn't stop fishing like some of the other folks did.

ANDERSON: So in these – in these more recent years then, like when we had rollovers and mop-ups, the Pacific Prince continued to fish while other vessels left the fishery for whatever reason, and that's why the proportion of the catch taken by this vessel grew and that's why it's reflected in the difference in the alternatives, that it's 14%, I think, with alternative 4, and it's 10% under status quo?

HYDE: Yeah, I think it's almost entirely the result of taking advantage of those opportunities of rollovers and just lack of participation by other vessels. I forget the exact number that Jim mentioned, but I think maybe ten of the mother ship permits have never fished since 2003. So once all that competition was out of the fishery, naturally, the guys that stayed with it year after year have a higher percentage.

ANDERSON: Thanks.

CHAIRMAN: Other questions? Dave Hanson.

HANSON: Mike, you've indicated you don't think the council should stick with status quo. Is there a specific alternative that meets your position?

HYDE: Well, Dave, our position is that this is a great program. We have been an advocate for rationalized fishery out there ever since we started the whiting co-op back in 1997. I mean it's the only way to go. So my primary concern is that the council take an action that doesn't jeopardize the existence of this program, and I think choosing the status quo puts this program in serious jeopardy. I mean we got lucky here. We got a judge that said you got a problem here, you did this wrong, but I'm not tossing the whole thing out, I'm going to give you a chance to fix it. I'm not sure we're going to get that lucky a second time. So, to me, the only way that you can incorporate the

requirement of consideration of current participation is to choose one of the alternatives that does that. Two, three and four all do that. Obviously, I got a preference that you choose alternative four, because it most closely reflects what we've been catching, but I think any one of those alternatives probably satisfies the legal requirements here.

CHAIRMAN: Thank you. Any other questions? Thank you, Mike.

HYDE: Thank you.

CHAIRMAN: Next speaker is Todd Whaley. Todd Whaley, fishing vessel Miss Sarah. We'll come back. Tim Hobbs.

HOBBS: Good afternoon, Mr. Chairman and members of the council. My name is Tim Hobbs. I'm an attorney with the law firm of K&L Gates and I represent the Environmental Defense Fund and the Midwater Trawlers Cooperative. First off, again, I'd like to thank the council and agency staff for the tremendous amount of work they've done in putting together the documents supporting the reconsideration decision now before the council. It's been a tremendous amount of work in a short period of time, and we commend the efforts of staff on that. We've testified at length in prior meetings about the alternatives that are before the council. I think I would like to start off by addressing some of the plaintiffs' preferred alternatives and the rationale that plaintiffs have given for their preferred approach here. First off, the plaintiffs seem to suggest that there's only a single statutory factor that the council must consider when making allocations, and that is current harvests. But, as we know, that's only one of several statutory factors that the council must take into account when allocating fishing privileges. Other relevant factors are historical harvest and investments in the fishery. And so the other legal error I see in the plaintiffs' analysis is that the council is not required to base allocations on current harvests. Again, current harvests are one factor the agency and the council must consider when deciding what allocations to make. The ninth circuit recently held in a case that was decided last week that the Magnuson Act means just that, when it says consider, that is the council's obligation. A set of plaintiffs had argued that the reference to fishing communities in the same

provision of the statute required the council to make allocations directly to fishing communities. Well, the ninth circuit rejected that argument and said that the Magnuson Act did not require direct allocations to fishing communities. Similarly, here, the Magnuson Act does not require allocations to be based upon current harvests. Instead, current harvests are one factor that must be considered. So, in our view, what this means is that the council can choose not to base allocations on current harvests if it explains why it is doing that. And, here, the desire to adhere to the control date that was published in 2003 and 2004 provides a rational basis for electing not to allocate fishing privileges based upon more current years. Second of all, as a matter of policy, the plaintiffs have failed to tie their preferred alternatives to the goals and objectives of the FMP and of amendment 20. One of the primary objectives here was to address overcapacity in whiting fishery. I would direct the council's attention to an attachment to a submission that I believe has been or will be made by the Midwater Trawlers Cooperative that provides a brief history of overcapitalization in the whiting fishery. The fishery was overcapitalized since the 1980s. This council took extensive efforts to address overcapacity. Those prior efforts did not fully succeed, and so a fundamental purpose of amendment 20 was to take the final step, it was to succeed where the prior approaches had not quite succeeded. The allocation decision before this council must be viewed in the context of addressing overcapacity in both the harvesting sectors and in the processing sectors. The plaintiffs are asking the council to reallocate whiting fishing privileges based upon a period of time after the control date, so that those who increase their fishing capacity after the control date would be rewarded with increased allocations. That outcome is directly inconsistent with the fundamental goal of this plan to reduce overcapacity. The end result would be a shift in allocation to vessels that have increased their capacity after the council announced it's intent to prepare an IFQ program for this fishery. And so, in our view, the preferred alternatives that the plaintiffs have put forward are not legally mandated by the requirements of the Magnuson Act, nor are they tied to

a particular goal and objective of the FMP to mitigate overcapacity in this fishery. And so viewed in that context, it is arbitrary to make a reallocation to persons that have injected fishing capacity into the fishery after the control date, when the fundamental objective of the program is to mitigate overcapacity. Second of all, I would like to touch on the distinction in the control dates between 2003 for the harvesting sector and 2004 for the processing sector. There are legitimate reasons for the differences in the control dates. One of them was procedural. The council – or the agency had published federal registered notices in 2003 that did not make clear that the coming rationalization program applied to the processing sector. It was not until 2004 that the processing sector was adequately on notice that a rationalization program was under development that could affect that sector, and so there's a procedural distinction between the two sectors there. But there's also a substantive distinction, and that is that it was an important objective of this council to address community impacts that were to result from amendments 20 and 21. The council undertook an extensive discussion of ways to address adverse impacts to fishing communities that could result from this plan, and the council implemented numerous provisions to protect fishing communities. In fact, in the ninth circuit case that was recently decided, some of those very measures were pointed out, and the district court concluded that the council took effective measures to protect fishing communities. But one of the ways that the council acted to protect fishing communities was to make allocations of shore side whiting privileges to the processing sector, and the goal there was to ensure that fishing communities that were dependent upon the whiting fishery were not advantaged, and so that quota would remain fixed in certain geographic areas along the coast. Now, one processor made substantial investments in shore side processing capacity prior to the 2003 control date for harvesters, which did not come online to generate any processing capacity until after the control date. And so one of the reasons that the council decided to move the control date to 2004 for processors was to ensure that that substantial investment in shore side processing capacity was not stranded, and that,

therefore, it would help to protect the fishing community where those facilities were located. And so, you know, the council was struggling here to come up with a balancing act here. I mean it was attempting to draw a line between, you know, promoting a rationalization program and also protecting fishing communities that could potential be adversely impacted by that program. And so I think, again, there was a procedural and substantive difference between the differences in the control dates that were selected. We believe that status quo continues to be a legally justifiable option at this point. In fact, we think status quo is the most legally justifiable. We think it produces a result that is fair and equitable to all of the participants. We think that the council has a very rational basis in adhering to the control dates that it set up to address overcapacity in this fishery, and we believe that the council has now gone through this reconsideration process, has considered current harvest, has looked at the impacts of allocating whiting privileges based upon more recent harvests, but, in our view, the balance tilts towards status quo, and that is the most fair and equitable approach to allocating privileges in this fishery. And so we would, therefore, urge the council to embrace status quo. I'd be happy to answer any questions that the council has at this point.

CHAIRMAN: Thank you, Tim. Questions? Steve Williams. Well, you're both pointing to each other. Let's just go to Steve Williams and then I'll go on to Phil.

WILLIAMS: Thank you, Mr. Chair. You spoke a bit there about the control dates, '03 versus '04. Some have put forward the fact that the ultimate decision on the overall program was a number of years beyond when those control dates were put in place, and some have said, well, you hear the term stale or the control dates were stale and might have resulted or should have resulted in some kind of reconsideration. I'm curious about your thoughts about that concept of staleness, if you will, and how it does or does not apply to this situation.

HOBBS: Sure. I think there's a couple of answers there. First of all, some participants in the fishery may have taken action based upon

the control date. Some participants may have elected to remove fishing capacity or to stop fishing or to consolidate quota on other vessels or to transfer permits. To the extent that is the case, those actions only facilitated the council’s objective in mitigating overcapacity. The council effectively got the result it wanted sooner than it would have after the plan was fully implemented. And so I think, you know, if the control date alone was effective in reducing overcapacity in the fishery, you know, the people that took those actions should not be penalized for helping the council sooner achieve it's own objectives. Conversely, I think that those who injected fishing capacity after the control date, therefore frustrating the council's attempts to mitigate overcapacity, need not be rewarded simply for the length of time it took the council to develop this very complex program. Those that injected fishing capacity after the 2003 and ‘04 for processors control dates, they did so fully aware of the control dates that were in place. If the plan had been implemented in one to two years, they would have no legal argument that, you know, that it was stale or, you know, the current harvests were not considered, and so, essentially, they're trying to use the length of time it took here to obtain a windfall for themselves, but the actions that they took were on full notice of the control dates that were published in the coming rationalization program, and that any fishing history after 2003 or processing history after 2004 may not be recognized. And, second of all, I think there's an economic argument here about the staleness of the control dates. You know, if you look at capacity in the fishery, the length of time it takes the council to develop the program does not have any effect on the decisions to inject capacity into the fishery prior to the control date. I mean those that invested in gear and boats and increased their capacity prior to 2003 did so with the expectation that, you know, there could be a rationalization coming. But then the council put out the control date and said, after this, we will not – we may not consider any further history. And so I think that, you know, from an economic standpoint, it's irrelevant the duration that it took the council to implement the program after the control dates were published.

CHAIRMAN: Phil Anderson.

ANDERSON: Thank you, Mr. Chairman. Thanks for your testimony, Tim. One of the advantages of being a council member is you get a lot of free legal advice, so I'm going to – albeit it a few of the advantages. So there's been this - we've had discussion and I've listened to various legal opinions about the difference in satisfying the directions of the court and that - and I think you said something like the status quo was legally defensible. But there's some who have said, well, from status quo to alternative one to two, three and four, the farther status quo high risk of being rejected by the court, same for alternative one, if you get to two and three, well, you're probably having a better chance of not being rejected by the court, and if you go to four, you're home free, or something like that. And so I think most of the people in the industry, not all, but most people, do not want to go back to a derby-style fishery, agree that there's a lot of attributes of the current program and want to have those stay in place. And so here we are arguing over how to allocate the initial quota shares. And I guess, as one council member, I'm particularly concerned about not wanting to make a decision that would have the result of us going back to the old system and having to start over again. So from your perspective, is that continuum, do you agree with that continuum of action that would have the least likelihood of putting the program in jeopardy in the future and, if not, why not, without repeating most of the things you've already said?

HOBBS: Sure. Well, I think if you look at the current set of plaintiffs, that framework might hold true. I mean, certainly, the plaintiffs are looking to reallocate based upon the most recent years and even exclude earlier years, and so I think the farther you get from status quo, I would presume that the current set of plaintiffs would, you know, their thread of litigation would likely go down. But I think the council also has to take into account litigation threats from other potential plaintiffs who would view moving away from status quo as an arbitrary and capricious action that may also be subject to challenge. And so I don't think that - I guess, overall, I do not agree with that assessment of the litigation threat here. I think

that the council's goal – the council here – the council is entrusted under the Magnuson Act with authority to make these very difficult allocation decisions. It is a line drawing exercise that is left to the expertise of this body and to the agency, and I think the Magnuson Act gives the council broad flexibility to make the allocations it believes are in the best interest of this fishery, overall. And, again, the council must consider and take adequate account of various factors, including current harvests. But, at the end of the day, the council has to take the action that it believes is in the best interest of this fishery and promotes the objectives of the FMP and of amendment 20. And so, in our view, awarding fishing privileges based upon increases in fishing capacity after the control date is fundamentally at odds with the objectives of the FMP, the longstanding objectives of the FMP to mitigate overcapacity, and with amendment 20 in particular. So I think the council has broad discretion here, as long as it articulates the basis for its decision.

ANDERSON: Thank you.

CHAIRMAN: Thanks. Any other questions? Thank you, Tim. Let me come back to Todd Whaley. Fishing vessel Miss Sarah.

WHALEY: Chair Wolford and council members, my name is Todd Whaley. I'm a second generation commercial fisherman and I've been fishing my whole life. I've been involved in the groundfish fishery since 1983 and the whiting fishery since 1984, participating in both the shore side and mother ship sectors. I'm testifying here today to support the status quo option. I strongly encourage the council not to make any changes in this very successful program. I hold one of the permits that would likely benefit from reallocation in the mother ship sector, but I still support no change in the current program. This program is working. In the years after the control date and closer to implementation of the IFQ system, there is a lot of issues with bycatch. If you want to do the right thing and stand down during high bycatch periods, responsible fishermen would now be punished by any other option other than status quo or option one. A few years ago, just prior to rationalization, National Marine Fisheries Service notified the industry that at the current rate of bycatch in the

fishery, the season would close within a few days. In spite of this, two of the plaintiffs threw caution to the wind, went fishing in high bycatch areas, caught large amounts of bycatch, which largely contributed to the bycatch caps being exceeded on at least one species before the season actually got closed. In the end, an allocation that rewards those who sought to increase their catch history in recent years rewards this behavior. This program was designed in such a way as to not create big winners or big losers. Any change from status quo results in a few huge winners and many losers. This is not fair and equitable. Thank you.

CHAIRMAN: Thank you, Todd. Questions? Todd, thanks. Next speaker is Bud Walsh. I know he can't be too far.

WALSH: Sorry to keep you waiting.

CHAIRMAN: That's okay, we're anxious to hear what you have to say.

WALSH: Thank you, Mr. Chairman. Are we having any fun yet? That’s usually my first question. My name is James Walsh. I'm a partner in the law firm of Davis Wright Tremaine and we have represented the plaintiffs. Let me explain a couple of things at the outset about who the plaintiffs are currently. Some of them will be coming before you. Two of the processors will be speaking, Ocean Gold, Pierre Marchand from Ilwaco Fish Company. And I want to immediately address what Mr. Tim Hobbs said about new capacity. Unfortunately, I think Mr. Hobbs is in another universe. My clients have all been in the fishery forever. They are not new capacity. And as Mike Hyde very ably disclosed to you, the reason that the amount of their effort went up is because there was more opportunity because there were fewer competitors, and they being in the fishery, and dependent on it, took advantage of it. And, as a consequence, they believe that you should include current as well as historical harvests. Once again, Mr. Hobbs was wrong. We are not telling you to base this on current harvests, we're saying take it into account historical and current harvests. And the position of the plaintiffs will be presented by Mr. Steve Hughes and we attempted, you know, even a dog knows the difference between being stumbled over and kicked, and we kind of felt like when we went to the GAP this morning that we had been kicked because, you

know, the characterization of what we tried to do there was about as wrong as I've ever heard in a negotiation I have ever been in. We were invited to give our presentation. It is clear they had their mind made up and what they wanted to do is look like they'd given an opportunity for us to set forth what we did. I can tell you I did not make the same argument before the GAP as I made before Judge Henderson. Not at all. We tried to address the alternatives before you in the context of the guidance that the agency has given you, the guidance written in the guidelines, in the statute, and in whatever we can somehow discern from what the judges have said, because it's been elliptical to some extent. For certain, what was decided in the ninth circuit recently is not necessarily precedent about how this case would be decided, were it to go back to Judge Henderson. We were not challenging the IFQ program. We're only challenging that part of it that relates to the allocation. And the problem that you have, the bad fact, the poison pill, is there is no IFQ program ever approved by the United States government that is this far away from a so-called control date. I looked at them all. I looked at them all. And the judge's discussion about - I mean, go back to the halibut program. Most programs are based on the most recent years of history, three to five years before the plan gets approved, and what the courts have said is once you approve a plan, present participation, there's some flexibility about what is present participation. So, in the Yakutat case, they basically said, so you approved it in 2000, you picked 1998, and the plaintiff said we wanted to be in the plan because we fished in 1999, and the court said, well, you know, present participation literally means present may be 1999, but, under the program, we understand it takes a while to get approved. That's present participation. I agree with the sliding scale analysis that Mr. Anderson just put forward, and the reason is that it is not sufficient to give lip service, particularly in an allocation. And what cries out is all the factors that we've talked about interact with each other and, basically, if you look at all, you know, if we look these plans, if you look at the halibut plan in Alaska, they basically said, you know, the primary factor that shows dependence is

history in the fishery. Who’s fished the most. Now, there have been attempts to tell you today about why a bunch of people didn't fish. I can tell you that those aren't facts that can be recognized, either administrative or legislative, it's all speculation. All we know, the only salient fact is they're gone. They left. There was no new capacity. My clients were able to fish heavier because they had left. They weren't at full capacity with their vessels. That's the tricky thing about the argument that Mr. Hobbs made. But I think that the point is that you have to do more – you have to do more than just give lip service, because, you know, we're not Libya, we're not some dictator country, we don't just say, well, I've considered your needs and I’ll tell you what, I don't like you so I'm going to do what I want. You have to take it into account, you have to say what is dependence, and then you've got to explain why you left out those seven years. With regard to the first alternative status quo, I wouldn't want to be the justice department that goes back to Judge Henderson, because if you pick status quo, we'll be back again and explain to him why status quo works in 2012. We are in 2012. You have more facts. You have more information. You're going to have to explain to him why this fishery management plan in allocating IFQ did not bring it more up-to-date to the time that you approved it, and not only in 2008, but 2012. You're going to have to explain that. I even had this discussion with the judge. I mean I'm trying to find what the reason would be. Now, I would grant you that the GAP came up with some very interesting arguments as to why that's true, and I don't have time today to go over every one of them, but many of them come very close to just plain old sophistry. Let's start with the control date. If you look at the National Marine Fisheries Service guidance on control dates, it’s a double-edged sword. It covers people who got in and didn't follow the control date, but it also hammers people who got out if the control date is changed later. In other words, no one can rely on a control date. A control date is merely notice. Control dates in all these plans, whether they're LAPPs or IFQs, then get converted into history years that meet the two standards – two of the standards in the guidelines in the statute, present participation and

dependency and current harvests. Once again, we're not asking you to allocate anything based on the last two years or three years. The options we will present to you will be three and four, 1994 to 2010 or 2000 to 2010. Not purely current, but they reflect dependency. That's the classic issue that you really have to focus on. I've looked at the other plans. You know, there have been times when they've had control dates – control dates have all changed. They are moving targets because everybody represents, everybody knows that the process is going to take longer than you thought. Remember, congress amended the statute after your control date. Remember, you adopted amendment 15 and kicked out AFA processors after 2003. Those are significant changes. The idea that somehow new capacity came in falls on its face when you look at our people and you look at the history of this particular fishery. I mean this fishery has been losing vessels for years, all of them have because of the consequences of over-fishing. And everybody agrees with the desire to control capacity, but, remember, some of the guys that have been in here haven't been at full capacity because there have been too many boats and they decided to become active and stay active in the fishery. I have not found a single fishery management plan that allocated IFQ that said that just because we issued a control date, this is the reason why we pick a history ending period. I can't find one of them. It is not a rational basis for status quo, it can't be, it will lose in court. You will not win, because you cannot explain that. Nobody wants to go back to court. The probability that if anyone challenges, as Mr. Hobbs suggested, anyone challenges either three or four, I would give them - and I've done a lot of this litigation. In fact, I even helped the people on the east coast, and my view is that the chances of winning in that case are maybe 20%. If you pick – if you pick status quo or option one, or even possibly option two, the chances of your winning might be 50/50 or less, might be, because you haven't taken into account present participation, dependency and all the range of harvest. Thank you, Mr. Chairman. I see I have a red light and the last time I had a red light I got in trouble with somebody in the audience, so…

CHAIRMAN: Well, we don't want you to get in trouble. So, questions? Dorothy Lowman.

LOWMAN: Mr. Chair. But I would like to hear, I mean, apparently, you didn't feel that you really got a good hearing about what your new alternative was and so maybe you could just sort of say what it is.

WALSH: Well, what happened is that because the fact that so much information came out in June and because Jim Seger and his people have been doing a good job of finding out what the facts are, because we waited until we got the final information before we put anything on paper, so we waited until the, you know, the last minute and then we got it in. I mean I've been in many negotiations. I remember going on the house side and trying to negotiate the Magnuson Act, and you just know when you walk in the room and they don't want to hear your position, they've made up their mind. They really weren't that interested. I'm not even sure the full quorum was there at the GAP, but I don't think they were really interested in talking about the issues. We said what we had to say. We didn't make all those legal arguments. We tried to answer every one of the questions in detail, but it was pretty clear to us that they had made up their mind and, based on the statement that was given to you, which is quite thorough, I suspect it was written maybe last week, because it's pretty hard – it’s pretty hard for even me, who does this all the time, to come up with such a complete and well-researched paper that sounds like something I would have prepared for a law review, so I'm sure it was done well before this meeting.

LOWMAN: So…

WALSH: Go ahead, Dorothy.

CHAIRMAN: Dorothy.

LOWMAN: Mr. Chair. I don't think you answered my question. I wanted to hear what the specifics of your alternative was.

WALSH: Oh, the specifics are that we favor either option three or four, that with option four we also want a present participation requirement that, over the period of time after 2003 to 2010, that a harvester vessel catch at least 500 metric tons during the 2003 to 2010 period, and that there be two drop years. With regard to option

four, same present participation requirement, one drop year. The EA has a very specific description of present participation for processors, which I believe Mr. Anderson put into those options at the last meeting. There is some reference to present participation 500 metric ton requirement in the mother ship discussion in the EA, but I found it incomplete. It wasn't specific. I didn't know what it meant. I didn’t know what it meant for the shore side. I assume it meant we're just going to everybody have to have at least a 500 metric ton requirement. Our view is you should have it after 2003 to take care of the people who did leave. So that's our recommended approach, because we think that's more likely to, you know, and it meets all the standards. I have no doubt that it meets the standards. And it meets the standards better because no other plan has ever had the gap between the control date and the final rule.

CHAIRMAN: Dorothy Lowman.

LOWMAN: Thanks for your patience, Mr. Chair. I just wanted to make sure I understood that last part about the having to have at least 500 metric tons…

WALSH: Landings.

LOWMAN: …landings after 2003.

WALSH: Right.

LOWMAN: So I guess I would say…

WALSH: So in order…

LOWMAN: …and I guess would that say then if you didn't have it then even if you had participated from 1998 to 2003 or 1994 to 2003, you would get no allocation, is that correct?

WALSH: That's correct. It would basically eliminate the people who haven't participated in the fishery and demonstrated their business decision by simply not doing it. You know, there may be a thousand reasons why they didn't do it, but they didn't do it, and that's a hard fact.

LOWMAN: Okay. So I would just say then, I guess, so then, in your mind, that historical participation certainly, obviously, doesn’t count for much in your mind.

WALSH: Well, yes it does. If you – and, you know, we've already had a discussion of how many vessels have been in the fleet for a long time. Very few have, you know, we're talking about a relative minority number that haven't been participating, but if you, for example, if you pick option three and you have been active in the fishery after 2003 by landing 500 metric tons, you would get all your history between 1994 and 2010. And that is the primary factor that most Fishery Management Plan would recognize as dependence. So, you know, your historical fishing would absolutely be recognized.

LOWMAN: Thank you.

CHAIRMAN: Dale Myer.

MYER: Yeah, thank you, Mr. Chairman. I just wanted to double-check here on the facts. Not the facts, but the proposal you have there because what I heard was quite a bit different than what Mr. Hughes presented to the Washington delegation this morning.

WALSH: It's the same.

MYER: Well, it's not quite. You said vessels delivering and he said permits…

WALSH: Well, permits, okay. No, that's right. You're right. That's a clarification.

MYER: Okay, so it is permits.

WALSH: Yeah.

CHAIRMAN: Further questions? Seeing none. Sorry, Dorothy.

LOWMAN: I'm sorry. Sorry, Mr. Chair, but I did have one more. You know, you mentioned that you thought that this recent ninth circuit opinion or decision was not - or particularly wasn't precedent for this - in this particular case,…

WALSH: That's correct.

LOWMAN: And so I guess, could you elaborate more about in terms of what kind of effect it has at all or, you know, how it should be taken into account with respect to this.

WALSH: Well, I think the recitation that was mentioned here today about the factors and considering them basically states the rules that most courts have followed with respect to making these calculations, that is there is a series of factors, you must consider them, but I

think Mike Hyde stated it very well and said, you know, you don't have to take them into account, but, on the other hand, you can't totally ignore them. It's sort of somewhere in between. So what happens is, and I think it's the advice that the National Marine Fisheries Service is giving you, and that is is that when you do an analysis and a decision as to what you want as an allocation, you have to identify the facts selected and relate them specifically and rationally to the choices that you made. And that's where there is going to be a large difference, because there are a whole lot of facts in this case, such as the change from surimi to H&G, the fact that the congress passed a law afterwards. There’s a whole set of factors that would make it an entirely different case. How the court is going to interpret it is going to depend a lot on the facts before it, and having reviewed about everyone in the fishery decisions in this country, I can tell you that different courts sometimes come to different conclusions because they can be influenced by bad facts. This case, when we took it to Thelton Henderson, had a bad fact. That was that you didn't consider anything after 2003, it just wasn't there. That's called a really bad fact. Here, if you go forward, you're going to have to explain why you have this huge gap between 2003 and 2010 by accepting status quo. I personally don't believe that you can come to any rational conclusion as to why that makes sense, given that, you know, the change in net benefit is zero. There's no conservation impact, it doesn't destroy the program, it doesn't destroy any community, it shifts the allocations of the people who fish the heaviest, and they're not new people, they were always there. And, along the way, some others might be benefited, but these are people who have been in the fishery the whole time. And so my feeling is that the court is going to look at this case based on these important facts, really important facts. In your argument, I don't think the GAP argument will fly. I mean it's, you know, it's too full of just, you know, we can do anything we want, but it still doesn't get to the heart of the case, which is people who are dependent on the fishery are the ones with the most history, up to the point where you approve the program, and you look at it and you make your decision, that's 2012.

LOWMAN: Thank you.

WALSH: It's not going to work otherwise, in my opinion.

CHAIRMAN: Apparently, we sparked other questions. Phil Anderson.

ANDERSON: Thanks. You referenced my question that I had for Mr. Hobbs and offered your perspective that I guess you characterized it as a sliding scale…

WALSH: Do you want some free legal advice?

ANDERSON: You've been giving us a lot so far, so I figured you will give us a little more.

WALSH: Well, look, Phil, if you need a good lawyer, let me know.

ANDERSON: What I gleaned out of your testimony and you didn't say this specifically, so I acknowledge that, was that status quo, alternative one, alternative two, if the council were to do anything in that range of alternatives, there is a high probability that your clients would go back and object and whatever the legal process that you would follow and challenge that decision. So that leaves three and four or the alternatives that have been - those alternatives as modified by the letter that we received from Mr. Hughes as the only ones that would likely result in a level of acceptance on the part of your clients.

WALSH: Well, let me cage this, as I should, as a, you know, somebody who's on the firm’s ethics committee, is that I cannot speak for my clients. Once they look at the plan, and your justification for it, as to whether one would go into court on all those. I think, for certain, on status quo and one, I think there is a pretty good likelihood we will be back in court. With regard to three, I'd have to see the justification. I mean, I think, my view is I know why you argued that. It's also a wonderful compromise in a sense that it gives somebody - everybody a little bit of something, because I'm a former politician too. But the problem that you have is how do you explain away all the other recent data, and once you go to 2008, why don't you just go all the way to 2010, because it's a clear bookend. It's the end of the period before you started. But I, typically, you know, my view is that, you know, it's hard to predict cases. Very few lawyers will give you more than a 60%. I've considered 60% a high

probability of winning in court and I don't know a single good lawyer that ever gives anybody more than a 60% assurance. But I think there are certain things that are not winners. I believe the case that just got decided in the ninth circuit was not a winner from the beginning, because it challenged the basis of the program. You guys did a very good job of justifying why you needed an IFQ program and what the objects were and my clients do not disagree, and so that's not a lawsuit they want. What they want is a fair and equitable allocation based on their dependency on the fishery. They're not new in the fishery and it's not going to wreck anybody's plans. Some people are going to lose out. Some people are going to get their haircut. But there are going to be people who don't have the history who have not planned, and I think that they make good plaintiffs in challenging status quo, so I think it's very risky for the council. If you want to get this over with, if you want to get to the point of actually trading, because if this goes back to court, you know, the National Marine Fisheries Service is going to have a problem to decide, well, maybe we ought to postpone trading. And, if I were a banker, I wouldn't finance anything based on IFQ as security. Nobody's going to close a deal. You're going to have a whole lot of uncertainty in the fishery that really would not be necessary. My view is, just go ahead and make the hard decision. And we realize we are a minority, but that's the wonderful thing about the legal system. Minorities are the ones that go to court, and when they go, the judicial system tells the majority that you did something wrong, and that's what happened here. And I think that we don't want to do that anymore, we want to get on with the plan. They don't want to pay my fees anymore. They don't want to come here and fight anymore. They'd like to get it resolved. If you pick three or four, I think this whole thing will go away fairly quickly.

