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September 29th, 2021

Mr. Simon Kinneen
North Pacific Fisheries Management Council
605 W 4th Ave, Suite 306
Anchorage, Alaska 99501

Re: Agenda Item C4 BSAI Pacific cod Trawl CV LAPP – Final Action

Dear Chairman Kinneen and members of the Council,

My name is Robert Breskovich. I own the F/V Aleutian Challenger, (AC) a 100', independently owned AFA catcher vessel, (CV) that has been fishing cod consistently in the Eastern Bering Sea and Aleutian Islands for over 20 years. Due to the importance of this issue to my family and crew members, this is the fifth correspondence I've written the Council regarding the trawl CV LAPP since June of 2018.

We support the Council's work to develop a workable catch share program for the BSAI cod fishery that protects the few remaining independently owned trawl CVs in the fishery, and appreciate your thorough consideration of all of the complexities involved with this transition. For vessels such as the AC, the transition from the vessel-based management of the AFA program to the new LLP-based program has implications that we could not have anticipated at the time we made a number of past decisions, specifically with respect to the AC's history of using stacked LLPs. I want to thank the Council for its consideration of this issue at the June meeting, when I'd realized shortly before the meeting the ramifications of the specific area endorsement as it related to stacked LLPs.

By way of background, the AC had stacked LLPs on board while fishing cod in all but one year between 2004 – 2019, and our company that owns the AC did not own any of the additional stacked LLPs. The NMFS LLP database indicates that if we had not been fishing the stacked LLPs, they would not have been used by the license holder, which happens to be the largest AFA FT company, during the qualifying years. We did not have a written agreement as to how catch history would be assigned, but rather a handshake deal where the catch history would stay with the AC in exchange for delivery to the AFA company's CP. The AC does not have substitute LLPs that could fill in for the leased LLPs; the AC only has one LLP with an EBS endorsement. Under the June 2021 Council motion, the AC could possibly be shut out altogether from the cod fishery because of the minimum qualifying requirement, despite its decades of active participation. At a minimum, the AC stands to lose 85% of its catch history and possibly 100% depending on what happens with the Threshold element, Processor QS and AFA sideboard blending.

This issue of how to treat stacked LLPs does not potentially affect just the AC. Table 2-100 in the September 2021 RIREA indicates that there are nine vessels, including the AC, which have a history of using stacked LLPs that will be affected by **Element 2: Allocation to LLP Licenses**, and particularly **Element 2.3 Stacked LLP Licenses**:

Vessel	Total LLP licenses on vessel	BS trawl endorsements		AI trawl endorsement	
		No	Yes	No	Yes
1	4		4	2	2
2	3		3	2	1
3	2	1	1		2
4	2		2	2	
5	2		2	2	
6	2		2		2
7	2		2	1	1
8	2		2	2	
9	2		2		2

Source: AKFIN, April 2020

Table originates from Excel file BSAI_PCOD_Stacked(4-8-20)

This group represents an outlier that must be addressed by the Council in some fashion so that all historical participants in the fishery, including these nine vessels, are accounted for by the Council action.

Since the June meeting we have worked with eight of the identified CV's with stacked LLPs and come up with language for an amendment as shown in Exhibit A. In talking with the other potentially-affected vessel owners, we learned that while some owned all of the stacked LLPs on their boats during the entire qualifying period, others acquired one or more of the LLPs through private transactions during that period. Consequently, the other vessels asked that the language in our proposal underscore that existing contracts assigning catch history to a particular LLP will not be affected. The proposed language takes care of this concern, which was implied but not explicitly stated in the Council's June motion. Importantly, all CV's indicated that our proposal, if adopted by the Council, caused them no concern and would not cause harm to their "Stacked LLPs" situation.

The proposed amendment does the following:

Section 2.2:

Modifies the language to clarify that initial allocations of harvest shares are assigned to the LLP with the area endorsement for the area where the catch occurred, EXCEPT in the case of stacked LLPs.

Section 2.3, Explanation of intent:

Provides the Council with the factual circumstances and policy factors requiring the modification.

Section 2.3:

Modifies the language to provide that in the case of stacked LLPs authorizing catch in either the BS or AI, pre-existing transactions assigning catch history to a particular LLP will be honored. The terms of any written agreement assigning the catch history to a particular LLP will be followed in the initial allocation. In the absence of a written agreement signed by both parties, the catch history will be assigned according to Option 2.3.2, as indicated by the Council's PPA.

