



**UNITED STATES DEPARTMENT OF COMMERCE  
National Oceanic and Atmospheric Administration**

*National Marine Fisheries Service*

*P.O. Box 21668*

*Juneau, Alaska 99802-1668*

May 30, 2014

Eric Olson  
North Pacific Fishery Management Council  
605 W. Fourth Ave, # 306  
Anchorage, AK 99501

Dear Chairman Olson:

This letter is to inform the Council and public of a recent D.C. District Court decision that suggests regulatory changes may be warranted to limit the carryover (reallocation) of unused sablefish Individual Fishing Quota (IFQ) from one fishing year to the next – underage carryovers. The following sections of this letter summarize the relevant aspects of the D.C. District Court decision, its potential impact on the sablefish IFQ fishery, the approach we intend to take pending potential additional regulatory action, and the longer term implications on the use of underage carryovers in the Halibut and Sablefish IFQ Program.

#### D.C. District Court Decision

On April 4, 2014, the D.C. District Court issued its decision in Conservation Law Foundation's (CLF's) challenge to Framework 50 to the New England Groundfish Fishery Management Plan, *Conservation Law Foundation v. Pritzker*, No. 13-00821 (D.D.C. Apr. 4, 2014). The primary issue in that case was a challenge to NMFS's authority to allow carryover of unused catch in the 2013 fishing year to the 2014 fishing year that resulted in a total allocation of catch in 2014 that was higher than the Annual Catch Limit (ACL) recommended by the Scientific and Statistical Committee (SSC). The court held that carryover is inconsistent with the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act) if it results in a total potential catch level that exceeds the ACL recommended by the SSC.

Because the CLF case is specific to provisions in a Fishery Management Plan (FMP) and the Magnuson-Stevens Act, the court ruling applies to the sablefish IFQ fishery managed under our groundfish FMPs and the Magnuson-Stevens Act, and not the halibut IFQ fishery managed under the authority of the Northern Pacific Halibut Act of 1982.

#### Sablefish IFQ Fishery Management

For groundfish fisheries in the North Pacific, the SSC recommends the specific management area where an ACL applies after considering input from the groundfish plan teams. For sablefish, the SSC recommends one ACL for the Gulf of Alaska (GOA), and a separate ACL for the Bering Sea and Aleutian Islands Management Area (BSAI).



The Council also recommends sablefish Total Allowable Catch (TAC) limits in specific subareas, regulatory areas, and districts in the GOA and BSAI. By regulation, these TACs are apportioned between the sablefish IFQ fishery, and trawl gear. The specific apportionments between the sablefish IFQ fishery and trawl gear vary depending on the specific subarea, regulatory area, or district (see § 679.20(a)(4)). The portion of the TAC allocated to trawl gear cannot be carried over from year to year, and is not affected by the issues raised in the CLF case. The portion of the TAC allocated to the IFQ sablefish fishery is a directed fishing allowance for that fishery.

Regulations allow a person to carryover up to 10 percent of a person's total annual sablefish and halibut IFQ account from the current year to the following year (see § 679.40(e)). Each year since 1995, sablefish IFQ holders have left a small amount of sablefish IFQ unharvested in the GOA and BSAI for a variety of operational reasons. The amount of this underage carryover varies from year to year. Each year since 1995, sablefish IFQ holders have not harvested more than their total annual allocations of sablefish IFQ in the GOA or the BSAI even after the underage amount is applied. More importantly, since 1995 harvests in the sablefish IFQ fishery have not resulted in catch exceeding the ACLs in the GOA or the BSAI.

Regulations governing groundfish management specifically authorize NMFS to close directed fishing for sablefish – the sablefish IFQ fishery, if an allocation or apportionment for a specific subarea, regulatory area, or district has been or will be reached (see § 679.20(d)(1)). Under these regulations, NMFS will close the sablefish IFQ fishery in the GOA, or BSAI to ensure that an ACL will not be exceeded. This explicit regulatory authority to close directed fishing to limit catch below an ACL did not exist in the case considered by the court in the CLF case.

#### Current Management of the Sablefish IFQ Fishery

In light of the issues raised by the CLF case, NMFS will continue to monitor the sablefish IFQ fishery and will close the fishery in specific subareas, regulatory areas, or districts as necessary to ensure that total annual catch does not exceed the GOA or BSAI ACLs. We do not believe that limiting the amount of underage carryover for specific sablefish IFQ holders is necessary in the short term. NMFS will advise the Council if alternative management approaches are required after 2015.

#### Longer Term Management Implications

The CLF case raises issues about the use of underage carryover that NMFS and the Council should consider in the longer term. Although NMFS will close the sablefish IFQ fishery to avoid exceeding an ACL, this could have differential impacts among individual sablefish IFQ holders. For example, if a substantial number of sablefish IFQ holders harvested their annual allocations earlier in the season, including any amounts from underage carryovers, we must close the fishery before the end of the season to ensure an ACL is not exceeded. Under this scenario, IFQ holders who have not yet harvested their allocation could be precluded from doing so. Although this situation has not occurred in the past 20 years, conditions in the fishery could change; for example, a substantial decrease in TAC from one year to the next coupled with increases in ex-vessel value could encourage harvesters to harvest all available IFQ as soon as possible. This

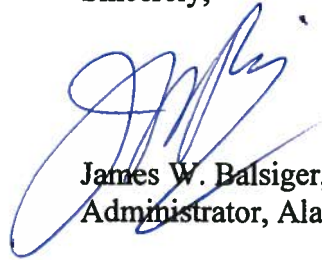
increases the likelihood that we would need to close the fishery before the season ends to ensure an ACL is not exceeded.

Several long-term solutions are available. The simplest, and likely the most equitable, would be to remove underage provisions. The halibut and sablefish IFQ fisheries are the only catch share fisheries that have underage provisions. These provisions were established 20 years ago when the industry and NMFS had less experience with catch share management. The rationale for establishing the underage provision was to accommodate uncertainty in the ability of halibut and sablefish IFQ holders to precisely harvest their allocations. Halibut and sablefish IFQ holders, and fishermen in other catch share programs, have consistently demonstrated an ability to effectively harvest their allocations with a high degree of precision.

Management of underage carryovers requires additional administrative costs to track and modify IFQ accounts. These administrative costs are collected from halibut and sablefish IFQ holders through the IFQ cost recovery fees. These costs could be reduced or eliminated by removing underage carryovers.

Given the issues raised in the CLF case, and our 20 years of experience with IFQ management, we encourage the Council to coordinate with us in the development of a discussion paper to consider whether maintaining underage carryovers is appropriate, necessary, or desirable.

Sincerely,

A handwritten signature in blue ink, appearing to read 'J. Balsiger', is written over the typed name and title.

James W. Balsiger, Ph.D.  
Administrator, Alaska Region