CHAIRMAN: Okay. Dr. McIsaac is pointing at the clock here to me. We're at 4:52. Any other questions? Seeing none. That does then leave us with a whole stack of cards to present. I think we've been at basically ten minutes per speaker at this point. I think we will cut it off here and pick up again tomorrow with public testimony. On

top of my pile is Pierre Marchand, so we'll plan on that tomorrow morning at 8 o'clock.

0921lm01

9.3 AUDIO FILE: 9-18-12am1Copy.mp3

CHAIRMAN: Pierre Marchand.

MARCHAND: Good morning Mr. Speaker and people of the PFMC. My name is Pierre Marchand and I am President of Jessie's Ilwaco Fish Company in Ilwaco, Washington, and I have some comments. Ilwaco Fish Company is the oldest surviving processor of whiting on the west coast and - I'm getting older now, I can't see anymore unless I have my glasses - and we've been doing it now for 27 plus years. Under this new IFQ regime, over the last several years, we've gone from a high of about 19 million pounds of whiting a year to down to this year around 2 million, and that puts us in a tremendously bad position. We depend upon whiting to help our company survive and our town survive and all of our workers. And I've been up here before and I'm telling you now this system doesn't work. And our town has about 900 people. We have about 100 year-round employees, and when we're running whiting, we run about 300 people, two shifts a day, and it is a tremendous economic boost to our community and to our people. And we need the whiting for the company to survive and for our town and our port to survive. One of the things about the Magnuson Act is that you're supposed to take this kind of thing into account and make it so that the coastal communities can survive on the decisions that you make and, as you can see by the numbers, it's really put us behind the eight ball. And when this was originally laid out, we were under the impression that we would get a fair and equitable piece of the pie so that we could survive, but it's not working that way. And we have invested a lot of money, time, effort, marketing, product, getting what we had to go out into the marketplace and keep the volumes up and keep everything running. And having been in this from the very beginning, I can tell

you how hard it has been to find the boats to go fishing, to rebuild the plants to process the fish to get out into the marketplace. We sell fish all over the world, and it's just going to be very, very difficult to do without the whiting, without an amount of whiting that will let us keep our plant running and to keep it going. When this new scenario came along and we saw what was happening, we banded together with a few other people and went to court because we got the short end of the stick, and the judge agreed with us, said it wasn't done properly, and so now it's back to you guys to do it correctly. If you don't do something, the status quo is not an option. The judge has already said that. You've got to change what you did. From my looking at what's proposed, options three or four are the options that work, and I think it's the only ones that the judge will let you do. I don't want to have you do like status quo and we have to go back to court again. I just don't want to do that. It's costly and it really - it's not the right thing. You guys have got to change what you did, and I think that's what I have to say.

CHAIRMAN: Thank you.

MARCHAND: Anybody got any questions?

CHAIRMAN: Any questions? David Crabbe?

CRABBE: Thank you, Mr. Chairman. Thanks, Pierre, for your testimony. I was trying to get a sense, you were talking about the difference between, you know, the 2010 years and the 2011, when the new program was implemented, and in the whiting portion of your business, was there a considerable drop off in your business, percentage-wise, between '10 and '11?

MARCHAND: I have it from about '08, which was about 19 million, I believe. And so you can see where it went from 19 down to 2 this year. And that's a tremendous drop, from 9500 tons down to 1000 tons.

CHAIRMAN: David, follow-up?

CRABBE: Thanks, Mr. Chairman. I wasn't referring to your allocation of the amount of whiting. I was wondering about your business and the profitability and the success of your business, was there a percentage drop off between how successful your business was in 2010 in the whiting portion of your business and then in 2011, was your – you

know, whether you were able to go out and get other boats to come fish for you in 2011, you were able to maintain a similar value of business income, or whether you dropped of considerably?

MARCHAND: It's gone down tremendously.

CRABBE: Do you have an idea of the percentage?

MARCHAND: Well, if you take 80% or so on whiting.

CRABBE: Okay, thanks.

CHAIRMAN: Other questions? I see I've got Dorothy in a queue.

LOWMAN: No.

CHAIRMAN: No? Okay. Phil.

ANDERSON: Thanks. Thanks for your testimony, Pierre. I just wanted to explore a little bit more with you. I know you mentioned that you're the oldest remaining processor in terms of being in the whiting fishery, so you've got a lot of history. When we had that qualifying week, we elected to provide quota shares with the processors through this program, had a base period, '98 through '04, so I'm assuming, given the strong history you've had in the program, that you received some quota share as a result of that element of the program, yet your testimony indicating that you've had this significant drop off in poundage delivered to your plant. I'm wondering - just trying to understand what the cause of that drop is, loss of boats that have chosen to sell to other processors, just trying to understand a little bit about why the drop, given the strong history in the company, given that you, therefore, would have had a seemingly a good share or got some quota share out of the processor element of the program, yet you have this big loss. So just trying to understand. Is it competition between processors, that boats went other places, or what's the cause?

MARCHAND: There is a significant number of factors, as always, that change things. Where are the fish. What other fish that the boats fish in other places at other times. Some of the fish went to processors that - while I had a boat or two or three, I got narrowed down to just one boat, and the quota share that he had and the quota share that I had didn't amount to what we used to catch or what I used to buy. The availability of boats, some of the boats have allegiances to processors in other places. And so they have whiting plants in the

U.S. or in the lower 48, and they go to Alaska and they fish pollock up there and the companies have processing plants down here, so they stay with that single market instead of going to other markets. And the number of boats has gone down. I think it was pointed out here the other day, yesterday, where the number of boats participating in the fishery has gone down quite a bit. So the boats simply aren't there to get.

ANDERSON: Thank you.

CHAIRMAN: Thank you. Other questions of Pierre? Pierre, thank you.

MARCHAND: Thank you, everybody.

CHAIRMAN: Next speaker is Marion Larkin.

LARKIN: Mr. Chairman, council members, good morning. I'm Marion Larkin, a longtime fisherman and disciplined in the groundfish fishery and whiting as well. I don’t know what's germane to my presentation, but I'll try to hit on a few points and if I wander and get off track, let me know. There's a document, Agenda Item H.7.a, Attachment 3, that I want to reference. And Mr. Seger gave you a cap of that document yesterday that indicated what would appear to be latent permits, permits that had changed hands numerous times, 18 of them. Seven permits changed hands after 2007, and etcetera. I maintain that you cannot look at this attachment and get the full picture. And I'll give you one example of a permit that I personally know the history on that permit, and just to show you that because these permits have not been in the fishery recently does not mean they aren't vested in this fishery or don't participate or are owners that do participate in the fishery that purchase these permits and with the intent that that would add to their business plan and the amount of quota they would get under a rationalized fishery. Now, it's been proposed that we throw these all under the bus, that they have no relevance, and I maintain they are as relevant as anybody that would base their quota shares on recent participation. They're part of someone's business plan. Somebody made an investment. It's as legitimate a reason to be included as part of the allocation as it is for someone who increased their production in recent years for various reasons, markets, higher quota, etcetera, etcetera. So if you look at - I'll just go and

start. It's the second one on that list there where it lists all of them and it shows the percentage of quota share they got and that type of thing. And that permit did not participate in the buyback, so it was still here. It was in a – it was in an estate that was in estate - anyway, it had no will, whatever that term is, and there was a time there it did not participate in the whiting fishery. I acquired that permit in 2004, and with the expectation that it would benefit me personally is to increase my quota share so that I could be viable under the program. Amendment 15, AFA sideboard was intended to control the fishery. It was based on vessels and not on permits. This permit had been changed from the - the vessel went one way and I got the permit, so, therefore, it didn't qualify under amendment 15. So we were out of the whiting fishery, could not have any recent history generated because of amendment 15, when we went from permits to vessels. Now we're back talking about permits and we list all the permits. So there's a reason why that particular permit didn't have any history, because of amendment 15. There's another permit on there that I personally know about and I don't know whether the person will testify, but it's also one of the higher percentages on that list. That vessel sank. The permit went to another vessel. Amendment 15 took that permit out of the whiting fishery. If you take those two permits that I'm speaking to, they represent 2.4% of status quo, out of a total percentage on that attachment of 4.3, leaving 1.9% of all those total vessels that were allocated, 1.9% in total. Now, I maintain that if you can generate a program that only has 1.9% that goes to latent permits or what other reason, then I think we've been very successful, and I think the only way you can really get to the bottom line on this is you'd have to analyze every permit here and not just kick them under the bus because you say now they're no longer relevant. They're a part of somebody's business plan. Six people own multiple permits. They participated in the whiting fishery. This was part of their portfolio. Rationalization did not make anybody whole. No one got 100%, so to buy permits to add to that history was a reasonable business plan. I think it is as valid today as it was at that time. Let's see here, 2:30 this morning, what else did I think

of. The control date, briefly, the plaintiffs now indicate that the control date really doesn't matter unless you took it seriously and made a bad decision and, therefore, shame on you. But we made a better decision. We ignored it, and now we have more history and I want it. Well, I maintain if one guy wins, another guy loses. We have a new definition of a control date. We ignore it. And going forward from that date, we include history beyond that, but we kick everybody out that was before the control date. That's a new definition of a control date, in my estimation. The other issue, dependency. I can't get out of this document how you determine who's dependent on the whiting fishery. Is the bulk of your dependence – is the bulk of your income coming from a pollock fishery. Did you build that platform based on the expectation of the size of vessel you need in the pollock fishery and this is just vacation money, I don't know. I can't get that out of here of who's really dependent on this fishery. So I maintain that anyone whose participated in it probably has some degree of dependence. The other thing I wanted to mention, recent participation disadvantages smaller vessels. The fleet changed in size over the history from ‘94 to the current date. You've seen larger vessels that pack 400,000 pounds. And I don't want to cry because I didn't build a big vessel, but I maintained a smaller vessel because I participated in the groundfish fishery down here and whiting, and a larger vessel wouldn't be economically feasible. I did not participate in Alaska. So am I more dependent on that fishery. If you look at how groundfish has gone, we're down to one or two vessels in the state of Washington, and I happen to be one of them. You had to find something else to supplement groundfish. Supplement. You had to make a living, I guess that would be a better way of putting it. Anyway, amendment 15 had an effect. There's been a change in the fleet, and I think the fair thing to do here is to do the best we can to establish a record and I hope it's done so today to support the status quo, because I think that's the only fair and equitable decision this council can make. Thank you.

CHAIRMAN: Thank you, Marion. Questions? Phil Anderson.

ANDERSON: Thanks. Based on my conversations with a lot of people this morning and your testimony, Marion, I think we could have started the meeting at 3:00 a.m. and none of us would have lost any sleep. But I wanted to ask you a little bit more about the recency and the dependency on the fishery, and specific to the Attachment H.7, whatever it is, that you referenced, H.7., and you were referencing a table I think, table two on page four. And I think I tend to agree with you in your comments relative to those permits that are owned by individuals that are engaged in the fishery, and that there's a demonstration of dependency and recent participation based on the owners of those permits being engaged in the fishery. So those six permits that have the yes under them, I think your point is well taken. What I wanted to ask you about is what about the other nine, I think that's the right number, the ones that, to the best of our knowledge, aren't owned by an individual or entity who's participated in the fishery since 2003, and, therefore, could be assumed to not have a dependency on the fishery and, based on that information also, don't have any recent participation. What about those?

LARKIN: Mr. Anderson, I don't know about those. I think they're all individual cases. I don't know whether a widow holds them. I don't know whether they're in a trust. I have no idea and that's, I believe, where the document doesn't delve deeply enough to where we can really understand that. I guess you can take them as a block and I would suggest that, unless we do have that detail, we won't be able to understand who they are. But if you look at the total amount of allocation, it's really rather small I would suggest, and it was pointed out in the GAP that this is a retirement program and we should depend on social security, you know, and this is what people have maintained these inactive permits are just so they could lease that fish out. I maintain if you can live on nine vessels and spread that out, it's really ridiculous to think that it's going to be a retirement plan for anybody. I don't know the answer to your question.

ANDERSON: Okay, thanks.

CHAIRMAN: Anyone else?

LARKIN: Thank you.

CHAIRMAN: Thank you. Next is Brad Pettinger.

PETTINGER: Thank you, Chairman Wolford, council members, for the opportunity to speak with you today. My name is Brad Pettinger, and while I rarely testify on a personal basis, today, I represent myself and my brother David on the whiting allocation issue before us. We own one of the permits that – the other permit that Marion mentioned. We made a business decision. Since we knew that permit had some history, but not enough to make it whole, in the sense that the – to outfit it to go be a whiting vessel. We understood that, because we understood the control date to be – to hold, so it would be foolish for us to fit that boat out to be a whiting vessel with the control date in place, and then not have enough to make it pay off in return. So we made a business decision not to outfit that, although it was exacerbated by the control date by amendment 15, because the person had died. Actually, the vessel had sunk, the person then died, and then we bought the permit. So there was no amendment 15 protection for us, it wasn't there as far as for our vessel to participate in fishery, because we were excluded because the vessel never had, the vessel we owned, the permit went on. But, with that, I went through my written testimony here, as many of you – as many of you recall, I was on the TIQ committee, as this council worked through the process of rationalizing the trawl fishery. I'd like to characterize the development of the program as the most transparent process ever, because this council was aware that they needed to get it right the first time, as this program was extremely complex, it dealt with over 80 species of groundfish, eight overfished species, individual bycatch quota for halibut, three different sectors, and included input from fishermen, processors, environmental groups and coastal communities. On top of that, the trawl groundfish fishery was one of the first fisheries in the nation to move forward with rationalization after the national moratorium on IFQ was lifted. If I remember properly, the crab rationalization in Alaska that preceded this program was under immense controversy, and that controversy greatly influenced the tenor of how we proceeded. This council, everyone involved, knew that there

would be – there would be no shortcuts. Now I heard yesterday you had control dates that didn't mean anything. Well, in the history of this council, control dates do stand for something. If you recall, the groundfish fishery established a control date in 1988 for limited entry, and permits weren't issued until 1994, six years later. That control date was challenged and a court upheld the control date for a program that was far less complicated than the one we debate here today. We rationalized this fishery because we knew that we needed to do something different in how we managed it. Bycatch was a huge problem and the council was under tremendous pressure to find a solution. Trawl rationalization was the path that the fleet proposed and what the council chose to pursue in solving that issue. Now for just a few minutes, imagine the control dates didn't really mean what we intended. Imagine that we told a fleet that we're going to move forward with rationalizing this fishery and the landing history started tomorrow as to how much quota a vessel would receive. Can you envision what would happen. We would be wasting fish left and right, seasons would be cut short, prices would go in the toilet, markets would collapse and fish stocks would ultimately suffer. It would have been absolutely nuts, even chaos, and we would have greatly exacerbated the very issue, bycatch, that we were trying to solve. I finish my testimony today with a part out of the 70s movie classic Animal House, which is known as the Flounder Principle. In the movie, Flounder's a pledge in Delta House, and his fraternity brothers talk him into using his brother's car for a road trip, all the time assuring him that everything will be okay and his brother's car will be fine. Well, by the end of the night, Flounder's brother's car is trashed, totally ruined and Flounder is horribly upset, crying out to his fraternity brothers, why, why did you do this to me. The answer is simple. Flounder, you screwed up, you trusted us. That's the Flounder Principle. The fishermen in this room supported the status quo allocation, trusted the council NMFS that the 2003 control date would be just that, a control date on fishing history that was determine the permits allocation. We trusted the door was closed, not that the starting gun had just been fired. From that, individuals

made business decisions and made plans for the future. Today, we trust you to reaffirm the commitment to the 2003, because it's fair, it's equitable, and it's the right decision. We want to catch fish, not be Flounder today. I trust you will make the right decision.

CHAIRMAN: Thank you, Brad. Questions? Steve Williams.

WILLIAMS: Thank you, Mr. Chair. Just one question, Brad, regarding you mentioned a lot there about the control date, and you spoke to the issue of the timeframe between the time it was set and decisions were made. Expound just a little more on your thoughts about the staleness question that you hear a lot about regarding this control date and the time it took in between, can you give me your thoughts on how that is rationalized in your mind, so to speak?

PETTINGER: Well, I just think, you know, this council, unfortunately, things move really slow, but we've moved consistently through it. Would we like it to have been faster, absolutely. I think everybody was frustrated that things weren't going faster, but this system here is very bureaucratic. I mean we have layers and layers of transparency, and we have a lot of requirements by the law. This is the first – this was the first program really to go through a council process, very complicated, it's amazing it got done, so I'd be looking at the control date for the limited entry. That doesn't have near the complexity of this program, and it was sufficient. Six years wasn't too much for that, and I think what we're talking about here, I mean it's – well, 2004 through into 2008, six years to actually get this thing finalized. Is it our fault that it takes two years to get the program up and going because of complexities, no. But I think you have to have a control date and the control date has to have teeth. And if you don't have teeth in the control date, the very issues we tried to solve would be horribly exacerbated.

WILLIAMS: Thank you.

CHAIRMAN: Dorothy Lowman.

LOWMAN: Thank you, Mr. Chair. Brad, just going back a little bit to this permit that you bought during the time, and the boat had sunk, so you couldn't really do whiting once you bought it, but I assume this permit had both non-whiting and whiting…

PETTINGER: Yes.

LOWMAN: …history on it, and you were fishing non-whiting throughout that whole period.

PETTINGER: Yes.

LOWMAN: And so I guess, first, my question to you, now that we're under this IFQ program, are you fishing whiting?

PETTINGER: Actually, we're leasing it to one of the plants that didn't receive whiting allocation, so they can help lure boats to their facility. We actually traded traditional groundfish.

LOWMAN: So you're also using that to kind of, again, change your portfolio…

PETTINGER: Exactly.

LOWMAN: …to have more non-whiting.

PETTINGER: Yeah. I mean permits were bought and sold – everybody knew what history they had. If someone says different, they're lying. Everybody understood what permits did what.

LOWMAN: Thanks.

CHAIRMAN: Phil.

ANDERSON: Thanks, Brad, thanks for your testimony. I just wanted to go back to that table, the H.7.a, page four. I think, based on, by process of elimination and what Marion said, and what you said, I think I know which number you are, and I think there's a yes as having the permit owner also owns other permits.

PETTINGER: Yes.

ANDERSON: Is that correct?

PETTINGER: Right.

ANDERSON: You're one of the yeses?

PETTINGER: My brother and I own that permit.

ANDERSON: Okay.

PETTINGER: So we have multiple permits.

ANDERSON: Yeah, all right, thank you.

CHAIRMAN: Dale Myer.

MYER: Thank you, Mr. Chairman. Brad, I'd like to explore a little bit deeper the comment you made about business decisions that you made, that you looked at trying to get it or trying to take that

permit into the whiting industry and the cost that was involved, because I understand that concept very well. We made the very same decision with one of our permits, was not to reinvest in overcapitalized fisheries and, of course, you don't really have the numbers, but I'm sure you did on the back of an envelope type of a calculation to try to figure out what it would cost to see if it would pencil out, and I was wondering if you could give us an idea of what you thought it was going to cost you to come into, you know, be a big whiting player and get into the industry?

PETTINGER: Well, I mean it takes – I mean fish holds have to be redone, repowers. You know, my brother and I do a lot of work ourselves, and so, but easily 250, 300 thousand dollars, at least. I mean that's a lowball because we do a lot of the stuff ourselves, but I mean it's we trusted the 2003 date was going to be the date and, with that, we made the decision not to invest much money, that after the control date went in place, there would be left stranded with a vessel that is overcapitalized. And why make the program worse than it already is, as far as the fishery, worse than it already was at the time. I mean the fishery was overcapitalized, that's why we're doing what we're doing. The race for fish had to end and we didn't want to get in the middle of that, spend much money, and then have it stranded, in essence, after the fact, because we believed the control date. If you had to take the boat to a shipyard, you're talking well over half a million, obviously.

CHAIRMAN: Thank you, anyone else? Thanks, Brad.

PETTINGER: Thank you.

CHAIRMAN: Jim Seavers.

SEAVERS: Thank you, Mr. Chairman, members of the council. My name is Jim Seavers and I was only up at 3:10 this morning trying to figure out what I was going to say, trying to condense seven years of my life into a five minute testimony. I've got a written paper here and then I'd like to add some comments on the back of it. I want to take this opportunity to express my strong support for the status quo option, under this agenda item. I live in Newport, Oregon, and own two vessels that participate in the whiting and non-whiting fisheries,

including both shoreside and mothership whiting, and have been fishing groundfish for about 27 years. I've been a vocal supporter of rationalizing the groundfish fishery with a catch share system and support the program as implemented. As a longtime participant in the groundfish fishery, I attended most of the IQ meetings throughout the years of development of the catch share program. While there were many species and diverse business interests involved in the development process, a series of compromises led us to a conclusion that resulted in a system that has virtually eliminated bycatch, has promoted higher fish prices and more stable employment onboard vessels and at the local processing plants. The compromises reflected the give and take of the participants and their aim to create a system that benefitted the fishery as a whole, with no big winners and no big losers. I had to give up some financial gain in order to make the compromise, we all did, and we were willing to in order to make the program work. We accomplished our goal of not creating big winners and losers, and to choose an alternative other than status quo will eliminate all these gains. Nearly all the fish boat and permit owners chose to play by the council rules and accepted the control date. They made business decisions, trusting that the council process would move forward based on the control date. To let a tiny fraction of fishermen benefit from a breach of this control date would not be fair and equitable, in my opinion. Any past or future catch share or limited access programs here or around the nation would be in severe jeopardy if the control date had not been held. And I'll have further comment on the control date. And the GAP, Mr. Walsh said control dates, and I quote, "control dates are intended to scare people off", and I think, in a large extent, that's true, they are meant to guide us. So what does that really mean. Does that mean that those of us who got scared off aren't brave, because we chose to play by the rules. I think that's the wrong message to send. In response to a statement in the litigation made by the plaintiffs that the MTC vessels were gaining the system by building history during the development stages of catch shares. I can only speak for one boat that I have. It's an AFA boat, The Seeker, and say that we did not

lease our pollock or change any of our fishing strategies during the development of this catch share program. Instead, we chose to play by the rules that were in place. Mr. Walsh also said that the AFA didn't affect the whiting fishery. From the records provided by Fred Yeck, the Pacific Challenger had over, in a period of seven years, had over 40,000 metric tons of pollock that it leased out, that it did not catch, or it leased out that or gave away, hard to tell what it did. By not catching those fish, it allowed time to come down and impact the whiting fishery. At 40,000 metric tons of pollock over seven years is an average of 5 or 6000 metric tons per year. If they caught 5 or 6000 metric tons of whiting, instead of 5 or 6000 metric tons of pollock, and you could easily do that with the same gear, same boat, that would have affected our – effectively shortened the fishing season done on the west coast by three or four days a season, assuming a 1,000 to 2,000 metric ton burn rate of pollock per day. A three or four day reduction in season length on a 30 to 45 day season is 10%. I hesitate to – or I will say that a 10% reduction on our season from one AFA vessel's effort hurt, and it hurt my crew, it hurt the processing plants, and it hurt the program in general, and that concludes my comments. Thank you very much.

CHAIRMAN: Thank you, Jim. Questions? Thank you. The next speaker is Mike Stone.

STONE: Thank you members of the council. My name is Mike Stone. I manage the Fury Group. It's a commercial fishing company that's got three vessels that have actively participated in whiting, and I guess where I come from on this whole thing is that, in any of these rationalization programs, we've been through them before with crab, they're all kind of like a knife fight in a phone booth. You know you're going to get cut, that's really the only thing you can be sure of, and nobody ends up with exactly what they want. It's always a compromise. This one took a long time to put together, was quite a battle, went on for years, and kind of reminds me of Clint Eastwood, the guy, you know, talking to the invisible president in the chair, but before he was doing that, he was making movies. And one of his movies is about a sergeant and a bunch of young recruits, and he says,

you know, to be a good marine you have to improvise, adapt and overcome. And I think to be a good fisherman, you have to do the same thing. And I just look at our case, you know, we had two boats that had been actively participating in whiting since 1987. As we saw the rationalization process coming along, we realized we had only one permit, and we were going to lose our history, it was going to go somewhere else, it was going to go with the permit. Well, that's life, that's the way it was. We went with the rules. We said, okay, what do we got to do. We went out and tried to acquire a permit, which we did, and then we said, oh, wow, even with this other permit, we really don't have that awful much fish, what are we going to do. Well, we're going to consolidate, we'll put it on one platform, so one boat won't fish whiting anymore, we'll put it on one. Well, which boat should we put it on. Well, let's put it on one that doesn't burn very much fuel, but packs a lot, and that's what we did. And I think that that's what you have to do. I mean you have to – the way the program is set up, the advantages far outweigh the disadvantages of your initial allocation. Even though the first year our quota was not as good as we would have liked, we were able to go out and lease 60% more fish than we were allocated. We did it and we caught all that fish. We caught 25 million pounds of fish our first year out. God, I wish we could do that this year. That's not going to happen again, but, our bycatch rates were really low. It was an overwhelming success and I think this program has been an overwhelming success. But when the council makes decisions, and they make final action, fishermen take final action and they do things based on those decisions, and we did too. We converted a boat. It was risky and we did that. We turned it into a trawler. It was a crab boat. We said, okay, this boat would make a good coastal groundfish boat and a trawler, and we'll do that. And, you know, I guess that's just – that's all I really have to say is I think status quo is valid. I think that the period of time that it took is, to get to this program in place, was because it was very complex. We all knew what the control dates were way in advance. We all took action based on that and here we are today and now we want to change the whole thing.

Well, you know, you guys are in a tough spot, but a lot of us, I mean I signed a mortgage, you know, based on the decisions that were made here, and I think that's – you've got to, at some point, there has to be some credibility to the process. That's all I've got to say.

CHAIRMAN: Thank you, Mike. Any questions? Phil.

ANDERSON: The name of the movie was Heartbreak Ridge.

STONE: There you go, yeah, there you go. A fitting name, a fitting name. Any questions, anybody?

CHAIRMAN: Dale Myer. Did I see – I thought I saw your hand up.

ANDERSON: No, I just wanted to make sure Mike knew that the example he made was pertinent to the task at hand.

MYER: Thank you, Mr. Chairman. Mike, from summarizing your testimony, you're basically saying that you made business decisions based on the – on the control date, the fact that - the rules set up by the control date. I was wondering if you – and you don't have to answer this if you don't want to, but do you mind sharing with the council what kind of monetary decision you made with it – with your decision?

STONE: Well, I mean we had a boat that was doing some charter work and it was a crabber, and we had intended to turn it into a trawler, so it wasn't like that was a whole new thing. We thought – I mean our other boats are getting old and we thought that, eventually, this one would replace those, but in order to prosecute the whiting fishery, specifically, we did work on the refrigeration, which we wouldn't have done as a mothership vessel. We did it to fish shoreside. We weren't planning to take it to Alaska. And we also said, well, you know, we've got some black cod, let's try and make that work. And I think that we probably spent in excess of a million dollars to do these things. But this program, the IFQ program, has allowed us to trade fish and to lease fish, and it's a great program. It really – there's a lot more opportunity than there ever was before for people to consolidate and make it work. And the fishery was overcapitalized, so I think it's – we have to look at this as a real success story, and I don't think we should undermine it now. I think we should stay with status quo, and I think it's dependable.

CHAIRMAN: Thank you. Dr. McIsaac.

MCISAAC: Thank you, Mr. Chairman. As the council members are wrestling with this control date issue, a follow-up to Mr. Myers' question, you described some strategies that you used leading up to the control date. If you would have thought the control date was not solid, what would you have done differently if you knew that the control date would have maybe been reconsidered?

STONE: Well, for one thing, I never leased out my pollock, we never have. We've always come down here after pollock season and fished. If I had known that history was dependent upon how much I caught by X date, I could have done that. I could have leased out my pollock, come down here and just hammered the whiting. And a lot of guys could have done that, and we didn't do that.

CHAIRMAN: Dorothy. Dorothy Lowman.

LOMWAN: Yes, Mr. Chair, thanks. Just one kind of question, you know, you said that you sort of thought that these – you made some decisions based on the control date, and so I'm just kind of curious, did you feel comfortable making those decisions prior to council action? Did you make them afterwards or let me hear your thought process on that.

STONE: It's all – I mean, fishing, it's always an element of risk. Everything you do. I mean the fish don't always cooperate, even if you – even if you have an allocation, right. So, you know, I won't say I was totally comfortable with it and – but I saw how things were going to go. I kind of realized we're going to end up with about this much fish and how can I make that work, and made the decisions based on that. And some of the things we did after, you know, like our first season with the new boat wasn't until 2011, so we had the other boats operating prior to that. So, I don't know, did that answer your question?

LOMWAN: Close enough, thanks.

CHAIRMAN: Anyone else? Marija.

VOJKOVICH: Thanks. I thought I heard you make some sort of a statement about it's not about initial allocation, it's about what you do with that. I didn't quite capture it.

STONE: Obviously, everybody wants to get as much fish as they can get. That's just human nature. But I don't think anybody gets as much as they think they could get in an open access, you know, everybody – that's just fishermen, you always think you can get more, if I was out there competing, I'd do even better. But what the program has allowed fishermen to do is to lease fish, trade, trade some of their traditional groundfish for whiting or – it's just giving you way more versatility, and many more options than you had in the past, and I think that's how you have to – that's the new world we live in and that's how you have to operate. You can't just throw your hands up and, you know, if you really want to make the system work, there's ways to do it, by consolidating with other people.

VOJKOVICH: Thank you.

CHAIRMAN: Thank you. Dorothy.

LOWMAN: Thanks. Mike, I have one more question. So you said that you have participated in at least one other program of rationalization and that kind of you never get what you think you're going to get. Is there some sort of sense of, you know, kind of what people – kind of percentage less than they do kind of in general or, you know?

STONE: Well, I don't think it's always – I don't think it's always just a percentage difference, it's the years that are chosen don't always - in our case, I'm thinking of king crab, okay, I was up in the Bering Sea working king crab in 1971, and we fished king crab every year that it was open. We never missed a season. We did sometimes have timing conflicts. There was some seasons that were very short for us. Because our boats were trawlers, we weren't really effective crabbers later in the history of years. After we converted to trawling, we couldn't carry as many pots, that sort of thing. But the years that they chose weren't, obviously, our best years. They certainly didn't look at the years where we got a million pounds of crab every year, you know, they looked at the more recent years, and so in order to make crab work for us, we took three crab vessels quota and put it on one boat, and now we've got one crab boat that can make some money, and that's the kind of decisions you have to do. It just

– that's the way it works. And we're still better off. We're better off, even in that scenario, so…

CHAIRMAN: Okay. Anyone else? Thanks – thanks, Mike. Next speaker is David Jincks.

JINCKS: Thank you, Mr. Chairman, council members, my name is David Jincks, President of Midwater Trawlers Cooperative, for the record. I've introduced several documents. One's the PowerPoint that's going to be on the screen, which is a first for me, so I'll probably mess it up a little bit, but also another document that is answering some Q&As, some questions and answers from the plaintiffs' lawyer, Mr. Walsh. And another document that addresses overcapitalization that this council has faced and that the whiting fishery has faced for several years. So we're addressing several issues today. I'm going to burn through a lot of slides, some other stuff, but mostly slides address things that we addressed throughout the program, as we were developing it. And we relate this one is, you know, why is status quo fair and equitable in 2008. Why was it fair and equitable in 2008. Up to 2008, this was an industry, council and agency developed program together. Very transparent. We all worked on it together. And so was it fair and equitable, yes. Was it fair and equitable that the agency and the council body and we all went to the communities and said, hey, support this, this is what we're doing, this is what's going to happen, yes, that was fair and equitable. It was handled really well. The purpose and need of amendment 20. You know, despite a completed, you know, it was completed, you know, in 2003, to reduce fishing capacity. You know, we did a buyback program, right. The buyback program didn't reduce the capacity we needed to. We were still overcapitalized in every sector. The Ocean Policy in 2004 report, it's, you know, many participants and observers. They viewed the trawl fisheries economically unsustainable under the current management regime. This had to do with all sectors, and we all know that. We were facing that and we struggled with it. So the purpose of the Trawl IQ Program, capacity rationalization plan, that was the main – one of the main goals, and this council faced that for a long time, and it was part of the strategic plan. Strategic plans are

important and it's important to follow them. Capacity reduction was a big part of that for all sectors. Whiting was mentioned in that several times, the need to control capacity in whiting. So what the judge ordered, reconsideration. You know, reconsideration… (noise in background)

CHAIRMAN: Well, let me just – so let me just – let me just take that as an opportunity to remind folks to turn your phone cells either off or on silent.

JINCKS: So reconsideration is exactly what's being done today in 2012. We're considering what the most fair and equitable allocation scheme is or was. In doing so, we needed to determine – we needed to look at why three fishermen decided to sue other fishermen. To me, that's distasteful. It just shouldn't happen. These things can be worked out in other ways. But processors too, why did processors feel they needed to sue. We all worked on this together. We all agreed on it. There's documents supporting that we all supported it. So why, at the end of the day, are we suing now. What's changed. So we're going to reconsider that, but to assist us in doing that, we need to have some good explanations. How is it that fishermen can say they were in the whiting fishery forever, but now they have to sue to get more allocation. If you participated in this fishery forever, you should have suitable allocation. So why is it that makes it so important now to sue to get more allocation. Obviously, they weren't in the fishery forever. I was in the fishery forever. I didn't get all the allocation I wanted, but, as Mike Stone said, I'm making due with what I have and I'm actually doing better with what I have now than what I did before. Prices are higher. My costs are going down because we're able to implement our business plans differently. So – and he didn't mandate a particular change be made. All we're doing is reconsidering here. Reconsider means a few different things, so as you think about this today, we've got to think – we've got to reconsider it, but allocations must consider current and historical participation, employment in the harvesting processing sector, investments in the dependence on the fishery, current and historical participation of fishing communities. Current and historical

participation, we addressed that, and it showed up in documents. You know, we allocated to current permits, and it's successful. Graphs show it was successful. And like it was said earlier, any time you have that low amount of latent history that shows up, that's a success story. That's far better than what happened in AFA and crab rationalization, and they picked a lot fewer years. I mean we are looking at ten years and you end up with that little of latency, you've got a real success on your hands. And the investment and dependency on the fisheries, that's an (unintelligible, 61:41), because that one's really hard to solve, but we'll get into that a little bit later. But it is really – it really is difficult. It's what you use these platforms for and where else you use them. Current and historical harvests, you know, you recognize the investment that 18 permits traded hands after 2003. Yeah, you're recognizing that. People were allocated fish, people made investments. The status quo alternative to the current fishery clearly recognizes current participants. That's just what it does. Just what we're fishing underneath today, it's recognizing current participants. It gives you the option either you're going to be current after today or not current. You can lease your fish, go back to Alaska. You can lease your fish in Alaska and lease more fish down here. You can make business decisions. That's what we're doing and that's what we've been doing for the last two years. Moving the window period forward ignores historical participation. Moving the window, period, forward is a mistake. We learned that with the processor shares, okay, you don't do that. That is a huge mistake. It will cause problems, serious problems, throughout the nation. Recent participation, 23 permits increased whiting landings after 2003, and only three are suing for an increased initial allocation. You can look at them. You know, all of this information is on the Internet. You can find out what AFA vessels harvest, what they're allocated, crab boats, anything you want to find out. But if you look the Pacific Dawn, Pacific Challenger, 1.991% of the initial allocation shoreside, does that show that he fished in the shoreside whiting fishery forever. No, it shows that he is a part-time participant in there. It shows that he had

recent participation after the control date. But he still ranks 18 out of 55 people that were allocated whiting. Mothership whiting, 3%, 16 out of 36. A good average. But all that speaks to when you were fishing and why you were fishing. But it also speaks to the fact that when you're talking about dependency, you know, if you got 20 million pounds of pollock in the Bering Sea, are you dependent on Pacific whiting. You've got to think about dependency when you're making these decisions. All this stuff's available. The Chellissa 1.734.6, he sued, but he fished eight out of ten years and he still sued. Two years, he got the drop, made him whole. But, what he doesn't say is that when everybody else was fishing whiting full-time, he was up in the Gulf of Alaska gaining several million pounds of rockfish history in the Gulf of Alaska. It's all on the Internet. It's all there to read. The Collier Brothers, same song, same thing, but he was real smart. But this is diversification. I don't hold anything back – against these guys because this is just diversification. This is all we do. We're building portfolios. That's what we're doing. Because James Schones, 1.5%. That's not much whiting, but, still, it's something. It's something to do something with. You can trade it and use it. But, during that time we were fishing shoreside whiting, he was also gaining several million pounds of rockfish history in the Gulf of Alaska, which is now an allocation. He was also fishing black cod, which gained him a tier I black cod permit. The permit itself is worth $600,000.00. So, these are just business decisions. They made the same decisions, but now they want more. Recent participation. No one is prevented from harvesting or processing whiting due to the initial allocation. That's true. Whiting is going different places. It's going to different communities. It depends on where the fish is at, it depends on the price of fish, and that's what's really interesting is what the price of fish is doing. What's the price of whiting doing, 18 cents a pound in some places for certain size fish. This is historical. This is tremendous. This is a return to the nation. This program's working. Da Yang Seafood, you know, they received no initial allocation, and they're still processing large amounts of fish. That's one thing I got to say about Cheet & Dae

Yang Seafood, when they came to these meetings and through development, the one thing they said was is we don't need processor shares, we're going to pay you more, and that's just what they're doing. So latent permits are insignificant. We've covered that pretty well. I don't think we need to go into that, but it is an insignificant amount. Employment in the harvesting processing sector. We've proven this through the program as it is. Healthy fishermen keep processors and communities healthy. Any – under any action alternatives, resources shift from one community to another. That's not a good thing. We need to recognize these communities. So back to investment and dependency on the fishery, we've gone through that. So west coast seafood processors, dependent or diversification. Everybody diversifies. There's nobody that's just going to process whiting. There's nobody that's going to show true dependency – dependency on whiting. Everybody diversifies. The processors diversify. They have crab, groundfish, shrimp, salmon, sardines, albacore, tribal whiting. I got Canadian fish there. I guess there's been a stop put to that, but we got shoreside whiting, we've got fishmeal. It's all a diversified package. That's what we do as fishermen, that's what processors do as processors. There's always those rainy days you need a backup plan. The vessel side. Are we dependent or are we diversified. Look at the vessel side for must of us. We have west coast black cod tiers, okay. Some of the boats have those. West coast groundfish IQ, west coast crab, west coast shrimp, west coast shoreside whiting IQ, mothership catcher vessel whiting co-op, Gulf of Alaska pollock, Gulf of Alaska cod, GOA rockfish, Bering Sea crab, mothership catcher vessel pollock, AFA, inshore pollock, co-op, Bering Sea cod. All this is diversification. These are the communities. This is what was issued. You got Trident, Ocean Gold, Pacific Coast Seafood, Pacific Shrimp, Point Adams, Jessie's of Ilwaco, Pacific Seafood. So this recognizes historical participation in communities. This wasn't addressed to bring whiting to a processor to say, oh, you invested in this, this was historical participation in communities. What we're about to do, if we change from status quo, we're about to change that. We're about to take from communities and

give to other communities. The whiting is divided up. Washington gets a lot of whiting, tribal fish, they get a lot of whiting, and that's good. They're a tremendous state, they process a lot of whiting, they furnish a lot of jobs outside of Washington. They furnish me jobs. The motherships that come down, I harvest fish for them. But this is the allocation and that's as it is. But to now say we're going to change an allocation scheme that's going to change this, and it's going to continue to shift fish to the north from communities that are dependent on it, I don't think we want to do that. I think that, along the line, we're going to continue to disrupt this program and I think, throughout it, we're going to trash MSA standards while we're so focused on what consideration means. We need to be cautious there.

CHAIRMAN: Dave, your time's close. Are you about ready to wrap up?

JINCKS: I am. I'm wrapped up.

CHAIRMAN: Okay. Other questions? Steve Williams.

WILLIAMS: Thank you, Mr. Chair. Thank you, Dave. Can we go back to the distribution 2012 whiting by state that you had if you would, please?

JINCKS: I told you I was going to mess this up.

WILLIAMS: There you go.

JINCKS: Okay.

WILLIAMS: Now, I want to just understand this slide. This is the current distribution under our existing program, correct?

JINCKS: This is the current distribution underneath the total U.S. OY of whiting. This includes catcher processors, motherships, catcher vessels, shoreside catcher vessels, shoreside processors and tribes. Now, the only reason why I put tribes in there too is I'm just showing an overall U.S. OY allocation. I could pull tribes out and I believe – well, you can do the percentages. But the point is, is that, you know, if you look at the slide, an interesting point of it is, is that if you look at California at 3%, they go way underneath any of the alternatives. Okay. So, but the interesting thing is, is that in the 80's and early 90's, we fished 50% of our time in California, and most of that fish it was processed off shore, but even today, catcher boats

cross the line into California, catch their fish, and drag them back across the line to be processed. So, the point is, is that that is just a total allocation of U.S. OY. Sorry, Steve.

WILLIAMS: Okay, thank you.

CHAIRMAN: Jeff Feldner.

FELDNER: Thank you, Chair. Dave, in the early statements here on your testimony, you talked about that during the process, that the process was transparent, fair and equitable. I wasn't on the council during the early stages of it. In terms of the overall support from industry, fishers and processors, what percentage of that group was in favor of moving ahead as the council did? Give me your best guess.

JINCKS: Are we addressing whiting? That's what's on the table today.

FELDNER: Yeah, whiting.

JINCKS: Okay. All of the whiting representatives, United Catcher Boat Association, Midwater Trawlers Cooperative, which covers all the whiting, and individuals, yes, supported this move 100%. It was needed, we had to do it. And the other point I would like to make is that so this council and who wasn't here at the time understands, this wasn't an agency decision, this wasn't a council decision to move in this direction of IQs and co-ops, the fishermen and industry brought this to the council in 2003, after we completed buyback. This was brought by industry and industry supported to move ahead with.

FELDNER: Thanks.

CHAIRMAN: Thank you, David. Anyone else? Dale Myer.

MYER: Yeah, thank you, Mr. Chairman. Dave, in one of your slides, you showed how the participants had participated in other fisheries in Alaska and the west coast, to try to get an idea of their dependency, but you didn't talk too much about the Pacific Dawn. Do you know what their dependency or do you know what their other fisheries that they're involved in, in Alaska, crab, cod, pollock, or the Gulf?

JINCKS: Pollock and a small allocation of cod.

CHAIRMAN: Thank you, David. Could you go back. Dale, did you get an answer to your - good. That's the chart I wanted to go back to. You kind of glossed over that. No, that one. The one with the red and green on it.

JINCKS: Okay.

CHAIRMAN: You glossed over that. What was the intent of that chart?

JINCKS: Oh, the intent of that one just shows the change. On any of the alternatives, besides status quo, you'll see a change, status quo or alternative one, you see a change, and the green shows the change. What you're going to do is you're going to readjust those allocations that were made to processors. And so the green shows the ones that are going to be rewarded for their lawsuit. The red shows the ones who are going to have to give up for those that are being rewarded. But the point that has to be made here is it's just not a processor issue. The processor shares were intended to be part of the community, and that's what kept us out of having adaptive management on the whiting fishery. What happens now is, is when you move that fish from one community, you're also taking that fish from the fishermen. Because the fishermen are receiving that fish back in that community, back to the whiting boats. So it's a double dipping and that's the worst part. That's, back again, hitting the fishermen that are vested in this fishery.

CHAIRMAN: Dorothy Lowman.

LOWMAN: Thanks. Kind of a follow-up on the Chair's question. I think when we did this and we gave 20%, there was a lot of discussion about, well, I'm going to give this to the fishermen who have traditionally fished for my plant and kind of from that community and kind of keep it there. I'm just wondering if you can give me a sense of whether that's actually been the reality of how that quota has been used in different ports.

JINCKS: It has worked well. And there's times it's worked better, differently than what I thought. I've been a recipient of quite a bit of whiting. Right now, I have a transfer waiting to accept, because I've delivered X amount of fish to one processor. He is now going to transfer me quota shares. There's processors that didn't receive any quota share that are going out and obtaining quota share to give to their catcher vessels to keep them fishing. It's an interesting process. But, yes, the processors are returning it. And I'm not getting charged for it, so it is working. And, last year for example,

I left my community and I went to Astoria and delivered to Da Yang Seafoods, because I was having some rockfish issues out in the area where we were fishing. He paid me more money, so it was an easy fix. He didn't need to give me fish, he just gave me more money. It all works the same. Money, fish, that's what we're after, so it worked really well. But the processor I left, he was able to bring in another boat that had the ability to carry more fish from a further distance, which kept the fish in that port. It was a success, it was. But now it's a different story. Now we're suing for another reason. Now we're suing, it's not about fish, it's not about communities, it's simply about greed is what it's about.

LOWMAN: Thank you.

CHAIRMAN: David Crabbe.

CRABBE: Thank you, Mr. Chairman. One of the last slides towards the end, it says disruption to existing programs, and we've heard a lot of comments about disruption and I guess I'm trying to make sure I understand disruption. We had the fishery prior to 2003, we had the fishery after 2003 to 2010, and we had implementation, so can you give me an idea of disruption, or go into how do you see the disruption of the fishery occurring if we move to one of other proposals or stay with status quo?

JINCKS: Well, the disruption is when – you all have to address disruption as fair and equitable, because it all comes together. Is it fair and equitable to take fish away from historical participants that had access to the fishery during the historical periods and through recent history and give it to new recent history. It's a shift in allocation, it's a shift in fish, it's a shift from communities, and it's a shift from the people invested in those permits. And so one of the big issues in fair and equitable when you're talking about a disruption is, you know, new entrants into the fishery. We have new entrants coming into the fishery. They came in, they bought permits, they bought permits that were there available to buy, and now we're going to squelch that new entrance. That was one of the standards that we wanted to hold into this fishery, is we wanted to make it accessible to new entrants. We move off this, this

is going to kill some of those people that invested in some of those permits, and some of these are young fisherman that are just coming into the fishery. That's a disruption. I don't know if that answered your question, Mr. Crabbe, but it's…

CHAIRMAN: David.

CRABBE: Thank you, Mr. Chairman. Yes, I guess it's what – I mean from what I'm getting out of your answer is that it's not a – I mean the fishery has been adapting in whatever situation it's in and it's going to continue to adapt, even under this new fishery management, and disruption is not – there's not a blatant – I mean other than allocation shift, what's fair and equitable to individuals, but the fishery is going to continue to react to different changes whether the fish are in the north or the fish are in the south or if there's a better market here or a better market there. So I mean it almost sounds like the fishery is going to keep rolling along, and disruption to a fishery, I mean other than these prearranged deals, there's not going to be any huge like different management plans or any major changes to the fishery, other than typical disruption, typical changes, and I don't know if I'm asking this correctly, but I'm just trying to get at this disruption comment that I've been hearing from different public comments. So that's not really a question, more of a statement.

CHAIRMAN: Okay, thank you. So there wasn't a question in there, okay. Phil Anderson.

ANDERSON: Dave, thanks for your testimony. I have two questions. On one of the slides, on the last part of the slide, it talked about shifting the allocation period forward and you emphasized strongly that that would be a huge mistake I believe is what I heard you say. Could you expand a little bit more on your thoughts about that as to why that that would be a huge mistake?

JINCKS: To me, and I'm going to speak personally about this, because this is probably my 26th or 27th year attending council meetings and addressing issues and overcapitalization has been one that's really bothered me. And it's just not at this council arena, it's throughout our nation in other council bodies that are addressing the same

issues. Without viable control dates, without a means to control inference into a fishery when you're considering this type of management plan or any other FMP, without a control or something that says we are considering this and that anything after this you may not be rewarded for your participation, without that type of control, you're never going to be able to reduce the capacity in these fisheries. If you now go out and say that control dates are no longer viable, that we need to deliver after the control date, that is exactly what we're going to do. You heard Mike Stone. If this council hadn't set a control date, it would have been horrible. I would have gone out and tried to catch more bycatch to help with my whiting fishery. I would have entered the groundfish fishery. I would have leased out more pollock in the Bering Sea. I would have leased out, which I do lease out my crab now, but I would have made that business decision, and fisherman are going to do that. That's what we do. But we do respect control dates. It does affect your business plan and, Mr. Anderson, I don't know if that answers your question, but, to me, overcapacity is a huge issue in our nation. And if we don't address that now, the agency is going to be fighting that in court forever.

ANDERSON: And then my second question had to do with these latent permits that I asked Marion a little bit about and I think Brad, and I fully understand the perspectives on those "latent permits" that are linked to someone who's active in the fishery and that we shouldn't be taking that away. Those other nine, which I understand we don't have specifics on, except to know that they're not owned by an entity or an individual that owns another permit that's active in the whiting fishery, and the issue of recency and dependency, and whether or not it makes sense to have quota share go to those nine permits is what I wanted to ask you about – your thoughts about.

JINCKS: I have two ways I want to address that. One way is that, still, with those nine boats, the amount of latent capacity is so small that it's a blip on our radar. It's insignificant. If the plaintiffs wanted that, I think we'd all gladly give up that out of our shares and let them have it and let them divide it up, if that

would make them happy. But the second part is, is that we considered recency several times throughout our program when we were building it. It's well documented in the program. And when I skip through these slides fast and just speak real fast, I only got ten minutes to tell you about seven years of hard work, and you all realize that. But we considered recency many, many times throughout our program, and one of the recency periods we considered was '98 to 2003. If you didn't deliver in that recent period, then you wouldn't receive an allocation. That's well-documented in our program documents. And also the analysis that was done on that is well-documented, and it basically said this number is so insignificant, it's so insignificant that it does not warrant the effort to throw these people out of the fishery when we're trying to gain total support to implement this program. And that's well-spoken to in our documents in this program.

ANDERSON: Okay, I understand it's a small amount and it would be insignificant, I get that. It's been a point that's been focused on by the plaintiffs and there was some focus on it by the judge and so I'm just trying to explore a little bit what your thoughts are about it, so, thank you.

JINCKS: Well, one last point on that is that when we first started to focus on this, it was 20 permits, 25 permits, it was 10%, it was 15%, it's been boiled down really well. I think that we should name those permits. Let's put names on these permits. This isn't personal anymore. I mean it is personal, but lets put names on these permits so we can discuss them. Let's not put dummy identifier numbers on them, let people know who they are.

CHAIRMAN: Steve Williams.

WILLIAMS: Thank you, Mr. Chair. I just wanted to get - you talked a fair amount about control dates, Dave, and I wanted to get a little more of your viewpoint on a question I asked earlier, I think it was of Brad, the timeframe, the length of time in which we had the control date, we made decisions. You've had 20 plus years of experience, as you described. In this case, does that time bother you or how do you feel about that length of time, and comparing it to other programs that you've been involved in?

JINCKS: This program took longer than crab rationalization and AFA. But AFA did take longer than what most people are saying, because you had inshore/offshore issues to deal with. So if you tie that all together, all of it is part of rationalization with AFA. So it did take considerable time and a lot of effort. This program took a long time, but I learned a lot through this program. And when I went back, and I read every briefing book in the last three months, since – in the last three months, I read every briefing book since 2003, read all the statements from the advisory panels, from the Allocation Committee, and went through them, and I looked at the council's schedule at the same time, and what else this council had to deal with at the same time it was implementing trawl rationalization, it's incredible. I wish we would show that calendar. I wish that that would be analyzed what it took to do this. But length of time is kind of interesting. What if you would have only taken two years, like Mr. Walsh says should be a national standard, what if you only took two years to create this program, would the plaintiffs be any better off. Well, no. The extended time gave them the ability to make a lot of money between the control date and the cutoff period. So two years to implement this program, the plaintiffs would be no better off. They'd be in the same position.

CHAIRMAN: Thank you. Any other questions? Thank you. I think we've been at this for a little over an hour and a half. We need a break. Ten minutes, please.

0924lm01

9.4 AUDIO FILE: 9-18-12am2Copy.mp3

CHAIRMAN: So, as we come back into session, we're still on Public Comment; 15 or so cards to go. Donna Parker?

PARKER: Morning, Mr. Chairman, members of the Council. My name is Donna Parker. I represent Arctic Storm. We are long-time participants in the Whiting fishery. We have two mother ships that

operate and two catcher vessels that operate both the shore-side and the mother ship sectors. I have had written comments distributed to you yesterday, which you should have before you, and I will be touching on some of those points. I'd also like to mention the, the additional written comments that were submitted by M.T.C. that didn't gain much notice because the PowerPoint presentation was so marvelous, and that was the question-and-answer document that they circulated to you. A lot of effort went into development of that document. It basically took the written comments of the plaintiffs that are a part of your E.A., and it isolated the specific issues and questions raised in the written comments, and it provided answers to each one of those, and I, I encourage you to take a look at that. A lot of effort by participants, as well as the legal counsel, went into developing those. First of all, I'd like to begin by responding to some of the comments that I heard yesterday by a couple of folks. One in particular was that the reason the, the plaintiffs and the Arctic Storm permit, I mean, the American Seafood's permit were able to harvest more fish in recent years is because 20 vessels retired from the fishery and, so, left a vacuum, and, since 2003, and that's simply untrue, and let me try and walk that, walk you through that. If you go to Pages 47 through 51 in the E.A., you'll see the enter-and-exit patterns of the shore-side and mother ship fleets since the '90s, and what you'll see there is that there were always at least 20 permits that were not active because the fishery is over-capitalized. They're simply not markets available. The markets are not available because they have more, um, would have been economically unsustainable for the processors or the catcher vessels. So, we have the classic picture of over-capitalization: Too many boats chasing too few fish, and that was the primary reason for the control date. The control date said we're going to put a stop on this. The Purpose-and-Need Statement said we're going to, we are going to de-capitalize, so it can be an economically sustainable, rational fishery, and one of the things that was done, as part of this process to get to those boats out of the fishery, was to allocate to the permits, the current owners of the permits, rather than to steal, because that was to be retired and not

to the permit, the permit holders at the time of the harvest. So, the anticipation of these transactions that are documented, it, particularly in the supplemental paper of 18 permits that have moved, been purchased, was expected to happen, indeed, did happen and was based on the control date. Without that, it would've been out of control. We would've had over-capitalized fisheries that would have accelerated toward increasing their catch history, would've closed down fisheries because of bi-catch closures because people were not slowing down. So, the control date is very important, and let me be just a little bit more precise for people how it works. I can talk about the mother ship sector. There are 36 permits in the mother ship sector. There are six mother ships. Only three vessels can deliver to a mother ship at a time; that's 18, and if you've looked at that enter-and-exit patterns, you'll see that's all there ever have been. Everybody else is over-boated, and then, so that is why people were able to enter for whatever reason because they leased their pollack, they could come into the fishery because they fished at the end of the year when there was tribal rollover, and other vessels could not participate in the mother ship sector. These things contributed. It wasn't because a vacuum was created by the exit of latent vessels. Also, I'd like to say that there is some inequality going on here in the discrimination between the sectors. There's four sectors; there's the C.P. sector, there's the non-Whiting fishery, and then you have the two mother ship and shore-side Whiting fisheries. Only two of those sectors are here. The control date applied to the other two sectors. In fact, I recall that when Amendment 15 was being debated and people were testifying, the C.P. sector came up here and said, "You've got to pay attention to that control date because if you don't, if you allow new entry into our sector, you're going to destabilize it, you're going, it's over-capitalized, and so, you've got to stick to the control date." Why does it work for them, but it doesn't work here? Okay. So, now I'm going to transit to my written comments. One of our, one of our vessels was affected. I mean, we, we, it has been until more recent years, it's not one of these ones since 2003, but we have two catcher vessels, the Neoconi and the Sea

Storm. The Sea Storm, very active fishery, uh, participant, and our plan was always to consolidate the Neoconi fish onto the Sea Storm. The Sea Storm is a great vessel. The Noeconi is a piece of junk, and we had to go back and look at that vessel a few years ago, actually did a line-by-line itemization of what it would take to make that vessel safe to go out, and it was $1.5 million dollars. So, we said, "Okay. So, what are we going to do? We're going to infuse more capital into an over-capitalized fishery, get that piece of junk out there, and, or are we going to just sit on this and wait a couple of years and just put it on the Sea Storm?" Our business decision was made based on, not only the control date, that action taken under Amendment 15, the alternatives developed there in the process, and the final action. Changing that now would have, if we hadn't paid attention to that, we'd have that piece of junk out there. You'd have more boats out there than the 36 and mother ship and the 55 shore-sides. By not sticking to the control date, by deviating from *status quo*, you are doing harm to people that believed in this process, that took it seriously, that made decisions. We've heard about 18 permit transactions, you've heard from many people in the public testimony so far, I've added to that. If you weigh these, and you look at what's going to happen under Alternatives 2, 3, and 4, there's the harm. That's the big harm that's going to be done compared to staying with *status quo*. Um, and you're better going to accomplish a Purpose-and-Needs Statement and F.M.P. goals and also be able to meet the requirements under Magnuson. *Status quo* rewards in a balanced manner. I think what you see, when you go to Pages 80, for the shore-side sector, at 92 for the mother ship sector, you will see the actual amount of permits that have to suffer reductions in order to fund the increases for the few. So, for instance, on the shore-side sector, I think the one included in the GAP Statement was Alternative 3 would require 40 permit holders to suffer reductions to fund the increases to 25, and each one of those alternatives is a little bit different number, but they all share in, if you move from *status quo*, you're going to hurt more people than you're going to help, and I think that's something that helps evaluate those permits, those

alternatives. In terms of disruption, we are talking about doing all this disruption to benefit a few permits, because these are the ones that really gain it. There's a few of them that are going to be really big winners, everybody else is going to pay for it, there'll be some smaller changes, and for processors; I mean, these people are already winners. They're in the top half of the allocations to begin with, including the processor, and on Page 109, it says, "The maximum change for any one processor from status quo to Alternative 4 would be an increase of 1.3 percent of the quotas year." So, you can do all this disruption, all this harm for that little bit. Doesn't seem fair and equitable. - also on Page 116, you'll see the impacts to mother ship processors. Now, unfortunately, we didn't get an allocation, and I'm not going to bring that up now (laughs), but it still rubs me the wrong way.

CHAIRMAN: (laughs)…

PARKER: Nonetheless, you can't win. It's a matter of compromise, right? We do have obligations for a year and notification of that, in which we have to try and match our fishing plan with the mother ship with our fleets and be able to design our own business plan, and based on the new allocation, the affect on the fleet that delivers to us, which is about, I don't know, 10 or 11 permits, we'll reduce the amount of quota to our fleet by almost a third. We'll go from 30 percent of the mother ship sector that delivers to us, and we will lose 8.8 percent. That's going to be really disruptive. So, even though we don't get a processor share, it is really going to hurt, be disruptive to our company. There's already been discussion of the treatment of non-A.F.A. participants not having the option to lease quota, where some A.F.A. did, and we've seen that in the public comments submitted by Fred Yeck and the co-op reports, that's Pacific Dawn, has the largest allocation in the mother ship pollack fishery, 10 percent of the whole sector, leased out most of it during these recentcy years, and now wants to be rewarded for both. With that I see I have a red light, and I will close my comments…

CHAIRMAN: Thank you.

PARKER: …but urge you to stick to your guns and not be bullied and told how you have to act in order to have this action approved. Do it, the right thing, what's best for this fishery. Thank you very much.

CHAIRMAN: Thank you, Donna. Other questions? Dale Myer?

MYER: Yeah, thank you, Mr. Chairman. Donna, I'd like to clear something up, here, for the Council, especially those that aren't familiar with mother ship operations, and you very passionately said that …only three boats could deliver to a mother ship…" and I, I just want to make sure that the rest of the Council members understand that you didn't mean that there was a legal obligation…

PARKER: No.

MYER: …or legal restrictions that would allow only three boats to harvest, that you didn't, that's they can have four boats, or five boats, or six boats, if you wanted to, to delivering to one mother ship.

PARKER: For the Chair, Mr. Myer, you can only have the three boats, to be economically sustainable for the vessels that are delivering to the mother ship. There's a rotation that occurs and in order for them to have a few deliveries during a day, they're can't be more three; you put a fourth boat on there, you hear about it, (Laughs) and because it's not economically sustainable to them, and, and that's why there's, half of the fleet doesn't have a market. So, in order for it to be economically sustainable, we need to decapitalize this fishery. Thank you very much.

CHAIRMAN: Un, Dorothy Lowman?

LOWMAN: Um, thanks, Mr. Chair. So, I'm going to continue to show my ignorance about this because you said about three boats and you'd be over boated, and then you, later you said that the effect that delivers to us about 10 to 11 permits – you saying that they are stacked, or do they deliver at different times? I'm trying to understand that.

PARKER: To the Chair, Ms. Lowman, you've answered the question yourself. We do a few trips, and they're not all delivering at the same time. They're at different times. So, there's three or four at

a time, some leaving it when they've, when their quota's done, and another one comes. We do, we, we participate in the spring fishery and in the fall fishery; generally, have pretty different fleets during those times to accommodate their business plans.

LOWMAN: Thank you.

CHAIRMAN: Other questions? Thanks, Donna. Richard Carrol? Chris Kayser?

KAYSER: Good morning, Mr. Chairman, Council. My name is Chris Kayser, and I'm an attorney for Ocean Gold, and with me today, I have Dennis Rydan, President of Ocean Gold and Richard Carrol, also from Ocean Gold. There's no question that this process has been contentious, and I always like to begin, find some common ground in contentious issues like this, and over the last day, or so, going to the GAP meeting, listening to the comments, I think there is one thing that most people in this room can agree on, and that is that Ocean Gold and the plaintiffs group, Pacific Dawn, all have a large target on their backs. It's obvious that, that the position we're taking isn't popular, but really what we're doing here is no different than what anybody else is doing, or what anybody else would do in Ocean Gold's shoes. Ocean Gold is here protecting its interests, including the more than 700 people it employs each year and its $40 million dollar investment in its plants. It's here to ensure the future viability of this fishery because Ocean Gold relies on 60 percent of its revenue from the Whiting fishery. The future of Ocean Gold is inextricably linked with Whiting, but there is one other issue that I hope we can all agree on, and that is the need for finality in this process, and "finality" means getting a decision that will survive judicial review, that won't come back to this Council once again for another consideration. Now, what does that leave the Council to do? You've got an extensive factual record before you, and I think we've heard this several times before. What the Council must do now is consider those facts that it's got before it and articulate a rational connection between the facts found and the choices made, and doing so, there's no, no question that the Council has a lot of discretion in the decision it reaches. There is no one right answer. There's a lot

of different answers the Council can come up with, and now there are four possibilities that it's narrowed it down to, but that discretion is not without boundaries, and the court has already defined a few of those. An allocation that excludes three of the most recent years from catch history pushes the limits of reasonableness. While one that, like the initial abiding allocation, excludes six to seven years arguably falls beyond those limits. The Council now has three options before it: Status quo, Alternative One, and Alternative Two that, between them, potentially excludes between five and nine years. If six to seven years falls beyond the limits of the Council's discretion, just think what the judge is going to think about a program that excludes eight to nine years as *status quo* and Option One would do. In order to justify either of those, this Council has a heavy, heavy burden to consider, and when you consider that burden, you've got a lot of facts in the record, and I'm not going to go through all the facts that talk about, what has happened in the last 10 years. I addressed a lot of those in the last Council meeting, but I do want to highlight a few that you can't dismiss. You have to look at, you have to consider, and you have to provide a justification for doing something else. So, in the last 10 years, there's no question that this fishery has become more sustainable. In 2004, it was declared no longer over-fished, and at the same time it's become more economically viable, more product forms are being processed to more countries throughout the world, and that stability has led to an increase in the value of the fishery. As the draft Environmental Impact Statement noted, X-vessel prices have been increasing since 2003, even as total harvest also increased, and how did all of that happen? Well, it happened because it needed new investments. These changes didn't just materialize. If this industry had stayed with surimi, just imagine what would happen? But, instead, what happened is we have investments, like those Ocean Gold began to make in 1997, their diversified product forms, and increased capacity, and in doing that, in doing that, it assisted this fishery in becoming the economically valuable fishery it has become, and it has also in the process become dependent on the fishery, employing close to 700

annually and deriving 60 percent of its revenues from Whiting. Now, how do all these factors factor into the factors under the N.S.A? Well, there's a lot of factors that these facts are relevant to. The most recent history takes into account present participation in the fishery. It takes into account current harvesting participation. It ensures allocations to persons, who substantially participate in the fishery, it takes into account employment in the processing sectors, and it evaluates investments in and dependence upon the fishery. As the draft Environmental Impact Statement noted, the more recent the years of harvest included in the allocation formula, the more likely that the allocation will reflect current dependence on the fishery. It also addresses some of the goals and objectives of the M.F.P., er, the F.M.P. to ensure an economically viable fishery. So, given that the last 10 years we have seen the fishery become more stable and economically viable, what is the justification to exclude that recent history? What is the justification to wait the 10 years earlier, when the fishery was unstable, over-fished, on the verge of collapse, X-vessel prices had reached all-time lows, what is the great justification for doing so? The only one that I've really heard so far is this idea of the control date, and that there's a sanctity to the control date that you cannot remove and you cannot touch. Well, the problem with that is that 2003 wasn't the first control date in this fishery. The first control date was November 13, 1991. People knew the potential for this fishery to go an I.Q. system, beginning then. What do you do with people that were speculatively fishing after 1991? You'd be giving them a quota under the status quo, but even the 1991 control date changed, and the next control date was in, and I don't have it here, but the next control date was in, 1999, and finally it changed to the 2003 control date. So, if changing the control date undermines it sanctity, well, the damage has already been done, but we know that is not the case. We know people continued to give respect to control date after 2003, and we know control dates always change. In fact, I've got a slide here, but it looks like we are - let's see, you can, oh, can you do the next slide? Oh, thank you. So, so, and here's what we've got. There's, there's six

fisheries, this, it is just an example of six fisheries, where the control date has changed, and if you look where they have changed, it's always to address this issue of this control date being stale. For example, the New England small-mesh, multi-species fishery had an original control date of 1996. That was changed in 2, March 25, 2003, because conditions had changed sufficiently in the fishery to make the September, 1996, control date an unreliable indicator of current participation. Same is true, with respect to the 2003 control date. We're now eight to nine years later; it's no long a reliable indicator of current participation, and it would be wrong to rely on it. Just like it was wrong for all these other fisheries to rely on their original control dates. They all changed them when they get old and, finally, if what the real issue here is some fairness and equity about allowing some fisherman to get a quota because they were fishing speculatively after the 2003 control date, why doesn't the same apply, with respect to the 1991 control date? If that's a real, legitimate concern, shouldn't you be looking through the, that period of time and identifying those vessels that were speculatively fishing? And if you do so, I think you've got evidence in the record that there may have been some because when, when the 2003 control date was established, a lot of those vessels dropped out, and if they were dropping out because they had already gotten the quota that they were speculatively fishing for and that they weren't really committed to this fishery on, then they were speculating, and there's no justification to give quota to those speculators and not to others. So, when you look at this issue, you really have to consider those rationales and those justifications and how they line up on the fishery as a whole and, so, in conclusion, I just want to say that what we're here to do is we want the Council to come up with an option that is going to survive judicial review. *Status quo*, Alternative One, and Alternative Two won't. The two alternatives that are on the table that will are Three and Four. Thank you.

CHAIRMAN: Questions? Steve Williams?

WILLIAMS: Thank you, Mr. Chair. Chris, let me, let me explore this control date issue just a little bit.

KAYSER: Yes.

WILLIAMS: I'll ask you just a couple of questions, if I might, Mr. Chair?

CHAIRMAN: Uh-hmm.

WILLIAMS: The examples that you have here before us, uh, seem to have some pretty long time-frames between the initial control date, and then the, then it was changed again. Were any of these programs, and I'm not familiar with them, continuously working on, on the program, or trying to develop it at that point?

KAYSER: Well, I have to say, I'm not familiar with all of the programs, but it was my understanding that once these control dates, for like the snapper-grouper fishery, once the control date was put into place, that's when they started evaluating the, the LAP Program.

WILLIAMS: Okay.

CHAIRMAN: Go ahead, Steve.

WILLIAMS: If I might follow-up, Mr. Chair, thank you. Given, given the complexity of the program that the Council put in place and in recognition of that date from the time the control date was identified, '03-'04, ultimate decision in '08, with ultimate implementation in '10, in your mind, how long is the acceptable time, given the complexity of the program? Is it the, the, we've heard a lot of different opinions about that, but I'm curious, is there a time in your mind that is or is not acceptable to give a program of the complexity we had the opportunity to be developed appropriately and be implemented?

KAYSER: Well, I, I think that's a good question. I think you do have some guidance. You have some guidance first from the court that said, I think the control date that it used to exclude six to seven years, is arguably falling beyond the limits of this, at the Council's discretion, but I think you also have examples of, from these other fisheries, where, while the New England small-mesh fisheries, the time difference with nine years, that was really unusual. Typically, it's about a five-year period that they then can change the control dates, and they go, move forward, going forward, and I think the issue here is no longer going to be whether or not it was justified in 2008. The

issue that the, that a court will look at is now, is it justified now to rely on that control date?

WILLIAMS: Hmm.

CHAIRMAN: Other questions? Steve?

WILLIAMS: One last, one last one, if I might, Mr. Chair? Yesterday, I think at the, at questioning of Mr. Anderson, Mr. Walsh commented, I believe, that, of the alternatives that are before us, in his mind, really only Alternative Three or Four were the only ones acceptable. Is that the same position that you have?

KAYSER: I, I think, yes, that's true. Alternative Three, the problem I see with Alternative Three is, again, justifying the five-year exclusion because it was my understanding that Alternative Three was proposed with the perception that what the Council's role and what it's supposed to be doing is go back and put itself in the shoes, in 2008, and come up with a new proposal, and I think that would be wrong, as a matter of law, and that type of justification would get the Council's decision reversed pretty easily. Thank you.

WILLIAMS: Thank you.

CHAIRMAN: Thank you. Phil Anderson?

ANDERSON: Thanks, Chris, Richard, Dennis. You talked about the investments in Ocean Gold's processing facilities and capacities beginning in 1997. Of the, and I think you mentioned a number of $40 million that's been invested in up-grading and increasing capacity of the, of the facility, can you give me a sense of what portion of that increased, that, that investment, came after 2004?

KAYSER: We'll let Dennis answer that question.

RYDAN: Good morning, Council. After 2004, we built our cold storage, which was about a $10 million investment, and we built our fish mills plant, which was about a $12 million investment. Those were the two after that point in time. The issues here for, for the processors are, are quite a bit different than the issues for the vessels. Unfortunately, we're kind of being thrown into the same pot, here, and we're being accused of a lot of things that just simply aren't true. We've been, being accused of being the new kids on the block. My partner, Frances Miller, delivered the first load of Pacific Whiting

to a shore-side plant in the United States. That’s not the new kid on the block. Chris Peterson, Pacific Challenger’s, his father, Chet Peterson’s 96 years old. He’s fished in Westport most of his life. He fished for my father in Westport. He’s also not a newcomer and a new kid on the block. I had a lot of things to say this morning, and I'm not sure all of which are relevant, but I want to, one comment in Donna’s statement was the mother ships didn’t get any a shore, didn’t get a processor share. They didn’t need a processor’s share to protect themselves because they had a closed class. Not, their investments were protected because of that. Our investments were left naked and, so, the recent years, and the recent, the ingenuity and, and, investments that we’ve made to try to support this fleet and bring value to this fleet and value to the fish need to be protected. That was the whole idea of the processor’s share, but without recent history being, being recognized, there is no protection for companies like Ilwaco Fish and Ocean Gold like there should be because we were the ones in the recent years that were investing all the money to support the fleet. We can't compete with companies like Trident, who have pollack fisheries, pollack operations in Alaska, who the boats try to fish for them to protect the pollack markets in Alaska, we can't compete with that, but if we have fish that we can give them to entice them to come and fish for us, we can compete with that. That helps us stay in business, and that was the whole idea of this processor’s share. The only problem that we have with it, it wasn’t distributed fairly. In recent years, Ocean Gold’s processed as much as 39 percent of the Pacific Whiting resource, but, yet, we got 3.8 percent of the processor’s share. Dave Jenck shows that 69 percent of the fish is on the North end of the fishery, and it’s there because Ocean Gold’s there, and it’s there because the big fish are there, because the value is there, because of our marketing abilities, and, and building the infrastructure. That’s why the fish effort has moved to the North, and that needs to be protected, and it wasn’t protected. Unfortunately, it, it got dropped through the cracks, and the large companies, like Trident and Pacific, made Ocean Gold promises under fleet promises that we’d be protected, that we’d be protected, and

we'd be, we'd, we'd be, that they'd help us, and just go along with this process, and we went along with this process in 2008 and, unfortunately, we shouldn't have done that. We shouldn't have trusted them, and that's why we're here today.

CHAIRMAN: Mr. Anderson?

ANDERSON: Just, so, on my, on the question that I asked Dennis, so, the, what I got from your answer was the investment after 2004 was in the construction of the cold storage and the fish meal plant. Is that correct?

RYDAN: That, that's correct. Well, that's most of it. We have a trucking company now, we have another processing company now, but over half of our investment was after the 2004…

ANDERSON: And the, so, at that, should that lead me to conclude that in 2004, the processing piece of your company, the investments made in the processing piece, were largely made and in place at that time?

RYDAN: Yes and no. We had several problems facing us. One was we were, we were filling every cold storage it he State of Washington and, and late in the, in the summer when the salmon and fish came from Alaska, the cold storages were full, and we couldn't find a place to put our fish. We couldn't truck it out of Westport as fast as we were producing it, so he had, we had to do something about that and built a cold storage. We had the same problem with our fish, with our fish scrap. We couldn't, we were trucking out fish scrap to Canada. Same thing Diwang's doing today, but it's a huge problem. It's a huge problem because of trying to get those trucks through the traffic in Seattle, I mean, we were to the point where we could do about 10 trucks a day and we needed to do 20 and, so, we had no choice, but to build a fish meal plant to support the other infrastructure that we were building, and one thing led to the next. The reality of the world is, today, that infrastructure is there. Today, that infrastructure protects this fleet, and brings the value to this fishery, and that was the whole idea of the processor share to protect that.

ANDERSON: Thanks.

CHAIRMAN: Dorothy Lowman?

LOWMAN: Thanks. Thank you all for your testimony. Could you go to the slide right before this, I believe, where he was, started talking about other control dates here? So, you know, we've had a lot of discussion about how we were continuously working on this program. So, when you look at that 1991 date that you said, "Why don't we adhere to that?" Do, I, you know, I wasn't around at the Council at that time, but, could you, was there a continuous working on it at that time?

KAYSER: It's my understanding that there probably was not, and the point of the 1991 control date, I think, was to put everybody on notice that it was going to go to an I.Q. fishery and, so, it was an effort to, you know, affect fishing behavior. So, it's kind of the same principle was applying, but I'm not sure if the same process was.

LOWMAN: Yeah, because, I mean, I mean, I wasn't here, but I do think I remember that we had an, a moratorium that was imposed by Congress, so you could not even discuss these things for a number of those years.

KAYSER: That's…

LOWMAN: I think it started in the mid, mid-90s and went some time…(indecipherable)…

KAYSER: 1996, I believe.

LOWMAN: You know, so…

KAYSER: Yeah.

CHAIRMAN: Jeff Feldner?

FELDNER: Yeah, thank you, Chair Wolford. Can, can we look at the previous slide? Sandra? We, we've heard in testimony over the last couple of days that one of the, one of the factors that – no, it was the slide on control date, on control date changes?

KAYSER: Forward…uh, two slides, the last slide…(indecipherable) slide, yeah…

FELDNER: I'll just go ahead. I'll go ahead while she's getting that. One of the factors that even since compounds and emphasizes reliance on control date in this case was the fact that there was another rationalized fishery, the A.F.A. fishery, that could make decisions that made it uniquely capable of coming down and affecting the fishery

during the time between the deliberations and the time that we actually enacted the fishery. In the, can you, in, with respect to the other list of previous changes in control date, did any of those have factors that were that compounding or were most of those just changes as a result of normal fishery dynamics, sort of, volitional fishery dynamics?

KAYSER: Well, you know, I, I can't actually speak to what other factors were influencing the control dates, but I do, it does raise an important point, that, in terms of control dates, they're very different for processors and harvesters and the impacts they are, and I think it's important for the Council to analyze those differences and evaluate them because for a processor, we don't have propellers on our plant. We can't move to Alaska, we can't come back. When we make an investment in a community, it stays there and, so, those investments are our creating dependence that we can't take anywhere else, so the control date really has a different impact on processors, and in reality, if you go back and look at the control date when it was originally proposed, processors weren't even contemplated as part of that. So… (indecipherable)…

CHAIRMAN: Dr. McIssac?

KAYSER: Wait.

CHAIRMAN: Wait a minute, are you still responding to Jeff's question?

KAYSER: Well, actually, what I want to do is, to a certain extent, follow up on Dennis' answer for Mr. Anderson's question about our investments?

CHAIRMAN: Sure, and then we'll (indecipherable)…

KAYSER: Much of our investment that occurred after 2004 was really dedicated to giving us a position in a sardine fishery. One of the, see, the things are somewhat problematic about our business model is that we had been so reliant on Whiting revenue, and we felt in order to get the business the balance it needed, we needed to make an investment that allowed us to participate to a larger extent in the sardine fishery, which is what we've done, to the point now, where I think in this current year, sardine revenue's may actually exceed Whiting revenues.

CHAIRMAN: Dr. McIsaac?

McISAAC: Thank you, Mr. Chairman. A question relative to the discussion of a reasonable period of time for a control date and these programs that you've listed up here, I don't believe any of them deal with the shares to processors? I'm not sure these deal with A.D. species, three states, over-fished species, community protection features, and a lot of things the Council was wrestling with. So, when you look at periods that go through 2010, which is just two years, and maybe a follow up on Mr. William's question about what you think the Council members ought to consider, is a reasonable period of time to deal with the program of this complexity?

KAYSER: Well, you know, of course, we're at a different state now, and I think, given what other programs do is when you're faced with it, a complex program that's beginning to take a lot of time, you change the control date, and then you don't have this problem because when you change the control date and you get a control date that's two or three years before the ultimate implementation, you can rely on that control date. There is no question. There is case law out there that says if you've got a control date that's excluding, even up to three years, you're okay, but the, the message that this is sending, and if not, and see, that's the thing. The fallacy of this is if, if we modify this control date, they're all, they're all out the door. All, the message that this is sending is when you have a control date that is nine years before the implementation of a program, it's probably not going to have much influence over what years you're going to use. So, to, to, to answer your question, I can't come up with necessarily a reasonable time-frame. I can tell you what the court has said, and the court has said that six to seven years is pushing it, and part of the problem here, too, is when you're talking about excluding nine years, you're, you're really out of the recentcy requirement. I mean, you're, you know, when you're talking about excluding years nine years ago, that's more historical participation and, so, that is compounding the problem on top of everything else.

CHAIRMAN: Dorothy Lowman?

LOWMAN: Thank you, Mr. Chair. Actually, this discussion on control date did make me have a question about these particular programs that you cite here. Do you know, because I'm not familiar with a lot of them, when they were implemented?

KAYSER: Some of them have not been yet, and I, I can't not say necessarily which ones have or have not, and, you know, the primary reason for these examples was just to show that, I know there's been some concern, if you could change the control date, they're never going to be useful anymore. They get changed all the time, though, and they're still useful.

LOWMAN: Thank you.

CHAIRMAN: Dave Hanson?

HANSON: Go back to what I thought I heard a few minutes ago about sardines. I think sardines are going out as a frozen product?

KAYSER: Yes, that's correct.

HANSON: Can you give us a sense of what percentage of the millions of dollars that were spent were really because of sardines, rather than Whiting?

KAYSER: You want to take that one, Dennis?

RYDAN: I, I don't think, I don't think I can answer that. Fortunate, er, you know, unfortunately, as some of the fishermen have testified to, the processors are not much different. We try to take advantage of the resources that are at our door at the particular time to create business and jobs for our community and economy and the sardines for us, right now, are, are a very good fill-in to the Whiting. So, how much is, I mean, we use the same freezers, the same cold storage, the same trucking company, the same meal plant for both species.

CHAIRMAN: Dave?

HANSON: On a previous slide, it was mentioned of an H. and G. change, or a new processing. What year was that?

KAYSER: That was in 1997.

HANSON: All right. Yeah.

CHAIRMAN: Further questions? Thank you, oh, wait a minute. There's…No? Okay. Thank you.

KAYSER: Thank you, Council.

CHAIRMAN: Next speaker is Steve Hughes.

HUGHES: Thank you, Mr. Chairman, members of the Council. I can tell you that I was also one of those people that was ready to go to work about 2:30 this morning. It sounds like I had more company than I might've realized. First, I'd like to, I'm Steve Hughes, and I'm here on behalf of plaintiffs' catcher vessels. The first thing I'd like to do is just make a couple comments about the process because there's been some questions about plaintiffs' position in the letter that was, has now been provided. When the E.A. came out, there was just a short time to review that document before the September 3 comment period in order to get that written comments into the briefing book, and it took us longer than that to go through the E.A. – no complaints, there – I think the E.A. is a very good document and it's answered a lot of questions that otherwise would not have been answered. At that time, we notified Mr. Seger that we would send, we would bring written comments down here and distribute those to the Council, and we provided advance copies to the National Fishery Service and to you, Mr. Chairman, and thanks for your acknowledgement that you received that. On Sunday, we were invited to go to the GAP and give the GAP a presentation of plaintiff catcher vessels' position, and we agreed to do that, and we went to the GAP after the Washington Council meeting on Monday morning and gave them a presentation, and I gave the chairman at that time a copy of our letter, the same letter that you now have. Yesterday, when we started this process, Council staff was kind enough to hand out the letter that I hope you all know, that you all now have. So, thank you for that. So, that's, that the reason the letter came in a bit later than otherwise might, might have happened. In, in our letter before you, there's a, we, what we've done is identified two concepts that we think need to be addressed in order to meet the judge's requirements and the National Fishery Service policy guidelines, and those things are to increase the history years beyond 2003 for harvesters and beyond 2004 for processors, and to take into account a new, recent participation requirement. Regarding the new, recent participation requirement, after we got down here, there was a supplemental document that was

handed out. There's been some, I think, very good and fair testimony this morning regarding what that really means in the case of permits that haven't had any history since 2003, and it's not the plaintiffs' intent to throw anybody under the bus that really, the owners of permits, that really have a history in this, in this fishery, but it is their intent that permits vessel owners, permit owners that haven't had any recent history, dependence in the fishery for the last several years, should not be provided quota shares. So, with that, if you go to the second page of the letter, I'd like to go through these alternatives. So, what we've done is provide what we have identified as a final preferred alternative for your consideration. The history years have been up-dated to include recent years for the allocation period beyond 2003 for harvesters and beyond 2004 for processors, and we've done this as two options. We've also identified that harvesters eligible to receive shore-side Whiting I.F.Q. must have a minimum deliveries in the shore-side fishery totaling 500 metric tons during that seven-year period, and that seven-year period is the most recent period – 2003 through 2010 – and we basically have identified the same thing in the mother ship sector. So, the two options that we've proposed are history years, 1994 through 2010, drop two, which is consistent with what we earlier considered, as far as the drop years go, and under the second option, history years of 2000 through 2010, drop one. So, Mr. Chairman, I think that when we provided this information to the GAP, I have to say that I was surprised to hear them come here and say that they didn't really have time to consider the impacts of that information because on Page, on Page 18 of the E.A., the alternatives that we have laid out here are consistent, from a history standpoint, with Alternatives Three and Alternatives Four, and the E.A. is absolutely full of information on the latent permits, the number of permits that have not been actively involved in the fishery and the shore-side sector and the mother ship sector for a number of years, including that up-dated information. Also, on Page 19 of the E.A., under the mother ship, catcher vessel, Whiting endorsement category, the 500 metric tons is identified here as being a harvest requirement that would apply to the up-dated years under

Alternative Four, and those up-dated years, again, are 2000 through 2010 for the catcher vessel sector. So, there's nothing here, you know, that's, that hasn't really been addressed in the E.A. It's a combination of these same factors, and I think the worst thing, the worst thing that this Council could do, in my opinion, is to identify a preferred alternative that will not be accepted by the judge and is inconsistent with a National Marine Fishery Service policy guidelines, and I hope that doesn't happen. There's also been some testimony regarding the operations of the Pacific Challenger in Alaska. There was a letter provided by Fred Yeck that I believe was referenced, and the vessel's legal counsel has provided this Council with a letter that addresses Mr. Yeck's letter and straightens out a number of factors that you should be aware of, and I would encourage you to take a look at that because it's important that you understand the details that are behind that, which, of course, Mr. Yeck had no information about. Let's see, Mr. Chairman, on a personal note, I just wanted to say that myself and the plaintiff catcher vessels have absolutely no interest in seeing this rationalization program fall apart, and that's been the case. We've told you that for many, many years, as we've been down here working on this issue, and I spent a lot of time building the mother ship co-op program, and I brought it down here to this Council years ago on behalf of industry, and I'm glad to say that it's been adopted, and I think you're going to find, with some up-dates that are, in my view, are required here regarding the history years, that this program is going to be a very, very effective long-term management tool with a great deal of success, and it's because of the vessels in the industry and the expertise here in California, Washington, and Oregon that are going to make this, make this program work very successfully. So, with that, I think I've covered most of things, and I'll quit.

CHAIRMAN: Okay, Mike. Steve, thank you very much. Questions for Steve Hughes? Steve Williams?

WILLIAMS: Thank you, Mr. Chair. Thank you, Steve. You'd heard, you've heard that some of the testimony this morning that was describing the disruption of making a change from *status quo* and

obviously your recommendations are following the lines of, as you said, Alternative Three and Four.

HUGHES: Correct.

WILLIAMS: On Page 77 of the E.A., it speaks to the number of permits that would be impacted by a change from *status quo* and it speaks to the fact that there are, and I won't go through the numbers, but the fact that there are, I'd call it substantially fewer "winners" than there are "losers" in that process. Someone else testified to that. In terms, how would you, how would you respond to those, those folks, or how, how, in view of the discussions of disruption that we had, how would you respond to those that, what some might view as an inequity in the approach?

HUGHES: Right. I think that's a good question, and I think that the alternative that simply adds, you know, the more recent history years, but doesn't exclude the earlier years? Probably best deals with that concern. So, I think, you know, it's, a lot of people have been involved in this fishery for a whole lot of years, and I think that simply adding the more recent years when there was other market opportunities available to a lot of boats that didn't have those market opportunities earlier on, is the fairest way to go and include the, include the longer history period. I think that addresses that concern the best we can do, given the judge's remedies that are before us, and given the National Fishery Service policy guidelines that we need to take into account.

WILLIAMS: Thank you.

CHAIRMAN: Anyone else? Dorothy Lowman?

LOWMAN: Steve, you have been involved in and about fishery, and other fisheries for a long time, and, you know, and have been working hard in many arenas of our issues over-capa, ha, on over-capt, capitalization. What's your sense of this, of this fishery? Of the Whiting fishery and the history of it, in terms of over-capitalization?

HUGHES: In, to, I'm having a hard time (indecipherable)…

LOWMAN: In terms of over-capitalization, sorry.

HUGHES: I see. Um, yeah. You know? I think a lot of us have, kind of, struggled with that because the way we have our allocation process, here, we have, we have an initial allocation that's based on the tack, you know, that comes out early in the year.

LOWMAN: Uh-hmm.

HUGHES: We all know what that's going to be and everybody, you know, gets set and off we go. But, you know, in most of the years later on in the fall, you know, there's been a re-allocation, you know, of some of the allocation components that have not been utilized and, so, when you look at over-capacity in the fishery, it makes it more complicated because, you know, you could almost say that, well, early on in the fishery, you know, that some of the seasons go pretty fast, and you could make an argument, you know, for over-capitalization, but then, later on in the fishery, there's many years there's been considerable quantities of fish that have been released and in some cases all of that has not been caught. So, it's more complicated that it would be if it's just a fishery, where, you know, you release an allocation, and then everybody goes out and catches it, and when the allocation's taken, the season is over because here it's split. So, that's, that's the way I see it. I think it's, it's a little more complicated than just saying it's been over-capitalized because of the bifurcation of the releases.

LOWMAN: Uh-hmm.

CHAIRMAN: Dorothy?

LOWMAN: Thanks. Just a quick follow-up to that, because I agree with, we do have a complicated system here, and, so, what, given that you earlier, you know, you could, with the race for fish, you could say there's some over-capacity, uh, why do you think there's under-capacity, essentially, in the later part, after there's a re-allocation, in your mind? I mean, what are the factors that make that happen?

HUGHES: Well, one of the factors has been the time when the second release occurs. I, I think, in some cases, it's fair to say that the vessels haven't been available in that time-frame or weather conditions have prevented them from fishing effectively late, late in

the year, and there's, again, back to these, you know,, the second release of allocations, it, it, I, I think the record is correct, but it, those allocations have not been taken in all years. So, the fact of the matter is that there have been Whiting allocations that have not been totally caught.

LOWMAN: Thanks, Steve.

CHAIRMAN: Other questions for Steve? Thank you, Steve.

HUGHES: Thank you.

CHAIRMAN: Next speaker is Mike Storey?

STOREY: Chairman Wolford, members of the Council. My name is Mike Storey. I'm a bit, a mother ship and shore-side Whiting captain. Originally, I was going to come up to the table with my sou'wester on, and the reason, the reason for that is I wanted to distinguish myself from the "hired guns," the cannery CEOs, and the attorneys, especially who've never wrang a drop a salt water out of their socks, but still contend that they can manage us better than anybody. I have fished off of the Washington-Oregon-California coast for five decades, three of those decades participating in the Whiting fishery. I have witnessed this Council process this since its inception, and during that time, I've seen the fraction, the factions, the harvesters, processors, environmental groups, communities, you know, go from where we cannot sit in the same room together to a collaborative effort to solve the most difficult problems, none more complex than the allocation process, and watching the Council from its infancy to the present has been an interesting and sometimes very frustrating journey, none more so than the issues we are faced with today, particularly when the plaintiffs and the rest of industry sat down at the collaborative table and agreed to do what is in place now, both in oral and written testimony. Did not Ocean Gold have employees and investments, etc., when we sat down at that table? I'm sure they did, but they would lead you to believe that that wasn't the case, you know? I do appreciate Mr. Carrol's testimony and the fact that they are very diversified now. They are not solely and dependent on Whiting, as they would, again, lead you to believe. Judge Henderson, in his remand, brought to focus in areas of concern, although I feel

those areas can be defended and, if you will, put to rest. With all due respect to Judge Henderson and his expertise, there's no way possible that he could fully understand the amount of work and effort put forward by this Council in developing an I.F.Q. program for a multi-species fishery. We are one of the permits, the 20 out of the 23 that you've heard testimony about, that would gain substantially under re-allocation, but having said that, it is our, and that's myself and the owners, belief that the preserving the allocation in a Council processes is more important than that from financial gain, and let, you know, and let's face it, we do have a program that's working, contrary to what Mr. Marchand says of the program, it really does, does work. The council has in its hand the thread that can unravel this whole allocation process and ultimately the Council process, itself, nationwide. I challenge the Council to do the right thing, safeguard that thread, and unanimously oppose *status quo*. In Mr. Walsh's testimony, you know, I would applaud the GAP for what the, what they've done and the document they produced at the meeting, and you've heard testimony that they didn't give adequate time. Well, if seven years of a very transparent process isn't adequate time for the plaintiff's, then we're all in some big trouble, and in conclusion, I keep hearing it's not about right or wrong. It's about whether it's defendable. Well, I believe it's about time we inject some moral fiber and integrity back into this process. Thank you.

CHAIRMAN: Thank you, Mike. Are there any questions? Steve Williams?

WILLIAMS: Thank you, Mr. Chair. Just a couple. Mike, given the history that you describe in this fishery, when, when you, as part of this Council, recognized the control dates that we put in place, were there different choices you made at that time as a result of control dates the Council adopted regarding these fisheries and the rationalization?

STORY: Yeah, I believe that, you know, we, uh, modified that in, in, you know, that there was, the race for fish was gone, that we, you know, just went out and prosecuted the fishery as best we could and what-not and, you know, our fishing, you know, because we knew that we

had a finite amount coming that we wouldn't, you know, exacerbate the primitive species allocations and stuff like that.

CHAIRMAN: Steve?

WILLIAMS: Thank you, Mr. Chair. You mentioned that you would be one of the folks who, or one of the permits that might substantially gain as a result of moving away from *status quo*; what, what did you mean by "substantial?"

STORY: Well, it's kind of hard to quantify it. Whether you, you know, if you're talking about a one-year process or if you're going to extrapolate out over a 20-year period, I have seen charts based on, on NMFS numbers and what-not, that would increase both my shore-side and my mother ship quota. The mother ship quota portion of it is very significant, in excess of 1.5 percent, and you take 1.5 percent of what the mother ship quota is over a 20-year period, you're talking a significant amount.

WILLIAMS: Uh-hmm. Thank you.

CHAIRMAN: Other questions? Dorothy?

LOWMAN: Mike, sorry, I may have missed this, but what other fisheries besides Whiting do you participate in?

STORY: We fish in the Bearing Sea, for pollack and codfish, yes.

LOWMAN: Uh-hmm. Okay. Okay, and so, I guess the other question is would you have changed your behavior had you not believed this was a control date?

STORY: Oh, yeah. Yeah, we would've, you know, certainly come down in, you know, and participated wide open, dangerously, if you will, in the primitive species areas and try to accumulate as much, you know, history as we could.

CHAIRMAN: Dorothy?

LOWMAN: So, just so, because I know that you guys struggled a lot during, even the 2006-2007, actually a lot of those years to try to not be closed down by bi-catch. Could you describe some of the efforts that people went to and how those works and how those lives have been affected, if people didn't figure there was a control date?

STORY: Well, this instance that comes to mind that's the, you know, that keeps flashing in my head is, is we received an email from

National Marine Fisheries one time prior to a closure, saying that we were approaching the threshold, you know, that we could, you know, that would shut down the fishery because of brownie catch, and I witnessed, you know, and not pointing any fingers or what-not, or calling any names out, stuff like that, but some behavior by some of the plaintiffs that I would consider, you know, not morally correct, I guess. That they went out and, you know, let's get it because it may be closed tomorrow, you know, and delivered, you know, huge amounts, you know, of, of brownies and greenies, yellowtail, if you will, and what-not, where they probably, they could've went out and maybe, maybe, you know, fished and got two trips, but, no, let's get as much as we can as fast as we can, and that, that's the result of, I don't think National Marine Fisheries gives us prior notice anymore. It's over, it's over. So, you know, no, we have our quota shares now. so,…

LOWMAN: Thanks.

CHAIRMAN: Thank you. Anyone else? Thank you, Mike.

STORY: Thank you.

CHAIRMAN: I think we've been at this for a while, again, let's take another break; come back at 11:15.

9-18-12am2.bkm.txt:jlw:0921jw04

9.5 AUDIO FILE: 9-18-12am3Copy.mp3

CHAIRMAN: We're running a little long. So without further ado, we're going to take a break after the speakers are through. We're gonna need some time to digest all that, to come up with an appropriate set of actions, so we will take an extended break after the public comment. Next speaker is Robert Smith.

SMITH: Mr. Chairman, members of the council. My name is Robert Smith and I've been a fisherman since 1978. You've heard a lot of very polished testimony here today and now you're gonna hear some

unpolished testimony, so bear with me. I've been fishing whiting for 31 years in some form or another. Mother ship or JB or shoreside. And as a fisherman who participated in the rationalized sedation process from the beginning, I'm here to express my strong support for status quo. You are all well aware of this, but I think it's worth repeating, that this has been a successful program which was implemented close to two years ago. By all measures, the current program is a success. The report to Congress from NMFS, highlighting the achievements of our program in the first year backs my claim. In fact, opponents to the status quo have also done well during these first two years under the program. They just figured out that they could do better if the system is changed. Mr. Steve Williams made a comment about control dates at the June council meeting that really resonated with me. And he said, and I quote, "It relies upon the fact that after you have argued it through and come down with a date that reasonable people should not expect to get a benefit after that date, whatever the benefit may be for that fishery. And for me, not only is that a kind of standard tenant that we should use, it is also a personable, honorable way to approach it." The bottom line is the majority of these participants chose to respect the control date. If people made additional investments or fished differently after the control date, they may have done so for business reasons. But that's fishing. But to turn around and ask that the control date be vacated because they made those decisions, simply is wrong and immoral in my opinion. As Bud Walsh said in his testimony, the fishery doesn't remain static just because you put a control date in place. And that's true. But expecting some windfall based on efforts may fall on the control date is unreasonable and unjust. Especially when your effort included injecting additional capacity into an already over-capitalized fishery. Something else that concerns me is one of the plaintiff's in the lawsuit was actually leasing out around 60% of their Alaska pollock in order to come down here and create history after 2003. This is clearly evidenced in Fred Yeck's written testimony included in your briefing book. And I encourage you to look at the tables in Fred's letter, because they are very telling. Now we've just heard

testimony here a minute ago about an explanation of that, having to do with CBQ's, but I can't find that letter out there, so I'd like to read that myself. But there were no big winners and no big losers. This is an understatement we've heard a lot, both during the trawl rationalization process and at the council June meeting during council discussion. No one fish owner was made whole. No one processor was made whole. I was not made whole. But all but three of the boats in 2011, for example, landed more whiting than their initial allocations. If you move off the status quo option, you're gonna create two, maybe three big winners and many losers. And somebody has to subsidize the winners. And unfortunately, the council can't print more fish, like the government can print money, and that said, the fish have to come from someone. Someone's gotta provide it through the winners. Another thing I don't really understand is that some of the plaintiff's who want to change the control date now, agreed to the original compromise in San Diego in 2008. One of the plaintiff's in June made the comment that promises were broken, and that was their reason for ignoring the control date and increasing their capacity in the fishery after 2003. The statement was left kind of hanging and unsubstantiated. And I've thought about this phrase a little bit. A more important promise, and one that can be substantiated, is the promise of a stronger, healthier, more economically vibrant and sustainable whiting in ground fish fishery. These are the goals and objectives of not only the FMP, but the ground fish strategic planned, the Trawl IQ program. They were all born out of the Magnuson Act. Changing the entire program now, not only breaks that promise to stake holders, it undermines all future fisheries management decisions in this council. If the plaintiff's prevail here, I know next time I'm involved in a control date, it will just be a bugle to me to go out and start racing for fish. That's exactly the opposite of what should happen. As the GAP reported, there are 23 permits that stand to gain from change in the control date, yet there are only three harvesters that are involved in this lawsuit. Where are the rest of the people who would benefit from a change in the control date. I'll tell you where they are. They're still supporting status quo. And Mike Storey, the gentleman just

before me, he stands to gain greatly from a change, but he's sticking to his guns here; what we agreed to in 2008. That decision that was made in November of 2008, was fair and equitable to the stake holders. It is still fair and equitable today, and I strongly urge you to continue to support the successful program that you have created and implemented. Thanks.

CHAIRMAN: Thank you, Robert. Questions? Seeing none. Mark Cooper.

COOPER: Chairman, council members. For the record, my name is Mark Cooper. My family received three IQ allocations and two mother ship endorsements from this program. I sit on the board of MTC, FMA and I am a commissioner on the Oregon State Trawl Commission. I participated in the TIQ committee meetings. I believe that the control date that the council must stay with the no action alternative. Looking at the alternatives two through four, there are more losers than winners. Some permits grow as much as 3%. Fishers that fish after the control date had no guarantee that their fishing history would be used for initial allocation. I believe that the control date was a justification for not considering the fishing history after 2003. Considering dates after the control date, reward fishers that increased effort after that date and penalize fishers that played by the council's wishes. At this time I would like to refer to Fred Yeck's letter, documenting the Pacific Challenger's pollock history that shows they leased 63% of their pollock between 2004 and 2010, freeing them up to double-dip into the whiting fishery. The other two CV plaintiffs have Gulf Rock fish allocations. One is AFA qualified and has a top-tiered sable fish permit. Two of the plaintiffs make it a standard practice to lease quota, but they feel it is unfair that they would have to lease quota in the whiting fishery. I disagree with the statements that several boats left the fishery after the control date. I believe that most of these boats left sometime during the window period, based on economics and micro-market. Some returned after the window, due to the fact that more markets were available. I know for myself, the reason my boats did not participate in the mother ship fishery after 2003, was that I could not find markets that needed boats. The history of the mother ship fleet was at its largest in

1994 and then shrank after that. Factory trawlers acquired permits and fished for themselves and two went to Russia. Fewer catcher vessels were needed, so should my history be taken away for the lack of markets. Since implementation of the coop system, we have caught our mother ship quota. Three catcher vessels are suing National Marine Fisheries. There are over 20 that could gain from this lawsuit, but they decided not to sue. You've heard from some processors they can't get enough fish. The boats aren't delivering to them. Why is that? Well generally, fishermen fish for processors that treat them properly, paying a fair price, coupled with accurate weights. I have fished for two of the plaintiffs in the past, but I am currently fishing for Da Yang, for the reasons listed above. I support the GAP statement and it's the will of the people. Thank you.

CHAIRMAN: Thank you, Mark. Are there any questions? Dale Myer.

MYER: Thank you Mr. Chairman. Mark, you're the first person that's come up that's talked about the lack of markets that made the difference with the number of permits that participated and so I wanted to talk to people. I wanted to talk to somebody who knew about that, because I believe it's one of the biggest reasons to answer where did all these 20 permits go. Or where did these 15 permits go. I know you know this, because you and I have talked about this before, what an over-boated market is. And I was wondering if you could explain to the council what that means to have an over-boated market and what processors do to try to prevent an over-boated market.

COOPER: Okay. Thank you, Dale. I think there's two ways to answer this. A lot of times when there's plenty of boats around, there are more boats put on the markets than it takes to really capture the fish. I think Donna Parker said that in the mother ship fleet, that a lot of boats have six catchers and three boats could do the job. And in my instance is when the FA came along, owners of the processor ships decided they wanted the catcher boats to have a bigger share. So I was told that so they could have a larger share, I was going to be let go. And I've seen it happen in mother ship fleets. It happened to me two different times with two different boats. And anyway, and it happens also on shore side fleet. When I first started fishing for

Point Adams, we had six boats on a 300 ton market. Eventually we ended up fishing there with, they have two or three boats now fishing on the same production line, you know. So that's what's happened to boats. There isn't always enough – there's not enough value for the boats, so people put pressure on to gain market share. I hope that answered your question.

MYER: Yeah, thank you Mark.

CHAIRMAN: Thank you. Anyone else? The next speaker is Shems Jud.

JUD: Good morning Mr. Chairman, members of the council. My name is Shems Jud and I work for Environmental Defense Fund. A handful of people have asked me why and environmental group would get involved in an allocation decision. The simple answer is that it is more than an allocation decision. To us it's about the integrity of the program and the viability of future catch share programs. We've been involved in this process for a long time. I have to tell you sometimes sitting in a GAP, it feels like even longer. Being involved in this process for as long as we have, I can tell you that generally speaking, I'm really impressed by this process. It's open. It's transparent. It brings in input from all different stake holder groups. It was a good process the first time around. I think more to the point, it's been a good process the second time around to date, and I trust that will continue through council action. The initial result of this program, as several folks have mentioned, are truly impressive. The race for fish is over. Bycatch is down, revenue is up. And I think we should revel in that for a minute. I know there's been all these trailing actions and this, in particular, I think have maybe taken away from the fact that the council has done something really impressive here. It's working well. And for those reasons, we don't want to see the program go away. So the last reason we're interested in this particular issue is the potential precedent. If it turns out the control dates are not defensible, I think there are significant implications for future catch share programs. I know right now there are programs under consideration in the Gulf of Alaska, also monkfish on the east coast, and I'll point out that for the Gulf of Alaska situation, the primary reason they are considering going to catch

shares, or potentially IBQ for halibut, is to reduce bi-catch. The goals are conservation-oriented. So I think that if there's a dampening effect of catch shares, we may lose some conservation benefits. If control dates aren't defensible, we've heard here from some fisherman and I know fisherman's behavior will change. They will increase capacity. And lawsuits will be all but guaranteed on future programs. EDF obviously believes strongly in the potential of well designed catch shares, because we think that creates significant conservation and economic benefits. So with that said, I'll explain briefly my views on the allocation options before you. And at the outset, I'll say I do not envy your position. It is a difficulty decision. There's no doubt about that. But I think ultimately the question you have to ask yourself is which option before you achieves the goals of the program and also considers the requirements of the National Standards, the MSA and the FMP. Before I get into the specifics of that, I'd like to correct a misconception. I heard Bud Walsh say yesterday that the status quo was legally vulnerable, because the length of time between the control date and implementation. He suggested that after reading every fishery management plan, the longest period he'd seen was two or three years. I can tell you I have not read every fishery management plan. But in pursuing a handful, I can tell you that's simply not true. There are several programs with comparable gaps between the control date and implementation. The Gulf of Mexico grouper tilefish is an example. 2004 control date, 2010 implementation. And that said, fewer species didn't consider processor allocation. Didn't consider community impacts, those kind of things. I also know looking at some of the Bering Sea Aleutian crab programs, there's sometimes a gap of as much as 10 years between the final year in the window period selected, and implementation of those programs. Red king crab in the Western Aleutians in particular, 1994 was the date of the last year of the window period, 2005 the program has been implemented. Further, we have a Ninth Circuit opinion on this, the Alliance against IFQ's. Barely upheld a three-plus year gap. And again, the facts are considerably different. It was a single species. It was adopted

before reauthorization of MSA and it didn't consider processors, communities, or several other factors that we had to consider here. I think this program took a long time, because we did a good job. You did a good job. And future catch share programs are also going to take a long time. It's a new world with regard to what needs to be considered under these programs. Well, all of that said, I think ultimately the Ninth Circuit opinion and my concerns about precedent don't really matter. This program needs to stand on its own. And I won't pretend to guess what a judge might do. I think there's legal risk on both sides. I know it's not insignificant. But I believe status quo is the only option that meets the goals and objectives of the program. We heard from Mike High that he didn't change his operation. I'm sure that's true. But others did. Both were sponsoned after the control date, shoreside processing capacity was added. The only way to fairly allocate is to not award those who gamed the system. So to sum up, this is an incredibly difficult decision, but I believe status quo is defensible. The rational, considered basis for not selecting another alternative is that it would not comport with the goals of the program, or the long-term goals of the council in terms of capacity reduction. It's also the right policy. Control dates have to mean something, or we simply won't see more of these programs. Thank you.

CHAIRMAN: Thank you, Jud. Are there questions? Shems, I'm sorry about that.

JUD: Not a problem.

CHAIRMAN: Shems, are you a member of the GAP?

JUD: I am.

CHAIRMAN: Did you work on the GAP statement?

JUD: I did. I was responsible for drafting the GAP statement.

CHAIRMAN: When did you start?

JUD: GAP discussion began on Saturday afternoon. That's when it was scheduled on the agenda. And just to point out another misconception from yesterday, plaintiffs were in the room at that time, didn't say anything. So we had our GAP discussion. I began drafting Saturday night. I'm not sure if you can see the bags under my eyes from here,

but I was up late that night drafting. We had additional discussion heard from plaintiffs Sunday morning and we were drafting right up until lunch as this item was up after lunch on Monday.

CHAIRMAN: Thank you. Any other questions? Thank you. I missed one Dorothy.

LOWMAN: Shems, in your opinion, I mean I hear you loud and clear that you think it's really important to preserve the integrity of control dates. Do you think there's a way of sort of moving a little off of them and still kind of giving the message that they're really important, or how big of a problem is moving off of a control date in your mind, in terms of just a little bit off of it.

JUD: Ms. Lowman, thanks for the question. I think it's a good one. I think it's something that we should seriously consider. I know there's been a lot of discussion about whether there can be a compromise found here. I guess it's almost a better question for fishermen. I think the question is what would the behavior shift be if you moved just a little bit off of a control date. Would you still see that ramp up in capacity, the influx in additional fishing. Fishing hard, fishing fast, whatever it might be. The bi-catch concerns that come with that. And I think that the answer probably is you might still see some of those things. If there was economic gain to be had from modifying the control date just a little, I think the precedent of that is still dangerous, in my opinion.

CHAIRMAN: Any other questions? Thanks Shems.

JUD: Thank you.

CHAIRMAN: Next speaker is Tom Libby.

LIBBY: Good morning Mr. Chairman. Members of the council. My name is Tom Libby. I'm speaking today for Point Adams Packing Company Division of California Shellfish. And first off I'd like to thank Mr. Walsh for the compliment on the GAP Report. There was a lot of hard work that went into it. One thing to be considered is that in June, the GAP made a decision and recommended a PPA and it's that framework that we used to produce the document that you see before you today. You should each have a copy of my testimony, but there's not enough time for me to cover it in its entirety, so I've picked out the points

that I think are the most critical and those are the ones that I will address in my testimony today. Fairness and equity. I'm going to give you some stories using Point Adams Packing Company as the subject of the story. Further discounting through reallocation, the history of processor, who like Trident Seafoods, Point Adams Packing Company, Pacific Seafoods, Pioneer Shore based volume processing of the Pacific whiting in the early '90s, and who invested millions in plant equipment, community infrastructure and labor. To redistribute at this point is contrary to MSA goals and objectives. Read Fairness and Equity. High volume shoreside whiting began in the early '90s. Had the entire processor history been considered, Point Adams Packing Company would have been allocated about 7%. We agreed to drop the years from 1992 to 1997, in exchange for those processors with more recent history, accepting an end date of 2004. In that process, our allocation dropped from 7% to 2%. If you look at that on a 100,000 metric ton quota, 7%, 7,000 metric tons. 2%, 2,000 metric tons. The difference – we gave up 3,000 metric tons willingly, voluntarily, because that was what was needed to get a decision made. Our allocation dropped from 7% to 2%. That's a transfer of 71.4% of our history of more heavily weighed toward recent seated history from 1998 to 2004. This resulted in a transfer of that history from the whiting fishery dependent communities of Newport, Warrenton and Hammond, Oregon, to Westport, Washington primarily. In our case, the 71.4% voluntary reduction contributed to a final allocation of 3.8% for Ocean Gold, nearly twice the Point Adams Packing Company allocation of 2%. With that, Ocean Gold was able to increase its share of the ACL from 5% in 1998 to 29% in 2010. That's pretty spectacular and I have a lot of respect for anybody in the business that can do that sort of thing. It's very remarkable. The problem with what's before us today is that with 700 employees since 2005, pretty much an average according to their June testimony, and with $40,000,000 spent in the last decade, we still see that they're asking for others to give up more, so that they can become more successful. How could you possibly spend $40,000,000 in a decade, and how could you go from 50 employees to 700 employees from 1998 to 2010, and not be successful. Not be

economically successful. The owner of my company would be absolutely elated if he had that situation. And we certainly wouldn't be asking for anything more to cover ourselves. Following the effects of options two, three and four for Point Adams Packing Company, each of these alternatives result in the loss of 130 employees for as many as five months in each season, that we would be unable to get fish. Alternative two, results in a 67% reduction in Point Adams Packing Company's quota share from 2% to 0.661%. Alternative three, a 77% reduction in Point Adams quota share a 77% drop from 2% to 0.47%. Alternative four, this is a tough one. A 99% reduction in Point Adams quota share from 2% to 10%. Now that doesn't mean that I'm not gonna get any fish, but in the years prior to 2010, 2011, excuse me, when the implementation of the program was put together, our company averaged actually less than the 5,000 metric tons, with the exception of a couple of years, that we gave up in the recommendation and for status quo. I'm going to move on. I lost my train of thought a little bit there. In calendar years 2011, Pacific whiting represented 100% of landings at Point Adams Packing Company's dock. And 98% of our total production. We do a little bit of crab production in the winter if there's an overflow from our sister company, Hallmark Fisheries. Point Adams Packing Company is pretty much 100% dependent on whiting as something that's going to make the operation go. Without whiting, we don't have a business. In 2011, now I mentioned less than a 5,000 average, with the exception of a couple of years from 1998 to 2010. In 2011, with the 2%, after having given up 5,000 metric tons, with the 2% that we had, I was able to leverage sufficient amount of fish to actually process, and this goes to over-capitalization to a degree. We actually were able to process 23,000,000 pounds, 12,600-and some odd metric tons. We were able to do that not because we increased our capacity, but because all of a sudden there wasn't a race for fish. No race for fish, no need for the processors to continue fighting over that fish, no need to process 24 hours a day, no need to process on the weekends unless you decide to, no need to have overtime unless you decide that you want to have overtime, unless that's economic for you. So there are many things that happened in the quota share program that

landed to much better flow of fish and a substantially greater capacity, because of the longer time that we had to process. Our capacity in the earlier years, with the exception of one year in whiting, or in surimi, where we hit early '90s, a little over 12,700 metric tons, that was probably the biggest year that we had. With the exception of that – I lost my train of thought again. I should just keep to my records here. From 2005 to 2011, Ocean Gold continued to invest heavily in both capital assets, $40,000,000, human resources, 50 employees in '97 to 700 in each of the years from 2005 to 2011. That's information taken from their testimony in June. The transfer of rents for those assets, capital and human, plus whiting x-vessel value, to Westport, came at the expense of other harvesters, processors and whiting fishery dependent communities, and is contrary to the intent of the quota share program, further affecting fairness and equity. In considering alternatives two, three and four, to reallocate processor quota share, none is fair and equitable. Options two, three and four do not meet the standards of MSA. Status quo and alternative one, meet MSA requirements and are the least disruptive, most defensible and all criteria are considered. The point that I was going to make earlier, I see the red light go on, but I'll finish that off. In a single month we would process perhaps 400,000 pounds a day and so in 30 days, we might get somewhere close to, what would that be, somewhere in the range of 5,000 to 6,000 metric tons. I don't know if those numbers work out just right, but the point that I'm making is that if your capacity is limited to one month because that's the period of time that the vessels catch the boats in, that's your capacity. If all of a sudden because of a quota share program, your capacity extends to six months, or four months, or three months, you get a multiplier in your capacity and that's the kind of latent capacity that's out there. Ocean Gold, asking for additional help to bring into their program more fish, has the capacity in their plant today, if no one else were processing, to process the entire quota. So I think they're in pretty good shape. That's it.

CHAIRMAN: Thank you, Tom. Questions? Seeing none.

LIBBY: Thank you.

CHAIRMAN: Craig Urness and Mike O.

URNESS: Mr. Chairman, members of the council, my name is Craig Urness. I'm here on behalf of Pacific Seafood Group and Pacific Fishing, LLC. Pacific employees over 2,500 team members and has invested substantially to increase market opportunity for our vessels in the shoreside whiting fishery and other seafood markets. Pacific, along with the vast majority of the whiting industry, and I speak particularly the shoreside industry, support the status quo alternative, the then thoroughly vetted decision that this council made in 2008. I'd like to reference agenda item H7A, attachment 2, the Guidance for Making Allocation Decisions for Catch Share Programs. At page 9, beginning at management goals, which are conservation, economics and utilization, it's my opinion that this record and the record that was developed in the continuous years of the development of this program, including but not limited to the GAP analysis that's currently in front of you, the EIS and the substantial and detailed public comment that you've received today and in many years prior, demonstrate that all of the goals and objectives identified on pages 9 through 11 have been met under the status quo allocation option. None of those goals or objectives will be enhanced or affected by changing who gains or who loses in an initial allocation, a reallocation. And I think the comments have been clear on the fact that under status quo, no one received what they would have liked to have received. As I stated in my June comments, I think that the judge in the plaintiff's case got it wrong. And that happens. The record up to then, and as it is here today, is more than adequate to support that the status quo alternative was a fair and equitable decision then and it is now. And the fact that the vast majority of the industry agrees on this fact, should not be under-valued. I close by stating again, that this record supports the 2008 decision and I believe more importantly, that a change in the arranges is no supported by this record. And for the reasons that you've heard, it becomes very clear that there is no sound rationale to support a change and that such a decision would likely be easily determined to be arbitrary in nature. Now I am going to reiterate that what Shems says, and I'm glad that he

said it as he did, is that status quo is a very defensible position for this council to take. Thank you.

OKONIEWSKI: Thank you Mr. Chairman, council members. My name is Mike Okoniewski and I'm also here on behalf of Pacific Seafood. The largest portion of my job assignment over the last 40 years has been to run fish plants for sustainable profits. After the first set of TIQ control dates were announced, business decisions were made by both processors and harvesters, in order to adjust and adapt to the forthcoming regulations. One of TIQ's objectives was to decapitalize a fishery deemed overcapitalized. This overcapitalization led to a race for fish and shortened seasons. From a business perspective, after control dates were set, it seemed rational and prudent to minimize placing more capital into harvest or processing, when it was obvious there was a high risk of stranding that capital. A few, however, continued to put money in. Ironically, some representatives of those same entities later publicly agreed the proposed TIQ program would have net benefit to the communities and bring stability to the industry. Current dependency. It's a very complex issue, but it should include analysis of alternative fisheries and sources of fish for both harvesters and processors. There has been a lot of testimony and other information presented that show how that takes place. Under AFA, sardines coming into the fishery in the last number of years in bigger amounts. Those type things. But it should be considered, also. So to conclude, what I have stated may not provide you with tools for better analysis, but it does bring into question what is truly fair and equitable. In our view, that can only be status quo, or an alternative one. Thank you.

CHAIRMAN: Thank you. Questions of Craig or Mike? Dr. McIsaac.

MCISAAC: Thank you Mr. Chairman. In your testimony, you have indicated that you are supporting status quo on the basis of the record at hand. You didn't speak very much about the litigation that has occurred and so I wonder if you could talk a little bit about how much you weigh in the judge's decision that has occurred and how much you weigh the potential of further litigation, in the event the council might want to choose an alternative different than status quo.

URNESS: Mr. Chairman, Dr. McIsaac. If ifs' and buts' were candy and nuts, we'd all be overweight. And so I've heard a lot of people in the industry talk about the fact that there should have been more industry intervening into that prior lawsuit and I think, had that occurred, I think we would have likely had a different outcome. Again, as I said in my public comments, I think that this judge got it wrong. Federal judges don't admit that very often, but I think if this council stands by its very well founded decision that it made in 2008, that stands up in litigation the second time around. I think that the likelihood that if there is a reallocation, that this council is going to see a different kind of litigation. I think the likelihood of that is high.

CHAIRMAN: Dorothy Lowman.

LOWMAN: Thanks. Actually this is a question for Mike. Mike, I think your company works also in Alaska and in the Gulf, which there seems to be some signs that maybe the next big place for a rationalization program discussion in a multi species fishery. Has there been any discussion about what's happening here in relationship to that beginning effort?

OKONIEWSKI: Thank you Mr. Chairman, Ms. Lowman. As I understand, and it's all second hand that there has been discussion, it's coming from different sources. But what the nature of it is and the particulars, I don't have good information on. But in a general sense, I think it has attracted the attention of those people that are looking at this program. The North Pacific Council will meet in October. I will attend that and I should get a better read at that time, but I can't speak to the particulars of what's being said or what discussions are taking place.

LOWMAN: Thank you.

CHAIRMAN: Thank you. Any other questions? Thanks guys. It is now noon. I still have five cards left. We should break for lunch, give you an opportunity to check out. When we come back we should probably look forward to something close to an hour of discussion, testimony and discussion. So come back at 1:00. Let's try 1:00.

0924sh07

9.6 AUDIO FILE: 9-18-12pm1copy.mp3

CHAIRMAN: Kind of at this point, the game plan, at least the one I've got in my head, is to conclude the public discussion, the public comments, probably then take a break to let folks contemplate what we've just heard, all the testimony we've taken, come back from that, give you a chance to ask staff Q&A session if there are any questions you want to pull up with staff. I would like to have then just a short, well no, I would like to have an open comment when anybody has got some issues they want to bring out, things they think are important, give an opportunity to do that before we get to the motions, and then full discussion on those motions and close this action, but the plan is kind of we've got a lot of steps yet to go, so . . . next speaker, Joe Plesha?

PLESHA: Thank you Mr. Chairman, members of the Council. My name is Joe Plesha and I work for Trident Seafoods. For those of you who don't know, Trident has a shore-based whiting processing plant. The Council is tasked today with a difficult decision of how to allocate Pacific whiting in the mother ship in shore-based sectors. In doing so, the Magnuson-Stevens Act requires a balancing of various considerations. I would like to talk about the considerations I believe to be most relevant. I know you have heard this all before, but the Act requires consideration of both current and historical harvest as well as investments in and dependent upon the fishery. I am going to address my comments specifically to the shore-based processing issues but I think they are relevant to the issues that are determinations for the catch histories he used in the other sectors as well. So I want to start by saying I believe the years 1998 through 2004 are the most fair and equitable to use in allocation of quota shares to processors and I believe that for the following reasons: 1998 of course is different than any more recent year for the start of qualifying period then 1994 a year under consideration for the harvesting sector, and the reason I believe 1998 is a fair and equitable period to start allocations for the shore-based processing

industry is that in the early to mid-90's, really it was our plant in Newport had a huge percentage of the whiting production. I have been told – although I don't have records on this – I have been told it was over 50%, so if you are to go back to 1994, we would likely wind up with an allocation that wasn't reflective of investments in and dependancy on the fishery when the Council started considering rationalizing this fishery. Given that other processes were invested in the late 1990's and the early 2000's, again if the qualifying period had started that early, we would have had a huge windfall. I don't think that would be fair and equitable. And I want to say this about the processing sector as opposed to the harvesting sector, the market shares that two or three additional processes can make, the impact is far greater than if two or three vessels enter a fishery. Vessels are always entering and leaving fisheries but in the case of a processing sector, again our market share and others are greatly impacted by investments that were made in the late 1990's and early 2000's, and so it makes sense then to take that into serious consideration. I believe 2004 is a fair and equitable year for the last year of qualifying for shore-based processing sector. I say this because in 2003, a control date was published indicating that participation after that date would not result in the allocation of harvesting quota. It was not at the time specifically referenced to the possibility that shore-based processors might receive quota under the plan. That notification wasn't given until 2004. Also, investments made in the processing sector are relatively larger and far more less malleable than those made by any vessel owners. So granting of a year beyond 2003 to 2004 for processors reflects that fact and I believe appropriate, given the 2004 publication date of what I'll call the processor control date. As importantly, I think that it is unfair and inequitable to use years after 2004 to allocate quota. I say this for a number of reasons. The only reason to allocate quota to the industry, and that includes permit-holders and plan owners, is because of the impacts that rationalization has on the value of our investments, or at least that is the principle reason. Participation after 2004 may not actually reflect the investments in

and the dependence upon the fishery. You have heard testimony of intents of operations that can actually increase your throughput that have nothing to do with additional investments. So, for example, you could have a meal plant and encourage your fleet to fish on small fish and run them directly to the meal plant just because you can get a heck of a lot more throughput. Or encourage your fleet to fish where bycatch is high just because you want to race to get the quota prior to the fishery shutting down. You can encourage boats to come down from Alaska that ordinarily would be fishing pollock under the AFA. So, after 2004, you really don't have a good proxy for the investment scene that depend upon the fishery. Moreover, if there were investments made, and obviously we heard testimony that there were, those investments were made with an understanding that after the control date they might not well qualify for any sort of allocations of quotas, so they're made with no reasonable expectation of receiving any quota for that, and I want to talk about control dates because this is important. There are allegations by the plaintiffs that the control date was stale because of the time period involved. First of all, control dates have absolutely no legal effect on the decision upon which you base your years of history. That is based on what you believe is fair and equitable. A control date does two things: One, it notifies the public that you're considering rationalizing fishery, and two, it notifies the industry that participation after that date may not well qualify for quota. So for a control date to become stale, the Council has to either abandon its efforts to rationalize the fishery and the public is aware of that, or it has to make clear that it won't consider dates at the control date it is going to for sure consider dates beyond the control date. Of course, it always can consider dates before the control date if it'd like. I've been involved in various fishery rationalizations to process from halibut, Bering Sea crab, Bering Sea pollock, rockfish in the Gulf of Alaska, and I'm here to say that the whiting process was the most open and public of any that I've had the privilege to be involved with, and in doing so, everybody in the industry and everybody who cared in the public was aware that the Council is actively pursuing rationalization

and that dates after the control date may not well qualify for history, so it didn't become stale because it never changed the public's perception of what was a likely outcome or potential outcome for this council. The 1991 control date that was referenced earlier obviously became stale because the Council had long since abandoned 1991 and there was no chance that history after 1991 would not qualify for any sort of quota. So I want to talk another reason why I think it is unfair and inequitable for the Council to use years after 2004 for allocation history, and it goes to the national standard guidelines. The national guidelines on fair equities say that inherent in an allocation is an advantage to one group to the detriment of another. The motive for making a particular allocation should be justified in terms of the FNP; otherwise, disadvantaged user groups will suffer without cause. In this case, the stated purpose of Amendment 20's amendment to the FNP was to decapitalize an overcapitalized fishery through rationalization. It is irrational and even nutty to then reward those who increase their intensity, increase their capitalization, increase the race during the consideration of quota shares while punishing those who even though there is a control date published and nobody had a reasonable expectation that participation after that would result in quota who chose to not increase their intensity or even lessen their intensity in the fishery. So I think it is actually irrational to go beyond those years. Two days ago I had passed up a letter that was written by Dr. Barzel and Professor Kochin at the University of Washington. The letter is only two pages long, but I'd like to reference it just very quickly. Dr. Barzel is really one of the world's experts on property rights and has written actually the book on the issue of allocating public resources to private entities for the benefit of the public utility. Attached to the letter is his curriculum vitae as well as Professor Kochin's curriculum vitae, so it's actually a longer package than the letter. And I encourage you to both read the letter and just glance at the curriculum vitae's. They really are quite impressive, and the letter can say this far more eloquently than I have, but in summary, the letter says that meeting the qualifying period forward in

time is irrational and generates want and waste and he bases that argument in essence on the Magnuson-Stevens Act even though he didn't have that as a reference at the time. The point is that the purpose of this whole program was to decapitalize and overcapitalize fishery and to award those who entered into the fishery after the control date and when they had no reasonable expectation that their participation would result in allocations of quota actually encourages people to make those investments which provide no national benefit to the nation while penalizing those people who chose to do the social utility of not increasing their capitalization or even minimizing it. Thank you very much; that's all I have.

CHAIRMAN: Thank you, Joe. Are there questions? Dr. McIsaac?

MCISAAC: Thank you Mr. Chairman. On that last point when you used the word "waste", I wasn't quite clear what you were saying would be wasted. What is the waste?

PLESHA: This is – I can be easily criticized. It is much more difficult to criticize Dr. Barzel. The idea is when a fishery is fully utilized, additional capital put into harvesting and processing that resource is a net national loss to the nation. You're getting the same output with additional capital input, so it's a waste. Now, so from the net national perspective looked at from that angle, it provides no benefit and only cost, so in that sense it's a waste.

CHAIRMAN: Other questions? Steve Williams.

WILLIAMS: Thank you Mr. Chairman. And I apologize, Joe, if you spoke to this already and I didn't hear you. In the H7C supplemental public comments number 3 that we received, there is a paper document that you and three others were – I believe that's you – that were developed. I guess my question is, the context of this, you prepared it for us today but how does it totally fit into what we are trying to do here?

PLESHA: Thank you very much. I presented this paper at the June Council meeting. It discusses at great length the issue of allocations of quota and the impacts of control dates and the rationale for making sure that for sticking to a control date in the sense that it changes the public's participation and you can't have a reasonable expectation of receiving quota after that control date.

Again, the paper I tried to present to the Council in June, what we did was we gave that paper to Dr. Barzel and he referenced that in the letter so I thought it was appropriate to add as an attachment. In addition, we cleaned up some of the typos that were caused by typing it initially at 3:00 in the morning.

CHAIRMAN: Any other questions? Dave Hanson.

HANSON: Joe, did I hear right, you were saying '98 to '07?

PLESHA: No. Excuse me if I said '07 that's incorrect.

HANSON: Or, I'm – '04.

PLESHA: '04. That's correct.

HANSON: Okay. Could you – you're an attorney – could you tell us what you think the relative risk is of going to an alternative that's not really in the analysis although we may be able to tease it out of the analysis?

PLESHA: I sincerely believe that it's irrational to award quota to people who continue to capitalize an overcapitalize fishery. When they were on notice that their participation after that date may not result in the allocation of quota and when the purpose of the entire program was to decapitalize the fishery, it's counter allocating quota of those people is counter to the purpose of the program in the first place, so I believe it is irrational and I believe that if the council were to choose dates beyond 2004 for example, I think that there would be substantial risk of litigation and the plaintiffs prevailing in that. Having said that, I'm a lawyer and I think as a lawyer we try to advocate our cases. We are not agents of truth or justice, so I think it's in my opinion about whether we would prevail or not isn't as important as the rationale that I give for and the basis I give for that opinion and I think it's important for the Council to listen to everybody carefully and ultimately, I mean there is obviously concerns that all of us have about including I know the government, about the court's decision, but ultimately the decision that you have is using your knowledge and experience and giving a complete record and totality of circumstances and everybody's testimony, decide what you believe is fair and equitable and meets the standards of the Magnuson-

Stevens Act regardless of litigation risk because I think they are all on sides. Thank you.

CHAIRMAN: Thank you. Any other question? Thanks. Next speaker is Brent Paine.

PAINE: Thank you Mr. Chairman. For the record, my name is Brent Paine. I'm the director of United Catcher Boats and it's a fairly sober issue, so I thought I would start my testimony with a little bit of levity and so I started looking on the internet during somebody's testimony about lawyer jokes, and there're a lot of lawyer jokes. [laughter] There are specific sites that just list lawyer jokes, but the question is "what is the difference between a lawyer and God?" and the answer is "God doesn't think he's a lawyer". And then I thought well "what is the difference between the Council and God?" "Nothing." [laughter] Bud Walsh would probably say "what is the difference between God and Judge Henderson?" and he would probably say "Nothing." Anyhow. Moving along. So, UCB is a vessel member organization. We have 17 active whiting permits in our membership and I think of the 17, 16 of the permit-holders are here yesterday and today, and I think if you talk about dependency, you wouldn't see 16 permit-holders here in Boise if they weren't dependent on this fishery, and I guess I would just open my comments by saying that this is a very, very important fishery to the members of United Catcher Boats. It's on par and in some degree compliments our pollock fishery in the Bering Sea. So with that, UCB has had a couple meetings to deal with coming up with a position for this issue and we continue to and I want to let you know that the UCB membership continues to support the status quo as the preferred option for this Council. And to get there, I want to talk a little bit about how we are here today some about the success of the program and then thirdly about the risk of the program. So how did we get here today? I happened to also be doing some digging through some of the stuff that used to be submitted and in our written comments to the proposed rule to the agency, here's a paragraph I think that really summarizes why we're here today. "UCB supports the Council's preferred period of years to determine the permit-holder's allocation percentages and believe that the EIS would be strengthened

if information is added about how the preferred alternative meets the recency requirements of the Magnuson-Stevens Act. For example, we were unable to find information in the analysis that provides a comparison of the number of qualified vessels under the Council's preferred alternative with the number of vessels that qualify under provisions of Amendment 15 and with the number of vessels that are currently active and dependent on the fishery. Likewise, the analysis would also be strengthened if it included a comparison of the number of qualifying vessels under the preferred alternative to the number of vessels participating in the fishery in more recent years. This comparative information would help the public distill from the analysis how the quota shares will be distributed to vessels that have and have not participated in the fishery over recent years. And I'm reminded of the countless meetings that Dr. Hanson held of the TIQ committee. I am reminded of the countless meetings that the Groundfish Allocation Committee held, and the analysis that Jim Seger did, and we looked at all those dates and we looked at that time and I guess if you had to do a redo, you wouldn't have used a committee process to hone down to a very narrow selected range of alternatives for catch history allocation in your final decision. You would have left in a number of those alternatives and then considered them and talk about why you didn't go with them. Why you didn't go with them was done in Dr. Hanson's committee, and the Groundfish Allocation Committee. I remember the Marija Vajkovich being very, very involved with the Groundfish Allocation Committee's discussions on catch history dates and as were a number of you, so that is to me where the review needs to be and where you need to focus on that. We were very present in the TIQ. We didn't get what we wanted, in fact one of my members – I substituted for him because he got so sick of dealing with that committee, you know, but in the end we agreed to a compromise, and that I think is what Joe Plescher was talking about about an open and transparent process and other people who have testified before him about an open and transparent process, so that is why we are here today, in my opinion. The success of the program – while this was all going on, our mother ship co-op had a meeting here at, well, Dave

Frazier is our co-op manager and he was on the phone, but a number of the board members of our mother ship co-op met to talk about opening up Heceta Banks to trawling because we currently have a closure in that area, and that's an area where a lot of the whiting are living right now, but it's also where a lot of widow and canary are living as well. And these guys sat down and decided not to open this up, and it really is amazing because there's quite a bit of times left in the whiting fishery that needs to be taken before the end of the year but they sat down and said "no, we've looked at this, we've decided about it, and we decided to keep this area closed because it's just too risky in terms of the usage of canary and widow, how much we have". The government could never do that under a regulatory structure. That is something that this program affords this industry, to be able to minimize our bycatch, set up risk pools, be able to take the total amount of our whiting. That's the success of the program. I think Frank Lockhart presented information at the Santa Rosa II meeting that summarizes some other successes of this program, but we would never want to go back to open access. We would never want to go back to open access. It just is – what we know now, it would be a tragedy if that were to happen, so that gets me to my fourth point and that talks about risk. What is the risk here? And I know I started out with a lawyer joke, but we are dependent on the lawyers now. We are dependent on NOAA general counsel to help us, and I mean this sincerely, if you don't do your job correctly, we suffer. And if the judge remands this into vacancy or just overturns and terminates the program, where are we at? I can tell you where we're going to be at. We'll close the whiting fishery on bycatch like we did previously. You know you heard people testify earlier about the problems we had under open access. I remember sitting on the phone on July 4th with the NPC guys and the UCB guys, and we had like one-tenth of a pound or some crazy amount of dark blotch that was going to close the fishery down, and when we took that tenth of a pound or whatever it was and we spread it over three months, it was amazing, but we don't have to do that anymore, and we don't want to go back there, so please do the right thing. I think you guys know more than we do about what's at

risk and how to get out of it; I mean, you're having closed sessions, you get to listen to the attorneys tell you what to do, what's at risk. You know, please do the right thing because we certainly don't want a judge to rule and manage this fishery for us when you guys are the ones to do that. Thank you.

CHAIRMAN: Thank you, Brent. Questions? Let's see, none. No, not quite so fast. Apparently it takes a while to formulate a question. Dorothy.

DOROTHY: So Brent, I know that some of your members fish in other fisheries also; do any fish in the gulf of Alaska?

PAINE: Ms. Chairman, to the chair, yes, we do. We have a pretty good presence. Well, not where – we used to have quite a presence in the Gulf but now we are a minority player but yes, there are – I think a dozen of our boats do fish in the Gulf.

DOROTHY: So I guess I'll ask you a similar question I asked someone before, is the discussions going on here, is that of concern of any of them in Alaska?

PAINE: Through the Chair, yes, very much so. There is a – the North Pacific Council has recently done a couple things in the central and western gulf to reduce bycatch harvests and the directed trawl fishery. They have lowered the halibut allocation and they also put a hard cap on Chinook and they are poised to put a tanner crab hard cap on the trawl fishery and meanwhile you have this race for fish amongst 40 or so permit-holders that are active in the fishery. So the industry has put together a work group similar to what happened when we came to you guys 10 or so years ago and I thought David Jenks I think put up the problem statement of this Amendment 20 and you could just copy that problem statement and send it to Kodiak because it fits perfectly, so there is a request of the Council to start embarking on a catch-share program for the central gulf trawl fisheries. But I have been involved in that and this group is deathly afraid of requesting the Council to put a control date in, even though the effort is rampant right now. There are way too many boats fishing to harvest the amount of fish that are there. But I am sharing with this group up north all the information that is coming from not only this

lawsuit but also the other lawsuit that the NOAA General Council and the Department of Justice won a couple weeks ago that is a over arching program lawsuit, so yes, they are aware of what is going on here. Dorothy?

DOROTHY: And so why are they deathly afraid of putting the control date in?

PAINE: It depends to the chair of what the outcome here is. Really, if the determination that so many years are stale and if it take the North Pacific Council six years or seven years to develop a catch-share program after a control date gets put in, what's the purpose of putting a control date in if you're just going to get litigated? So they're wondering about that.

CHAIRMAN: Thanks, Brent. Anyone else? Next speaker is Craig Cross.

CROSS: Good morning, Mr. Chair, members of the Council. I'm Craig Cross. I represent Aleutian Spray Fisheries, managing partner of three whiting permits. We support status quo. I'm not an attorney, so I can't wow you with the legal analysis as others, not an economist, so I won't bore you with economic analysis, but as I am a manager of a family fish business, I can give you an example of how we have operated and the complexity that is going to happen in unraveling a program that has been in place for two years. We began purchasing permits in 2006 to allow our CP Starbound to catch and process in the CP whiting sector. We completed those purchases, five permits, in 2007, and combined them onto the Starbound. Unfortunately, shortly thereafter, Amendment 15 passed excluding the Starbound and our $3.3 million investment in permits. One of the arguments used in keeping the Starbound out was that there were control dates in place. NMFS eventually allowed us to disaggregate our permits, thankfully, and these permits had been purchased and combined before the Council passed because these permits had been purchased and combined before Amendment 15. Amendment 20 went forward. We combined some permits. We invested $500,000 in our Amendment 15 qualified catcher vessel, The Mermallock. We took the whiting from three of those permits and we stacked them on the Mermallock and we began fishing. We will by the end of the second year of Amendment 20 have delivered to three plants

in three different communities and moored our boat in a fourth. We have delivered to three different mother ships and we have kept our crew and our vessel working. There are options being suggested that would take history from the CV permits I have and give history to permits that have discounted the validity of the control date – the same control date that was one of the key reasons for excluding the Starbound. Please keep status quo which will keep consistency in the process, it will protect the business decisions that many of us have already made and have been relying on in Amendment 20, it will allow industry to continue to reduce bycatch, optimize fishing effort, and let industry to market forces, maximize deliveries to the most efficient plants. Thank you, Mr. Chairman.

CHAIRMAN: Thank you. Any questions of Craig? Thank you. Jeff Lackey?

LACKEY: Mr. Chairman; members of the Council. My name is Jeff Lackey. I work in a managerial role for the owner of two commercial fishing vessels in Newport, Oregon. We have seen firsthand the benefits of catch-shares as detailed in the NOAA report on the program's first year. Those program benefits directly align with the FNP management goals which are listed in the FNP in order of importance, number one being conservation, 2) economics, and 3) utilization. National Standard guidelines implementing National Standard IV state that "the motive for making a particular allocation should be justified in terms of the objectives of the FNP." The objectives are considered according to FNP 2.1 to accomplish FNP management goals. Since the motive for making allocations should be justified in terms of the objectives of the FNP, then the considerations for allocations are weighted and addressed as needed to support the FNP management goals of which conservation is number one. So, is a council justified in giving greater weight to factors affecting conservation than to post control date current harvests? The answer is yes. The use of control dates is a powerful and effective tool the fishery managers use to promote conservation. As noted in the EIS, conservation can be compromised absent respected control dates. Section 5.5.2 states that "not using a control date

may create more potential for future disruptions in this and other fisheries." 5.4.5.2 states, "A concern from a management perspective is that an act of considering the limited access system can exacerbate management problems in the fishery during the period while the system is under consideration." Control dates provide the stability that EA Section 5.5.1 links to economic benefits and equity. MSA 303A(c)(5) requires procedures for fair and equitable allocations during program development. Control dates are needed to create a static data set for considerations of those allocation procedures during program development. If the effectiveness of control dates is diminished, there is an incentive for boats to leave other fisheries to join the race for history. There is an incentive to increase effort even with increased bycatch. The plaintiff's attorney and Ocean Gold's attorney has stressed Judge Henderson's comments about how long the program took. There are a few things worth noting here. Judge Henderson ruled the original control date was procedurally valid. Judge Henderson said that the factual complexity of the program may have warranted the development time. He also noted that the parties did not brief on this issue. Alternatives 2 through 4 all have one thing in common; they breached the 2003 control date for harvesting of target species. I support status quo. NMFS has stated that status quo is a viable alternative. Current allocations do not breach the 2003 control date for harvesting of target species. Program benefits are universally praised by all stakeholders and the adherence to control dates provides a stable precedent for other fisheries and fishing communities to see the same benefits we have seen. As one other side note, there has been some talk back and forth about Fred Yeck's letter and the Pacific Challenger and the Bering Sea pollock, how much of the quota they fished. Originally the numbers from Fred Yeck if you just looked at those, they fished 37%, if my numbers are correct, by total weight, and there were some different numbers that came out in a letter. I am not sure who that letter came from. Just quickly while I was sitting here, I tried to re-crunch those numbers. I'm not positive, but I think the correct number just plugging in those other numbers would be 50%, they fished 50% of the pollock by

those new numbers, so I don't have a comment on that but as far as I can tell, those are the numbers, and that's all I have and thank you for your time.

CHAIRMAN: Thank you Jeff. Are there any questions? Thanks. Oh-ho, last card, Heather Mann.

MANN: Thank you Mr. Chairman; Council Members. My name is Heather Mann. I am someone who has been involved in the council process for close to 20 years. I was the chairman of the Groundfish Advisory Panel when final action was taken on Amendment 20. I was also an advisor on the Groundfish Allocation Committee during that time and I'm going to do two things today; I'm going to give you a couple of my own personal comments and then I'm going to read some excerpts from a written testimony that you have from Mike Rutherford to make sure that that is incorporated into the record. So first, I think we've heard a lot about rationale, so I'm not going to spend a lot of time talking about why I believe status quo is the most fair and equitable option today. First I want to talk about what I believe was a misrepresentation by Mr. Walsh about what occurred in the GAP. I think it was maybe Mr. Anderson yesterday who asked if they came in in the spirit of compromise and how that went, and I would say that no, that's not what happened, that Mr. Walsh preached about the law for a while and then Mr. Hughes presented a new and frankly much more restrictive option and that option not only ignores historic participation investment but suddenly recognizes 2003 as a date. Unfortunately, it's like a reverse control date where you have to have landed over a million pounds of fish after the control date to get an initial allocation. And the fact that they didn't even participate in the agenda item when it was scheduled is telling. They were there – look, I know what it's like to be in the minority. I represented the process through the whole ITQ process. I was always in the minority, but I was always at the table and I always made my argument. I didn't sit in the audience reading the paper and then bitch that I wasn't treated nicely. My second point is that I'm irritated, and if you can't tell that, I'll just tell you. I'm irritated that people are saying past decisions aren't relevant now. That's ludicrous. Of

course they're relevant now. Our status quo fishery is based on those past decisions. All the agreements, the compromises, everything that we all went through during those years, that is all relevant now. My third point is, I guess I'm a glutton for punishment, I got the tapes from Craig of November 2008 and listened to all the public testimony once again. There was no discussion about a stale control date, and this was five years after that control date was set. None. No discussion. And the GAP statement had a quote from Richard Carroll, the long-term benefits are going to outweigh the short-term compromises that we make, and this is truly in the betterment of the industry. What the GAP statement didn't say is this was in response to a direct question from Phil Anderson that said "*you understand that the compromise you're coming with does not, will not recognize investment after 2004*" and that was part of his answer. My last point is all week I've been hearing that NMFS has already make their decision, and I brought this up in the GAP and Marian was there. I said, "I'm hearing people are telling me NMFS has made their decision, they will not support status quo, if status quo is recommended by the Council, even if it's a unanimous decision, they are going to overturn it." Well this bothers me a lot. It bothers me a lot because all along NMFS has been saying that status quo is a viable option. It bothers me even more as someone who has worked in the council process all these years, along with a lot of you, with the agency, I've worked with the states, the industry, we've all worked together through the council process to manage fisheries, and that NMFS would overturn what could potentially be a unanimous decision for status quo on an economic issue. It's not even a biological concern, an economic issue. It makes me mad, and frankly, with all due respect, I think it should make you mad too. I think status quo is legally defensible, and if the Council recommends status quo, and the agency supports it and it ends up in court, the industry will support you. We will be there. We will intervene this time, and if we'd intervened last time, I don't think we'd be here today. And now I'm going to just read a little bit from Mike's letter. Mike Rutherford owns the Excalibur. He is a trawler out of Newport and I'm going to just read a couple points. He

expresses his strong support for retaining the status quo for whiting. He believes for many reasons it's the most fair and equitable option. He says he participated throughout the ITQ development process and he played by the rules He says *"I supported and adhered to the control date, recognizing that additional landing effort on my part after the control date would not be considered in the initial allocation formula. Permit transfers were allowed up through 2010 and I did purchase a permit for the Winona J with traditional groundfish and at sea whiting history that qualified for quota shares during initial allocation. My wife and I invested $450,000 for this permit and if the Council decides to rescind their original decision now, it certainly will have a negative effect on my investment and our fishery's business plan. Other folks made their own business decisions, like leasing out pollock in Alaska so they could spend time building history in West Coast whiting after the control date. The difference is that I made my investment based on what the Council told me was fair and what the program would be. They made their decision in spite of what the Council told them was fair and what the program would be. This reconsideration is a slap in the face to all of us who played by the rules."* And I would just let you read the rest of his letter yourself; you have that in your packet. And I'd be happy to answer any questions.

CHAIRMAN: Thank you Heather. Are there any questions? Thanks. Alright. Well, we have heard a lot of testimony. I think it's appropriate that we do cogitate everything that we have heard, think about it. Let's take a break.

092312jm

CHAPTER 10 APPENDIX - TRANSCRIPT OF COUNCIL DISCUSSION ON ITS FINAL RECOMMENDATION FROM THE SEPTEMBER 2012 COUNCIL MEETING

Pacific Fishery Management Council

Reconsideration of Initial Catch Share Allocations
in the Mothership and Shoreside Pacific Whiting Fisheries
September 2012

Agenda Item H.7.d: Council Action

10.1 AUDIO FILE: 9-18-12pm2copy.mp3

CHAIRMAN: We have come back to order. It appears to me as most of the Council has returned and is prepared to move forward at this point. It was my intent at this point to see if there were questions that folks had of the staff. Now would be a good time to get those out. Dave Hanson?

HANSON: It's for Jim Seger. There's been a lot of discussion about why the '03 and '04 dates and why they are different and what have you. Can you take us briefly through the history of what happened there?

SEGER: Thank you, Mr. Chairman. The history of what happened with respect to the Council's use of '03 for vessels and '04 for processors – are you asking about the Federal Register notices associated with those? Okay. So, Council took action November 6, 2003, to adopt the control dates for processors and for harvesters. However, in the January 2004 Federal Register notice that announced those control dates for the general public, processors, it mentioned only harvesters and did not mention processors receiving an allocation. Subsequent to that, just after the start of the 2004 whiting season, actually well after. I think it was late June of 2004, the clarification was issued

indicating that the Council is also considering an individual processing quota program, as well as IFQs and the control date would apply to that IPQ program and to processes. Then in May of 2005 just before the 2005 season started on shore-side, so it was late May, yet another clarification was issued to indicate that the 2003 control date would apply to processors with respect to the harvester shares. Thank you.

CHAIRMAN: David Crabbe?

CRABBE: Thank you, Mr. Chairman. Jim, I apologize for this question because I'm not sure it's something you can answer in a brief statement, but there was a lot of comments about the length of time. Is there a quick rundown on why this process took so long? I mean, I heard a lot of public testimony from it, but I'm just curious about why it took so long from the control data implementation until a final alternative, preferred alternative in '08?

CHAIRMAN: Jim?

SEGER: Mr. Chairman, thank you. Well, the program is a very complex one. As you may recall, at first we started out with looking at individual processing quota as well as harvesting quota, and so that in itself required some additional effort and work. We're looking at the program that covers 80 species. We were looking at alternatives that were not only for individual fishing quotas but for permit stacking. We were looking at – trying to figure out how many sectors we were going to dealing with. Were we going to manage for three sectors or was it going to be four sectors in terms of splitting the shore-side. We were also trying to figure out whether – how this interacted with other parts of the commercial fishery and there were questions as to whether this should be extended to other parts of the commercial fishery. So, we had a lot of basic broad-level policy questions to deal with right from the get go before we could even really start digging into the detail, even though we did dig into the detail from the get go, but doing both of those, you know, took quite a bit of time and took a lot of meetings. And I guess what I would reference this to is the list of meetings that is listed out in the start of the environmental impact statement. I was hoping to get a

count on those for you and I can do that and write them later on if there is another break, but we were having continuous working group meetings. We had a trawl individual quota enforcement group. We had a trawl individual quota independent expert's panel. We had a trawl individual quota data group that included people from the science center and so forth. I mean, this program not only is about designing the program, but it's about getting into mesh with the data system and changing the data system. As we know we have the observer program that we had to be thinking about as well. So, then we had the TIQC committee that we all know that really did the nuts and bolts and a lot of the heavy lifting on this process. So, I don't even think I've begun to cover it with that rendition.

CHAIRMAN: David.

CRABBE: Thank you, Mr. Chairman. Just a quick follow-up. So, it sounds like a huge undertaking that preceded my time. I am wondering about was there ever a period of time when you – where the program stopped because maybe you thought it might not happen or it was delayed just because it had stalled out? Did that occur throughout the entire program at all, or was it a steady, continuous process?

SEGER: Thank you, Mr. Chairman. There was never time when staff worked on this program and the Council's intent to complete the program stopped or halted. We have I think a few months in one year when we didn't have the money for the committee meetings, but we were – the staff continued to work on the process and the Council continued to move forward on it even without the support of – with that funding shortfall. Again, it was a very brief time, I think maybe it was on 2005 or something like that.

CHAIRMAN: Dave follow-up?

CRABBE: Thank you, Mr. Chairman. And then following that, I'm just wondering was there – did the control date ever come up again, the question of the control date? You guys had set a control date, but then this program took a while. It was very complicated to get it finished. Did anybody bring up the control date and think that "wow it's – this is taking a long time we need to change it?"

SEGER: Mr. Chairman, I cannot remember that, but on that point - the discussions were so long and extensive, you know, public testimony and so forth was so long and extensive - we did hear in public testimony that somebody had listened to all of the tapes in 2008, when you took the final action, to see if any members of the public expressed concern about that and I heard that that review showed that nobody was expressing concern about it. So, I cannot definitely answer. It doesn't jump out in my memory, but…you know.

CHAIRMAN: Thank you. Anyone, Phil Anderson?

ANDERSON: Thanks. Jim, this may be an unfair question. My recollection is that in 1987 we set a control date for the buy back program, oh excuse me for the limited entry program and the groundfish fishery. My recollection is that Rollie Schmitten was the regional administrator at that time and there was some sort of a glitch in the filing of the date and I think the one that actually got filed was the 1988 date. And my memory is that the limited entry program went into effect in 1994. Is my memory on that correct?

SEGER: Mr. Chairman, yes on all counts. The original date adopted by the Council was for sometime in the summer or spring of '87. There was a glitch and that was not published in the Federal Register and on the basis of the fact that it was not published in the Federal Register, then on August, in August of '88 we announced a new control date because of that failure to publish, and then the program was started January 1, 1994.

CHAIRMAN: Thank you. Dorothy Lowman?

LOWMAN: Right. This is sort of a follow-up, and so after the program, were there any challenges to the program and when there were, was there any concern raised about the length of time between the control date and the program start?

CHAIRMAN: Jim?

SEGER: Thank you, Mr. Chairman. Now, we are getting off into the details. There was a lawsuit. Maybe somebody else here may remember more of the details. It was, with respect to some factory trawlers who had come down and entered into the fishery after 1988 and prior to implementation, and the argument was made that they needed to be

taking into account because they were part of the current participants in the fishery. So, it did center around – those issues. That's about as much of the detail that I remember other than the fact that they did not prevail. The Council and NMFS position on Amendment 6 prevailed.

CHAIRMAN: Dr. McIsaac?

MCISAAC: Thank you, Mr. Chairman. During public testimony there was some discussion of some other control dates. I think a couple for the Pacific Council on IQ matters 1991, 1999. There was also a display of other control dates across other council areas that were changed with regard to being stale or out-of-date. There was a slide that had four or five of them. I wondered if you had the opportunity to, on those latter ones, to find anything more about why the dates were changed or how it implicated any particular LAPP or IQ program and on the two that were referenced for the Pacific Council, if you could speak to any more of the specifics on those.

CHAIRMAN: Jim?

SEGER: Thank you, Mr. Chairman. Okay, so I'll start with the ones that were up on the projector for us here. Atlantic mackerel is mentioned that the date was moved from '92 to '97 to '02. What happened there was after '92 the council formally rescinded that date. In '94, the council indicated its intent to begin work again in '97. However, because of the Sustainable Fisheries Act, no work was undertaken for a number of years and then when they started up again in '02 they adopted that date. So, that explains those three changes and that's all out of the Federal Register notice. For the Northeast small mesh multispecies fishery, the Federal Register notice indicated that – let's see in that situation the first date was '96. The Federal Register notice indicated that it was disapproved in 2000 and it was not taken up again until 2003, which is when the control date was moved to. So, we had a disapproval and then no work until 2003. For the South Atlantic Spanish mackerel, the move was from '93 to 2004 and we have – three of those dates had to do with the South Atlantic and I talked with the staff down there about those dates. The information I got there for South Atlantic with a move from '93 to '04

there was a 5-year hiatus. For the Penaeid shrimp, the move from 2000 to 2003, they never started working in either of those cases for either of those announcements. For the snapper grouper that was moved from ’05 to 2010. There was a 2-year hiatus and by the time they got back to it they were advised by NOAA General Counsel that the original date was stale because they had not been working on a program and that they needed to pick a more current date. And the Hawaii program I was not able to find out about that one. With respect to the ’91 date for IFQs, it was adopted by this Council. The Council immediately went to work on a sablefish IFQ program, only. The date applies to all of the limited entered fishery. The Council went to work on sablefish IFQ and preceded on that through ’95 and then ran into the moratorium and that work stopped and we have a long story to tell about sablefish - what happened after that until we got to the tier system. Then with respect to ’99 and there was a 2000 date as well, you can actually find that, the story on that one in the EA on page 155. There is a footnote that talks about those dates. Those were adopted with respect to the AFA. The September 16, 1999 - the Council tabled action on Amendment 15 in 2001 did not resume action until the fall of 2006. The 4-year hiatus during which the November 6th [2003] trawl date was announced and work started and at it’s June 2007 meeting the Council decided not to take action under the AFA but rather on another basis – I’m just kind of scanning here. So, what it came down to was that there was the – the dates were announced ’99 for vessels and 2000 for permits. So, two control dates were announced. There was a 5-year hiatus. They were announced for the purpose of AFA and then because of the 5-year hiatus and the fact that the policy bases for taking the action changed, the Council used a new control date for Amendment 15.

CHAIRMAN: Thank you. Dr. McIsaac?

MCISAAC: Yes, thank you, Mr. Chairman. On follow-up, the second one of those for the other councils you said the control date was disapproved. Was that disapproved by court action, by the Secretary or reconsidered by the council or what?

SEGER: Mr. Chairman. The control date wasn't disapproved. Actually, the entire program that it was a part of was submitted and then the entire program was disapproved.

CHAIRMAN: Further questions of staff? Okay, so again reiterating the game plan of how can we get from here to there. I'd like to solicit comments from folks on what they've heard, what's moved them, what has not moved them, basically just come open comments from folks about how the perceive the situation and their rationales for that. I'm not going to go around the table and kind of point out everybody, just make you do that. I'd rather if you have something to saym and I would encourage you to say it, please – we'll go through the normal raise your hand, I'll acknowledge you, and we'll get your comments out on the table. Then, we go into the motions. I begin looking for the motions when that's completed. And again I encourage you all, very full discussions on any motion or motions that come forward. The objective here is fill the record for whatever decisions we make. So, that's going to require our discussion. So, I will encourage everybody to jump into that discussion to the fullest extent possible. So, let me encourage and ask for some opening comments from the Council members. Frank Lockhart?

LOCKHART: Just usually don't often respond to public comment, but there was one comment made that I think I need to – the National Marine Fishery Service has not made a decision on this issue and will not do so until reviewing all of the documentation received from the Council, including the record developed here. So, I just wanted to assure folks that that was the case. Thank you.

CHAIRMAN: Thanks, Frank. Anyone else? Dale Myer?

MYER: Well, I'll start it off I guess here. We heard a lot of talk and debate and testimony about whether the fishery was over capitalized and in my mind the whiting fishery has been over capitalized since at least 2000. It may have been earlier than that and I do believe that it probably was. But in looking and researching the Council's strategic, the Groundfish Strategic Plan that was written up in 2000 and some of the Council members are still on that. Dave Hanson was on it, Phil Anderson was on it and I believe Don

McIsaac was also on that committee. They stated in there that they believe that the whiting industry was an imminent amount of over capitalization and that had given recommendations to issuing whiting endorsements to overcome the over capitalization and this began by starting in 1994, which is the first year of the limited entry permit, and there was talk about giving a certain amount of – if you had a certain amount of whiting deliveries that the Council should give an endorsement and recognize those as whiting vessels. And again in Amendment 15 and Amendment 20, they were really all about over capitalization and solving that problem. Dave Jenks quoted the purpose and need statement of Amendment 20, which was capacity rationalization. When we began Amendment 20 process, it was set up as an open and transparent process. Committees with broad stakeholder representations were set up. Had nontraditional trawlers, whiting trawlers, fixed-gear people, environmentalist people, agency people and as Heather Mann testified they even got some processors in. We had mothership processors, catcher-processors and shore-side processors. Indeed, many of the plaintiffs also participated in these stakeholder meetings. And, there were a lot of goals and a lot of objectives that came out of that, but one of the ones that stick in my mind is that when they put this program out there, there wasn't going to be any big winners and there wasn't going to be any big losers. And that's what I think we came up with our status quo, with status quo. I think we came up with a program that didn't make any big winners and didn't make any big losers. In fact, if you look at the plaintiffs and where they fell, they fell right about in the middle of the pack. And I believe that it would be unfair and inequitable to deviate from status quo and I think we should try to defend it and that's my opening to start.

CHAIRMAN: Thanks Dale. Phil Anderson?

ANDERSON: I'm going to save the majority of my remarks for when we get to the Council action. I just have a couple of reflections. I wrote down here in many ways this is a sad day. And I wrote that down when I was looking out in the audience and thinking about all the groundfish industry has been through at lease since I've been here. I

mentioned the 1987 control date. That happened to be the first year I was appointed to the Council. The limited entry program. We had a meeting in Gladstone in 1996 that was devoted solely to trying to figure out how we could fix the groundfish fishery. There was concerns about wastage. There was concerns about over fished species and the overarching chief concern was about over capitalization - how are we going to deal with that. That was followed by a, I think it was a 2-year strategic planning process. I went to I don't know how many meetings in Gladstone but lots of them as part of the committee. And coming out of that process, the same thing – over capitalization, regulatory discards, the industry wasn't profitable, and then the buyback program, an industry funded buyback program, I can't remember the number, but I think they borrowed 30 million dollars, trying to get their arms around overcapitalization and then onto the development of this program. And as David Jenks correctly reflected, we stared down this path because industry urged us to. I don't know if they demanded us to, but it was close to it. And during this time, I mean, the names have changed. ITQs, LAP systems, catch sharing programs, they've been called different things as we've – there's been moratoriums, there's been guidelines, guidance, all kinds of stuff that has gone on since we started this and we will talk about the complexity a little bit more as we get into the latter portions of finishing up and making our decision. One thing that just has really bugged me is the work that the industry did, particularly in November of 2008, when we made this final decision to try to come up with an approach that the majority could support, and there were winners and losers and it was – it's almost been maligned as this "political compromise" and somehow that was a bad thing and shouldn't be used and frankly from my perspective I think it was a classic demonstration of a diverse set of interests coming together with a broad array of outcomes and situations, and they came up with a plan that they brought forward to this Council and I don't know of any other process that could come to that end, that could be deemed more fair and equitable than that. Nothing that we could do as a governing body could come close to weighing all the things that were in that room and

coming out with something that they sat before us the greater, greater, greater majority of the participants and said we will support this. So, here we are. I'm – probably my overarching concern as we make this decision is to make sure that whatever that decision is that we maintain the integrity of this program, we continue to have a program that accomplishes its goals and objectives, that we do so that will survive this scrutiny that National Marine Fisheries Services will put to it, recognizing their role is to ensure that our action is consistent with the Magnuson Act and other applicable law, and that we can have a record, which I believe that we can, that demonstrates to Judge Henderson how this program complies with the Magnuson Act and other applicable law. So, those are my opening remarks.

CHAIRMAN: Thank you, Phil. Steve and then, come back to you Cal.

WILLIAMS: Thank you, Mr. Chair. Very briefly, obviously more comments when we get down to the details of the decision, but just an observation from today as I sat and listened to the testimony that we received we – in the course of coming to this point, we've had a lot of discussions about the building of the record, the need to build the record, and it was certainly obvious to me in listening to public testimony that the folks out there took this to heart and put a lot of effort and a lot of work into preparing and developing and providing us information that we could use to, at least in some form or fashion, make decisions, and I hope that at the end of the day the work that everybody put in is used in the record, that it is part of the record, that the judge has the opportunity in some form or fashion to see that record and recognize its value. I'll have some other comments about the record here in a little bit maybe, but I think right now I want to say thank you to the folks that put the time, the effort, the work into it. Some excellent testimony, thank you.

CHAIRMAN: Thanks, Steve. Cal Groen?

GROEN: Mr. Chairman, Council members and interested parties, I'm kind of the new guy here. I am just entering my second year of the Council. I'd like to share some of my observations. In my resource life I've been right in the middle of the (indecipherable 26:12) fair issue, the salmon issue, spotted owls, the wolf issue just recently,

and now, hello, Pacific whiting. It's a different issue. Some of my observations I want to make when I was going through my deliberations and consideration is that, one, the process was very open and transparent, dealing with an overcapitalization issue. It was a good transparent process. The second observation was that, industry worked together, extremely well. You usually don't see that. A tough consensus was achieved by industry, fishers, processors, all compromised, all felt pain and there was broad support for this agreement. That's what I picked up going through the records and these discussions. So, we dealt with a very complex issue with a very collaborative effort. I think everybody understands that and I commend this Council. They did give clear public notice, publication of control dates. They facilitated and documented these discussions. There is tremendous documentation. For a new person reading through it, it's amazing. This Council did a good job there. My struggle was with the control date, and I could not rationally connect or justify going beyond the 2008 Council action. I couldn't get there or even considering discounts or credits, it was arbitrary in my mind. I could not get there. This control date issue I think has to be taken very seriously. They are serious and they have to be trusted when they are given. If you lose that trust, I think it's going to lead to a lot of management implications and critical issues. And so I heard some saying well a control date is – just may be a 'maybe' notice in the Federal Register, I think it goes well beyond that. I think control dates again have to be trusted and taken seriously. So, I support the 2008 Council action. With my new eyes going through it, I think it was a good decision. I think it's equitable and fair. Thank you.

CHAIRMAN: Thank you, Cal. Marija?

VOJKOVICH: Thanks. I just also was impressed at the amount and the detail that was contained in the public testimony yesterday and today. And, it was apparent to me that, of course, this issue of allocation and the discussion is as important today as it was in November of 2008. I also noticed that there wasn't one individual who spoke who said they wanted to return to the open access fishery. They said that

to a person that the program was working and that everyone has already seen benefits to a program that has only been in place for a little over a year and a half maybe. So, to me that was very important to get verification that the basis of how we are approaching this program and the goals and objectives are solid. That's it for right now.

CHAIRMAN: Okay, anyone else? Dave, Dave Hanson?

HANSON: As one whose been involved in a number of rationalization programs, I knew we were in for a long and rocky ride trying to get this program in place. I believe it is the most complex program developed under the Magnuson Act in the United States. With the number of species, the number of over fished species, the diversity in the fleet, I'm not surprised that it took as long as it did. In fact, if you will recall, NMFS had to call in a number of staff from other regions and headquarters to help with this effort because we didn't have the level of staffing needed to do that plus other tasks. In fact, some other tasks slipped to keep this project in place. The other thing I'd say is in the other programs that I've been involved in, I've never seen the level of support from industry that we see here. It's – at one point it was virtually unanimous. It's not quite unanimous but the level of support is to me truly amazing and the program, I'll be honest with you, went 100 percent better than I thought it would the first year. So, I'm very pleased and I hope we can stay the course.

CHAIRMAN: Thanks, Dave. Dorothy Lowman?

LOWMAN: Thank you. Dave said a lot of the things I would. I would say that I did not, I was not sitting in this seat when the Council made the decision in 2008. I was involved in the process and I'll tell you it's real different being in this seat as we're reconsidering all of this at this time. It's a big responsibility. There are a lot of things to balance, a lot of objectives. Often we have objectives that are really important but sometimes competing. But I think that one of the things we are looking at is that now as we are now in this rationalized fishery it's true that the difference between any of the alternatives have very little difference in net benefits for the nation. But I think if we had not had a clear commitment to this

control date, we would have lost net benefits to the program in the intervening years that we were putting it together. I think we had a lot of testimony about how behavior would have been considerably different. I think we would have had – this fleet was already struggling with bycatch. I think we could have had some conservations problems with running up and over some very sensitive bycatch levels, potentially, in a race. And I think that, you know, it's always hard to do the what if, but I do believe that that's an important consideration for future programs too in terms of net benefits for the nation and having some sense that you aren't going to create a situation where people are sort of racing for history and that you have some stability in that way. I also, when we realized that we were going to be relocating all of this and people could figure out exactly where they were on those little graphs, in all of this good analysis, I sort of thought we might have another food fight. And I am very impressed with the fact that in general even though there would be – we created something which I do believe had no big winners and losers - moving to some of these other one would make some different losers and winners and yet I am still seeing a majority of people who have stayed strongly in support of status quo and I think that is something that we should really look at as we move forward. Finally, one other thing I'm reflecting on is I wasn't here for the initial allocation decision, but I was here during the time of kind of going through the review and what NMFS had to do, etc. to get this program reviewed and considered and approved and in place. And that was my first couple of years on the Council and I'll tell you it was a full couple of years. We had a new national standard, one that required us to do ACLs and to do a whole new different way of doing business on top of our usual biennial specs process, which is, we're in the middle of it now, isn't any easy matter. Plus this giant change in the way we did fisheries. And I remember thinking that this was kind of amazing that given how hard it was, I mean, some of the time I reflect back of how in-season management used to be, as opposed to these short times we have now. That the Council took the effort to try to make a substantial difference to the fishery and got all these

other things done too, and that the agency got all that done. I think there was practically, you know, sometimes it seems it's human nature to remember – the bad sort of fades more quickly into the background of years and you remember the good - but I remember some people who were probably close to divorce and exhausted and not having vacations for a couple of years in order to get this in place in 2011. So, I'm thinking about those things and I'll save the more substantive questions until we get into a motion, but that's sort of my initial thoughts.

CHAIRMAN: Thanks Dorothy. Anyone else? So, I've been debating whether to jump in and make opening comments here and I guess I will. It seems to me that we've had a couple of things that have happened pretty recently here. The PCFFA, the ruling on that case, really got to the essence of what does it mean to consider? So, you had to take things into consideration. We needed to address the pros and cons of the issue, but that no particular outcome was mandated by that. I think that's pretty significant. That allows us to deal with the merits of what's on the table before us today. I think the essence of our decision has really got to be based back on our legal mandate through the Magnuson Act. A couple of things there kind of stand out to me in that regard and one is to maximize the utility to the nation. The program that we're talking about is something that has to have value to the nation, and that we must be fair and equitable. Mr. Walsh in his testimony here raised the issue of dependency as a critical issue. We certainly need to worry about the issue of dependency. And all of that has got to wrapped up in this fair and equitable business. We heard from many today about how the elements of the program kind of work together to satisfy the objectives of the program. One of those compelling factors was to stop the race for fish that was contributing to excessive bycatch and that was shutting down the fishery early and to reduce the capacity of the fleet. Those are issues that we addressed in our objectives of the program as we put it together, and the use of a control date was critical to achieving those objectives. We heard from many of the people who testified today that the business decision that actually runs counter

to the objectives of the program should not be rewarded. I certainly believe that’s true. Not when we made our decision back there in 2008 and certainly not today either. So, when I looked at the alternatives that were sitting out there and I looked well do any of them really maximize the utility to the nation. And you kind of wonder well how do you measure that? You know, is it maximize the dollars to the fleets, to the communities? Are the resource conservations issues different, the measure of potential disruption among the current fleet, among the alternatives? Does one of the alternatives allow for more fishing opportunities in and among some of the sectors than others, and the EA does a really good job of exploring all of that and laying it all out. And yet when I look at that and read it, none of the options jump out to me as standing out and I can’t go ah-ha there’s the one I want to go with. Small differences, yes. The primary difference is who gets what in the allocation. But when taken as a whole the differences are small. Small enough so that when I look at the program as a whole there’s really no difference or clear winner in maximizing the benefit to the nation. We do have some guidance from the National Standards - fair and equitable. It does not mean that everybody must win. It recognizes that there will be winners and losers in this arena. But that on one should be significantly favored or disfavored without some credible rationale and it continually recognize that this is a judgment call. What looks fair and equitable to me may not look fair and equitable to somebody else. It’s in the eye of the beholder. It is truly a judgment call. So, I looked at what the control rules said, and it specified a set of dates under which allocation would take place, and it said that activity outside of those dates may not be considered. It doesn’t mandate that they can’t be considered. It simply puts on alert that they are at risk if they make business decisions contrary to the specifics of the rule. To me, that’s is a two-edged sword. It says one that there are known risks if you operate outside the criteria and that there is an expectation that if you stay within the criteria that there will be rewards. Those two factors ought to influence people's business decisions one way or the other. That they are free to make

their business choices, whether it was thru gaming the system or to just pursue a lucrative business opportunity, the motive isn't the issue here. What is at issue is that a rule is in place and that there were potential risks if it was followed and those risks were known and they needed to be factored into the business decisions. Conversely, if you decided to play by the rules, perhaps passing up business opportunities or even leaving the fishery entirely based on an expectation: "here is what would happen under those control rules." But, you know, you've needed to factor those into your business situation. Bud Walsh made it clear in his testimony of the issue of dependency, but for the life of me I can't noodle out dependency on the data that we've got there. I mean, there was a lot of testimony here on the floor today about what constitutes dependency and it was more than just recent participation as evidenced by landings. Dependency is a complex issue and it was not just a simple look at the table and here's your dependency. So, I don't know, I keep coming back to the control rule, the fact that it was in place, that there would be rewards for staying within it and you would not be rewarded for going outside it. My fairness meter tips heavily in the fact to the control rule, and to change the control rule after the fact, not during the discussions, but after the fact, strikes me as just patently unfair, patently unfair. I guess that's the basis of my look at things. Thank you for listening to my rant. We need to move toward motions. Do people need to take a break or are we ready to go for motions? Let's – 5 minutes? Let's take a 5-minute break. That will get us back here at 3:00 to do motions.

BREAK

CHAIRMAN: Okay, so at this point I'm going to begin looking for motions to bring this item to a close. We do have two business, we have two business elements that we need to take care of. One to address the preferred alternative of the allocation time periods and then we need to worry about the divestiture issues. So, Steve Williams?

WILLIAMS: Thank you, Mr. Chair. Since this is our final preferred alternative, I believe we have a, I think we can put it up on the screen if…

CHAIRMAN: Yes.

WILLIAMS: …Sandra, is that available? Okay. I would move the Council adopt as its final preferred alternatives for the time periods used for initial whiting catch share allocation the following: years used for history, based allocations for whiting trips, for catcher vessel permit short-side history, the no action alternative 1994 through 2003, whiting processors shore-side history, the no action alternative of 1994 through 2004, and the catcher vessel permits mother ship history, no action alternative 1994 through 2003.

CHAIRMAN: Thank you, Steve. With that one exception that's Sandra just made in the language on the word time, I believe that's exactly as you read it.

WILLIAMS: It is, yes.

CHAIRMAN: Is there a second? Jeff Feldner. Would you speak to your motion, please?

WILLIAM: Thank you, Mr. Chair. I'll be as brief as I can because there's been a lot of discussion about this, but the Magnuson-Stevens Act provides a number of guidance points for us and we heard a lot today about that guidance coming out of Section 303A, C5 in particular where it says that in developing a LAP access program, we're to establish procedures to insure fair and equitable initial allocations, including consideration of – and it goes on to identify then in one place four elements to do that. Mr. Chair, you mentioned the word consider and yesterday in particular we had some discussion about what did consider mean and in reference to our past decision, I went out and I took a look to see if I could find a definition of consider that I was supportive of, that I could say the Council followed, and the one I found was take into account and weigh carefully the pros and cons of an issue before making a decision. I firmly believe that's what we're doing here today. I firmly believe that's what we did in 2008 when we made our final decision. I think all the way along we do. I think – Jim Seger is not at the table right now, but Lord knows

and bless you Jim. You've provided us information by the carload for us to consider the pros and cons of. And it's very good information. I'm not disparaging it at all. It's excellent stuff, but it certainly should be recognized as being appropriate and complete with regard to our ability to make decisions and weigh information carefully. One of the key elements of a LAP program that was discussed here today and I've spoken to this before, the key element is a control date. We've done a lot of talking here today with regard to control dates. The establishment of a control date in 2003 for harvesters and 2004 for processors provided a clear message that we're taking action to control overcapitalization in the fishery and that individuals should not increase their participation with the expectation you'll be rewarded. Failure to set a control date would have encouraged the race to fish for catch history and we heard people today testify to the fact that some would have made that choice, some did, some would have made that choice, but my point is that it would have pushed the race for history. As a Council, when we made the decision for our control dates, we considered multiple years of fishing history. We looked at all of that and in the end, you know, the Council did not arbitrarily exclude any years. Rather, the Council looked at all that information and chose to come up wit the control dates that we had. We spent a lot of time looking at those control dates and we spoke a lot to those control dates and how we arrived there. The other piece of the puzzle for me that we've had some discussions today and I asked several questions regarding the issue of staleness of the control date and I appreciated Mr. Seger's review of the examples that were provided to us about some delays in that I think, maybe not all, but I think most of the examples he gave us all had some kind of a stop or a break in activity that I probably might suggest was staleness if the break was very long. We didn't have that in the case of our development here of the program, it was continuous. I happened to come into the process in the middle of it and it – believe me it was continuous. I hadn't known what I was walking into, but it definitely, there was no break with regard to the development of the control date of the program overall. Just to show one more reason for

what I think is the value of the control date, we talked a little bit yesterday – Mr. Walsh and Mr. Hyde talked about the opportunity to increase their effort, that there was opportunities out there as a result of several different things, and I believe as Mr. Walsh said there was a lot of speculation about why things happened one way or another. Well, I will speculate that one of the reasons there was opportunity there at that point in time after the control date was that we set a control date and some people made choices not to participate that may have allowed others to do that. One of the other points that was important for me and it was one of the first things that I ran into when we started working on this program and it's this issue of disruption. As we led up to the days and development of the final program, I remember a number of GAC meetings and others that we spent a lot of time trying to, we new that as a result of the development of the program fish would be shifting, jobs would be shifting, north-south throughout the West Coast and we spent a lot of time trying to shall we say create as little a disruption as possible. It's my view that after the two years of implementation we have here, the disruption that would be caused now could be quite severe. We could see again movement of jobs within and between the states and this would be a major issue, I think, for a number of communities up and down our coast as well as harvesters. It could be processors and crews. I think the GAP had a statement in their report that spoke to this issue of disruption and they said – they did this by stating that upending the plan would create significant instability and jeopardize the benefits already occurring in the fishery. They went even further to raise the issue about harmful impacts to other fisheries across the country. I don't know whether "across the country" would be an issue or not, but certainly it is possible and would be obviously a major disruption. The bottom line for me, on all of this, is that by making a decision other than maintaining the status quo, frankly we would be rewarding individuals that increased participation when it was actively discouraged by the Council, and frankly punishing those that followed our guidance. I haven't with all the piles of paper that we got regarding our decision here today, I came across in H.7.c

Supplemental Public Comment #3, this document I referenced earlier with Mr. Plesha regarding the analysis of the use of processing harvesting history and the allocation of Pacific whiting quota. There's a statement in there that I thought, from my perspective, made it fit quite well what I was thinking. "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." And that really says it for me. I would encourage folks – there a number of recommendations in this document as well that I think should be certainly reviewed as at least part of the record. I think this is a good document as well as a number of others, but for me and for all of these reasons, you know, this is why I believe the status quo is the most fair and equitable and best accomplishes the purpose and need of the – and actions consistent with Magnuson-Stevens as a National Standard Four – thank you Mr...

CHAIRMAN: Thank you, Steve. Council discussion? Phil Anderson?

ANDERSON: I have two things I'd like to do here. Before I do either one of those, I would like to ask the maker of the motion a question. It is my understanding that your motion is intended to reflect the status quo or no action alternative. Is that correct?

CHAIRMAN: That is correct.

ANDERSON: And in looking at the motion that we have in front of us, the qualifying period for whiting processors shoreside history, no action alternative 1994 through 2004 is not the correct dates or years. The base period, for the no action status quo alternative should be 1998 through 2004. And, understanding the intent of the motion then, I would move to amend the motion that the whiting processors shoreside history base qualifying period be the years 1998 through 2004.

CHAIRMAN: Okay, we've got it up there now. Dorothy Lowman seconds. DO you have any further discussion?

ANDERSON: Understanding that the intent of the main motion is to reflect the status quo no action alternative, the change in these dates does result in reflecting that intent.

CHAIRMAN: Thank you. Council discussion. Seeing none, I'll call for a question on the amendment. All those in favor say I. (combined I's). Opposed? Abstention?

MYER: Recusal.

CHAIRMAN: There is a recusal from Dale Myers…

LOCKHART: Abstention.

CHAIRMAN: …and an abstention from Frank Lockhart. Motion passes unanimously with those two, abstention and recusal. Phil?

ANDERSON: That was the first part. The second part is going to take longer. I want to speak in support of the motion and I'm sorry that I have to be so lengthy. I will try to move along as quickly as possible. I think some of the points are important. I believe after reviewing all the material and analysis, particularly concerning the fairness and equity of the allocation of the initial quota shares as it relates to recent participation and dependence on the fishery, that the integrity of this policy process calls for the Council's original decision to be re-explained to the court. I'm concerned about the uncertainty surrounding our policy authority on this matter and the potential risk that additional litigation poses to the IFQ and mothership co-op programs. However, I think the status quo alternative is the most fair and equitable given the unique set of circumstances surrounding the developmental steps of this program and the clear and consistent communications from this Council to the industry that would affected. The policy process embodied in the Magnuson-Stevens Conservation and Management Act that Congress established entrusted Regional Councils to make conservation and management decisions for the nation's fisheries. In this policy process, it is the Council's purview to determine what is best, as long it is done consistent with the Magnuson-Stevens Act and the NOAA guidance on LAPPs and other applicable law. From the Council, the burden shifts to National Marine Fisheries Service consistency review of Council recommendation. In conducting such reviews, I believe NMFS should not seek to substitute the Council's view of what is best with the agency's view of what might be better policy. Instead, the consistent review should be more a narrowly focused determination of

whether the Council's recommendation was permissible or not. That is to say whether the recommendation was consistent with the Magnuson-Stevens Act and other applicable law. In reviewing the court's written rationale for ordering this reconsideration, the judge reached its conclusion based on an incomplete understanding of the Council's policy reasoning. The court has asked questions in the summary judgment order that I think can be answered, justified and defended. While I believe the rationale was there at the time the decision was made in 2008, we realize the Council's administrative record may have left a lot to be gleaned from reading between the lines. And those few sentences in the court documents may have been all that could be gleamed from the administrative record. But now that we've had an opportunity to review not only the information that we had at the time that we made the decision in November of 2008, but additional information as well. I believe that we have a solid foundation for this decision. I'd like to speak to the specific questions raised by the Court. From my understanding, this reconsideration was ordered for two primary reasons. First, the Council used two different end dates in the allocation formulas for harvesters and processors - the Court did not understand why. The second, the Court questioned the age of the control date itself. The question is how those end dates could be six or seven years earlier than the start of the IFQ and co-op programs in 2011 and still have been consistent with the Magnuson-Stevens Act instruction to consider current harvest and the fair and equitable allocation of limited access harvesting privileges. The issues of different end dates for harvesters and process was the one the Court pointed to in ordering this reconsideration. The Court said "most problematic" and the view of the Court was the Council's "explanation of why the qualifying period for processors was extended to 2004." The explanation given to the Court was that "the extension to 2004 was made to benefit a single processor." The Court responded to this by saying that the explanation "begged the question of why the particular processor should benefit not withstanding an earlier control date when others should not." The Court also observed that the allocation period for the processors was chosen as "a result of a

compromise arrived at during industry negotiations." This, the Court stated undermined any arguments that the defendant's decision-making was free from a political compromise. At the same time, the Court approved the Council's reasoning for the years 2003 through 2006 in the allocation formula for bycatch stocks to the non-whiting permits. Even though those dates too went beyond the control date, the Court understood the reason for doing so was the implementation of the rockfish conservation areas and the desire to have the allocation reasonably reflect recent fishing patterns for the bycatch species. At the same time, the Court found "questionable" that the Council had that objective of reflecting recent patterns in the fishery but then "did not appear to have undertaken the same analysis for Pacific whiting." The Court was skeptical that the whiting allocation formulas reasonable reflected recent patterns in the fishery given the shift in landings toward Washington after 2003. The Court also noted that five new whiting buyers had entered the fishery after 2004 with the government making "no argument as to why it was rationale for them to exclude those new entrants." The Court also observed that there did "not appear to be any evidence, for example, that these new entrants engaged in speculation when they entered the market after the announced control date." The main purpose, from my perspective, of the allocation to processors was not to reflect recent fishing patterns. Instead, the Council's allocation for processors was chosen based on the significant investments that have been made in reliance upon pre-Amendment 20 management system. Looking to the possible disruption that would result from the major transition to the new regulatory system, the Council intended the allocation of harvesting quota to processors as a means of giving some consideration and measure of stability to those processing businesses that had built themselves up and invested under the old system. This is why the window period differed from the harvester window period, not just in its end date but in its start date as well. There were concerns at the time that the new system would lower the value of investments and place businesses at risk by changing the timing of the fishery and the balance of bargaining power between harvesters and processors. The

period 1998 through 2004 was chosen as an equitable reflection of the investment that has been made. I think the testimony today substantiated this decision and the reasons behind the difference in the control date and the qualifying period for processors. Given the control date established by the Council for processors, businesses that entered the processing sector or made investments after 2004 did so with a degree of risk. Expectations about the fishery had changed after 2004. Investments could no longer be made under the expectation that the management system would remain constant. The processing business that was the primary beneficiary of extending the date of 2004 argued in June of 2012 that years beyond 2007 had to be considered because by not doing so would fail to recognize the “most significant investments” made in the fishery. That may be so, and we agree with their position that the investments the company has made over the last decade and the marketing initiatives they have accomplished have contributed to the value of the fishery. Their business initiative has benefited Westport and the state. After 2004, processing business knew that the derby style fishery was likely to end. Landings might be spread out longer over the year and that the fleet could consolidate. We do not expect businesses to stop investing or attempting to earn profits. Yet those investments are made based on their best business judgment and about the future, including risks. The Council did not have to offset the potential loss in value and provide some stability established processing businesses with Amendment 20 but chose to do so as a matter of policy. By contrast, the Council decided the existing non-whiting processing businesses would not need program protection to have a stable business environment. Both choices are fair and equitable. The Council had very good reasons for rationalizing the fisheries, yet recognized that changes would impact existing business. There is a consideration of fairness underlying the policy. It was reasonable for that policy to favor investment that were made in the derby style fishery before the control date signaled the possible change in the regulatory system. The Court's observation that there was no evidence that the entrants engaged in speculation. I would reply that control dates are

preemptive tools meant to signal that speculation will not be rewarded. It is the prospect of speculation that creates the concern. Whether speculation would have been worse had no control date been issued is a question we cannot answer except based on the theory that the incentive was there. The more salient point to me is not whether these businesses speculated or not, it is the fact that they entered the fishery in a time where it was known that the regulatory scheme was changing. As the 2011 experience showed through the testimony we heard, the processing business does not need quota to be successful in this fishery. Amendment 20 was deliberated for years based thousands of pages of analysis, meetings, recommendations of the Groundfish Allocation Committee, the TICQ Committee, the GAP, the SSC, and so on. By November of 2008, every issue had been thought through in detail and we have had an opportunity to review that again, including information and data that's come since then. We were satisfied that the processor and harvester allocations were fair and equitable then, and I'm satisfied that the provisions of the program continue to be fair and equitable today. It did not treat the post-2003 or 2004 entrants the same, yet as I explained there were good reasons for that. It is important to note the Court upheld the procedural validity of the Council's control date finding that the plaintiff's challenge had "no merit." The Court's discussion of this issue showed good understanding of basic policy reasons for employing and maintaining control dates. Now, regarding the reasonableness of the control date, the best the Council can do is to fully articulate an interpretation of the policy disgression afforded to us by Congress and as part of that fully explain how it was reasonable under the circumstance to exclude years beyond 2003 for harvesters and 2004 for shore-side processors in the allocation formulas for whiting. There are two major factors for addressing the matter. The first would be the one mentioned by the Court, that is "factual complexity" of the program and its design, review and implementation. The complexity goes well beyond writing regulations. It involves allocation of the target species, which we hadn't even done at the time that we set the control dates, and sorting through possible alternatives through the

implementation of enforcement and monitoring programs to give effect to the final regulations and accomplish our conservation objectives. I also think the high degree of controversy surrounding the development of this program is another complexity and why it took longer than other programs that perhaps the Court was made aware of. More controversial programs tend to take more time to develop because of the need to analyze and consider information and weigh and address the various concerns. Likewise, I would place the significance of the proposed change and the severity and uncertainty of the potential consequences in the complexity category as well. The more substantial the change and the more severe and uncertain the consequences for the fishery participants and fishing communities, the more time and information decision makers will want, to insure their decision is sound and made in awareness of the likely consequences. Finally, an additional concern has to do with the conservation concerns and the connection to the control date. The concern is that speculative fishing behavior can have adverse impacts on conservation and management objectives. Speculation creates more participation and can worsen the biological and social economic problems created by overcapacity. This factor connects the fair and equitable standards to the broader conservation and management context. That connection is required by the Magnuson-Stevens Act under National Standard 4 and the guidelines that National Marine Fishery Service issued interpreting that standard. National Standard 4 requires allocations to be "reasonably calculated to promote conservation." The National Standard 4 guidelines then advised that "an allocation of fishing privileges should be rationally connected to the achievement of the optimum yield or with the furtherance of legitimate fishery management plan objectives." This standard and guidance are focused on the long-term conservation and management objectives whereas the effects of speculation last only until the allocation is finalized. Nonetheless, it should be recognized that speculation incentive created by proposed allocations can be severe enough to place real pressures on conservation and management objectives during the development and implementation of the limited entry program. And I use the example

that occurred on July 17, 2007. Washington Department of Fish & Wildlife officers responded to a report of fish being washed up on the beach at Longbeach, Washington. They collected 1,300 widowrock fish, 6 coho, 1 Chinook, numerous whiting that had been discarded at-sea and when they contacted the vessel that they believe to be responsible for it in Ilwaco, the response was, well I thought everybody was gonna stay out of the area where we had high back catch rates, but everybody else was in there so I did it too. So, the point is that even with the control date, the temptation there is to speculate and try to build catch history and what disregard to conservation is there. In sum, the reasonableness of a particular control date based on an examination of how consideration of the current participation weighs against the characteristics of the program design and implementation issues. The broader conservation and management context in the fairness to those that obeyed the control date - inevitably the decision is one that leaves much judgment to the policy difference about what is most fair and equitable, but again I submit that the motion that's on the floor is the most fair and equitable, and particularly in consideration of the testimony we heard yesterday and again today about the repercussions of changing the qualifying periods for any of these sectors. Thank you for your patience in listening.

CHAIRMAN: Thank you, Phil. Further Council discussion? David Sones?

SONES: Thank you, Mr. Chairman. I'll be abstaining for the vote and because I take my abstentions very seriously, I wanted to express why I feel that it's important for me to do so. I did support the 2008 decision for those control dates and I felt that at the time this was a very critical part of the LAPP program, to establish a control date that would control participating or race to fish after that date was established. It sure took us a while as people have explained, it was a very complex system, but we felt that as Tribes that this was an important conservation act that the Council had taken. In the national interest, the program overall we believed was important to the resources of the nation and how we manage these and what we project to the world in new management strategies that can deal with these complex issues and so many species and be able to pull a program

together. I tell you, 15 years ago I never thought I'd see today. Just looking at the situation that the Council was facing with overfished species, protected species, so many different types of species in such a wide variety of how the fish were accessed. I am pleased to see that it went in place. I know I raised concerns about whether our youth would be able to participate in the future and from the testimonies that I've heard I'm pleased to hear that this is happening. I think everything that we had hoped for is coming together. I see this decision today as more of an allocation issues, less of an issue of conservation, although I do believe if we don't respect control dates it will have impacts on where things go in the future with future programs. So, for those reasons, I will be abstaining for the vote and I just thought it would be important that I expressed to the public and the Council the reasons for that decision. Thank you.

CHAIRMAN: Thanks, David. Further Council discussion? Dorothy?

LOWMAN: Thank you. The nice thing about going after two eloquent Council members is that most of the points that I had on my paper have already been covered. But there was one that I think factored into my decision. It was something that I was trying to think about hard, was this concept of, you know, well there were a number of permits that seemed to not be used at all after 2003. And, when we got our supplemental analysis Attachment 3, we saw that actually there was a real rationale for a lot of it. They weren't being used, but they were part of an investment package, and that was supported also by some very good public testimony. In order, you know, and particularly fisherman who had permits who were active fishermen, who, you know, weren't maybe going to have the history that they wished to have, but were going to be able to use those permits and increase their amount of fish they had to harvest through those purchases. That makes a lot of sense. We still have less than 2% unaccounted for and nine permits. I don't think we really know where all of those are, but it's a pretty small amount here. So, that made me much more comfortable about that aspect. So, that was one of them. The other thing that factored into my fair and equitable decision was the fact

that while this is all about whiting, our program has a sector that is both whiting and non-whiting. In my mind, to have different dates for one part of the same sector than the other part doesn't seem fair. If you do that you've set up a situation where someone could have been kind of double dipping, awarded - getting all their non-whiting history and then if they chose not to have done some of that non-whiting in order to do more whiting, you know, getting all of that also. I just think there are also people in the non-whiting who probably had some of the same frustrations about some of their more recent catch history and levels of catch, but – and I think we need to treat people equally, so that was another part of my decision making.

CHAIRMAN: Further discussion? David Crabbe?

CRABBE: Thank you, Mr. Chairman. Just gonna make a real brief comment only because I think some of the other statements were very thorough. But I was compelled by the number of fisherman who would have been winners under either Options 3 or 4 and they did not come out in support of another option. They, as a matter of fact, we heard some of them speak in favor of status quo. When I think about fair and equitable and the position, you know, if you're in a position to where you're going to be benefit your business substantially but yet you're still willing to stay with the status quo, you must see a lot of fairness in the program and the way it was implemented and that your convictions to the control date are real. And, you know, I have a long history of being a commercial fisherman and have had some personal involvement with control dates and I've been involved with control dates that have been moved and in that process it had stalled and the management for the program moving forward had stopped and not proceeded. What occurred was I think industry came forward in a majority, in a large support, and stated hey we need to change this control date. It's stale. The program was no longer moving forward. Things have changed considerably and industry found it to be valid to move the control date. And I didn't hear about that occurring in this process, upon questioning. I didn't hear industry coming forward in 2006, or early 2007, when this process was going on, and request for a change of the control dates because it seemed like everybody involved

in the process felt like what was occurring was fair and equitable and that the process was continual and no changes had taken place, where they felt changing that control date was valid. So, I intend to support the motion.

CHAIRMAN: Thank you, David. Anyone else? Jeff Feldner?

FELDNER: Thank you, Chair. I'm also going to support the motion. Like Dorothy said it's very difficult to follow up some of this very eloquent testimony we've had, but I wanted to expound a little bit on a couple of long-term reasons why I'm in support of it. The first one is that it's very likely, I think, that sort of the eyes of the nation are on us here. There are going to be future limited entry programs. There are going to be future rationalization programs. The way we are able to deal with this control date issue is going to have long-term conservation impacts on future programs. Fisherman behavior isn't bad behavior. In a case where a control date is not trusted or when people don't adhere to it – I'm a fisherman. I've been a fisherman for 40 years. We have to go out and establish quota. We have got to go, we've got to do it, we've got to go now, we've got to leave early. That's what it means to be a fisherman. We will push the edge, as I think it was Mike Stone testified if there was no control date earlier he would have leased out his Pollock quota in Alaskan and hammered White. What does that mean in terms of possible impacts to bycatch species? What does that mean to overcapitalization or the risk of going over a quota on whiting? These are serious things. The second thing that is very important is the effect on the future function of this Council. I've just been on the Council for a year now as a Council member, but I was involved in the mid-80s. I can't even remember the timelines exactly, but I was on the salmon advisory panel back then when we were kind of still learning how to do it, and my view then and still is that one of the main reasons this Council works as well as it does, or any council, is the active participation of the industry. We don't rely on them just for their testimony and we don't just rely on them for their support. We also rely on them for their knowledge and their innovation. This governance doesn't work if they don't trust us and if we can't find a way to, you know, have the

courage to back up what we've done before, we're risking the future function of the Council.

CHAIRMAN: Anyone else? Rich Lincoln?

LINCOLN: Thank you, Mr. Chair. Very briefly I just want to – will be supporting the motion. I'm not going to repeat all the excellent, I think, justification that has been provided by fellow Council members on why the no action alternative is the most fair and equitable. It did strike me a bit that we are under a new set of circumstances now and in thinking about what the relative advantages or disadvantages in terms of fairness and equity might be amongst the alternatives, it struck me that, you know, part of the testimony and part of the discussion we have heard is that there would be disruptions in terms of a new selection of dates to look at initial allocations. And the question is, and there would be, I think we heard testimony that there would be in terms of the individual permit holders, the balance of benefits, people that benefit from such a move versus that would be negatively impacted, there seem to be a weight, that more people would be negatively impacted than would benefit. So, it seems like there should be a significant reason then to consider that such a move would in fact be a good decision. And, in terms of the program's goals and conservation benefits, I mean, we have to consider that we're at this point in time that the program has been implemented. We've already achieved some remarkable benefits in terms of controlling capitalization capacity in the fleet, reducing bycatch, some of the valued added benefits from the programs. So, it really would be difficult for me to support other alternatives at this point when there is no fundamental benefit in terms of national interest or even meeting the goals of the programs that we haven't already achieved in terms of somehow justifying that disruption. So, I just wanted to add that. Thank you.

CHAIRMAN: Thank you, Rich. Marija?

VOJKOVICH: Thanks. I guess just a little perspective from me as a lifelong public servant unlike some of the people on the Council that are industry members or have been fishermen or in other occupations. In discussions about allocating public resources, it has always been

very important for me in my job to look at what the greatest good is. The decisions about public resources, giving them to - or exclusive use - to individuals, it's not about the individual and what they might benefit from that, it's what all of us benefit from. And so, while I understand that whatever dates might be on the table and possibilities, there are individual consequences. Some people get a bigger share. Some people get a smaller share. I found it very difficult today to listen to comments about individual businesses and how this was going to affect individuals because there is never any one decision we can make that will meet every individual's need, their desires, their hopes, their dreams. And so I have to put away that thought of a decision affecting an individual and look at how it affects the industry as a whole, our fishing communities up and down the coast, our fishing businesses and communities in the nation. So, it's a much broader perspective when I'm looking at an allocation decision. To me, inherent in that is a component of fairness because you aren't looking at an individual, you're looking at the whole and what that brings, what decision brings to the whole. So, that hadn't been stated here. I agree with all of the other good comments that my fellow Council members have made. I agree with them and I do think that this is the right decision.

CHAIRMAN: Thank you. Anyone else? Well, I wanted to say that I'm going to support the motion for all of the reason I had in my prior statement. I – just in the case of some sort of administrative follow-up, I want to make sure that those statements are applied to this motion. So, any other comments? Yes, Herb Pollard.

MR. POLLARD: Well, nearly everybody else has had a chance to comment and, you know, we heard a lot of testimony. We read volumes of pages and Mr. Williams and Mr. Anderson very eloquently summarized the weight of that testimony to support this motion. And, I've always used the prudent person test, would a prudent and reasonable person given that information make the same decision that you are going to make and I apply that in one of the – the one reason that hasn't been answered is gosh what's the judge going to do with it? Well, judges are mostly reasonable and prudent people and I think if this goes before a judge

again, and if a judge sees the same information that we have, he will make the same reasonable and prudent decision that we have made. You know, and I can't imagine that a reasonable and prudent person with this weight of information would make a decision other than to support the motion, which is what I intend to do.

CHAIRMAN: Okay, anyone else? Cal?

GROEN: Mr. Chairman, likewise I will support this motion based on my previous comments.

CHAIRMAN: Any further discussion? Call for the question. All in favor say I -- combined I's. Opposed. Abstention?

LOCKHART: I abstain

CHAIRMAN: Frank Lockhart. Recusal Dale Myer. David Sones abstained. And Dale recused. The motion passes. We have a second item of business to take care of. Phil Anderson?

ANDERSON: Thanks Mr. Chair. I believe the next – we have two more items. They are the quota share transfer and divestiture periods, and the mothership catcher vessel severability, and I have a motion that you see on the screen consistent with the recommendations made in Agenda Items H.7.b, Supplemental NMFS Report 2. I move that we reinstate the quota share transfer and divestiture periods for the shore-side IFQ sector to begin on January 1, 2004 [2014], with a deadline to divest extended to December 31, 2015, and mothership catcher vessel severability to begin on September 1, 2014, with a delay of the deadline to divest extended until August 31, 2016. I hope I have that correct.

CHAIRMAN: Thank you, Phil. Actually, I don't think you did when you – particularly on the date on the shore-side IFQ sector to begin on January 1, 2000 what?

ANDERSON: I said well – I meant to say what's on the screen so if I didn't I correct that [2014].

CHAIRMAN: Okay, all right.

ANDERSON: And, if I get a ....

CHAIRMAN: So, that is what you intended?

ANDERSON: Yes.

CHAIRMAN: That is what you intended. Is there a second? Rich Lincoln seconds. Phil, would you like to speak to this please?

ANDERSON: Briefly, the intent of the motion is to allow an National Marine Fishery Service adequate time to implement the necessary quota share transfer rules and regulations, as well as the programming necessary to allow online transfers of quota share. Intent is also to allow National Fishery Service adequate time to implement regulations and to coincide with the annual permit renewal process.

CHAIRMAN: Council discussion? Seeing none, I'll call for the question. All those in favor say I (combined I's). Opposed. Abstention?

MYER: Just to be consistent I won't…

CHAIRMAN: Dale Myer recuses. Motion passes. Do we have additional business to conduct under this agenda item? Dorothy Lowman?

LOWMAN: I just wanted to say that I really feel this has been a, you know, as I said this was the first time through for me, through this decision and reconsideration of this, and I feel that there's been a lot of thought by all Council members in balancing the goals and objectives, all of our guidance, all of the requirements of the Magnuson Act, and now it goes to the National Marine Fisheries Service for their consideration. And I really do appreciate having some of the people who are making those decisions and don't normally come to the Council meeting come to this and listen carefully. And I do believe that, and it is certainly my hope that, you know, they will support the Council's decision as it goes forward, because one of the other sort of cost of all of this is we kind of, you know, I'm hoping we can move on to some of the other things that we need to do to make this program even better, because we've all been working really hard and I know we have a lot of work in our next agenda item on things and where do they all fit in, and so that's I just wanted to say that.

CHAIRMAN: Thank you, Dorothy. Jim, I see we've got the actions up there. Are we satisfied with everything or do we still have some left to do?

SEGER: Thank you, Mr. Chairman. No, I think we're done. There was a comment made about the amount of analysis that was in before you. I

just wanted to express my thanks to Dr. Ed Waters and Dr. Steve Freese for the tremendous amount of work they did on this.

CHAIRMAN: Phil Anderson?

ANDERSON: Yeah, Jim took the words out of my mouth, for thanking Ed Waters, Steve Freese and Jim Seger, and I’m sure others that I am not aware of for the great work that they;ve done and the support that they have provided us. So, thank you very, very much.

CHAIRMAN: Thank you. I think that does, in fact, then close out Agenda Item H.7. So, let's take a 10-minute break and we will pick up where the agenda item...

0922cd01