We are asking that this language be included in Final Action at the October meeting. As mentioned, we've shared the proposed language with 8 of the 9 CV's we know that had stacked LLPs as identified in Table 2-93. The following CVs (with "yes" by their names) have indicated that they do not object to the proposed language:

1. F/V Aleutian Challenger, **yes**
2. F/V Sea Storm, **yes**

3. F/V Arctic Wind, **yes**
4. F/V Cape Kiwanda, **yes**
5. F/V Majesty, **yes**
6. F/V Half Moon Bay, **yes**
7. F/V Anita J, **yes**
8. F/V Alaska Endeavor, **yes**
9. F/V Forum Star, **unclear, likely no**

Our proposal causes no collateral damage or unintended consequences to this group, and ensures the Council is not creating overnight “slipper skippers” by awarding QS to non-active fishery participants, and in my case, to the largest AFA FT company that doesn’t operate CV’s. This is clearly highlighted on page 190 of the RIREA, which states: *“Of the nine vessels with multiple LLP licenses, there is at least one vessel where the vessel’s qualifying catch history in one area would generate QS to be attached to an LLP license that is owned by someone other than the vessel owner.”*

The proposed amendment is consistent with the Magnuson Act and the National Standards. MSA section 303A(c)(5)(A) requires the Council to consider **(i)** current and historical harvests; **(ii)** employment in the harvesting and processing sectors; **(iii)** investments in, and dependence upon, the fishery. This proposal acknowledges this group’s historical harvest and investment & dependency on the BSAI cod fishery.

MSA section 303A(c)(5)(E) directs the Council to “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 a specific sector of such fishery”. This proposal supports AC’s decades of substantial actual participation in BSAI cod harvesting rather than rewarding “coupon clipping”. It is consistent with the MSA’s direction to the Council to ensure that active participants acquire LAPP privileges. Cod represents roughly one third of the income of the crew of the AC, in contrast to the AFA FT company, where if they receive the AC’s QS it represents a tiny fraction of their overall business model.

This proposal is also consistent with National Standard 4. Not only would it be fair and equitable for the nine affected vessels, but it would avoid the creation of excessive shares for what is already the largest AFA FT company. In particular, it is consistent with the language in 50 C.F.R. §600.325(c)(2)(iii) stating that an allocation scheme must “avoid creating conditions fostering inordinate control, by buyers or sellers, that would not otherwise exist.” Without this amendment, the AFA FT company not only gets a windfall, but it has increased leverage over CVs that does not exist under the status quo.

Although the proposed language creates an exception, it is an appropriate exception for this unique set of circumstances. There are factors at work here that are unlikely to be repeated in future Council decisions. Importantly, in 2014 when the cod TAC split between the BS and AI was adopted, the sector allocations established by Amendment 85 were not changed, creating an unusual hybrid system from a management standpoint. The new co-op structure builds on this hybrid system, because the program will allow co-op QS to be delivered to either the AI or the BS. Again, with the proposed LAPP, CV’s are making a transition from vessel-based to LLP-based management.

In conclusion, the AC doesn’t need to be washed out of the fishery if the Council addresses this issue and no one need be harmed since the MS, offshore processing companies will be big winners in this catch share program without owning the AC’s QS. The two companies have accumulated a number of LLP licenses with history, and also will be the beneficiaries of harvest shares and processing history that will be likely allocated to processors. They will certainly be made whole, or even made better off than what they have been doing under

recent years and there is simply no reason to stack the deck further.

I support the Council's PPA, with the modifications suggested in Exhibit A. I understand that this is a policy decision by the Council, and I will abide with whatever decision the Council makes. But one final thought - if this is the right thing to do, setting that precedent isn't a bad thing. It is important that the Council consider each circumstance as its own. The Council has done that in prior actions and should continue to do so. That is really a good precedent, not a bad one.

Thank you for your consideration.

Sincerely:

Robert Breskovich

Robert Breskovich

EXHIBIT A – PROPOSED AMENDMENT

(Proposed revisions are in italics; bold is Council’s PPA in June motion as stated in the September RIREA.)

2.2. Harvester Allocations – Eligible LLP licenses must be assigned to a cooperative to receive annual Pacific cod quota. The initial allocation of harvest shares will be made to eligible LLP licenses or transferable AI endorsements, with each LLP license’s or transferable AI endorsement’s allocation based on the Pacific cod catch history (legal landings) of targeted BSAI cod authorized by that LLP license or a transferable AI endorsement², except as provided in 2.3. In all cases, qualifying catch history consists of legal landings during the following qualifying years:

Option 2.2.1: 2014 - 2019

Option 2.2.2: 2009 –2019

Option 2.2.3: 2004 –2019

Option 2.2.4: Allocations based on a blend of catch history and AFA sideboard history³

Suboptions to credit catch history/sideboard at:

Suboption 2.2.1: 50%/50%

Suboption 2.2.2: 80%/20%

Suboption 2.2.3: 20%/80%

Suboptions (applicable to Options 2.2.1 – 2.2.4):

Suboption 2.2.1. Drop 1 Year

Suboption 2.2.2. Drop 2 Years

2.3. Explanation of Intent: *The following revisions are intended to address those cases where a vessel was assigned to multiple LLP licenses with BS and/or AI area endorsements, but due to processing commitments, catch in some years took place in only one subarea under a leased LLP license and the remaining LLP licenses assigned to the vessel were not endorsed to fish in that subarea. Without these revisions, a long-term participant that has been fishing cod for decades could lose 80-100% of its cod history to an entity that does not own CVs that harvest cod, which would be in direct conflict with the goals of the program and the MSA National Standards.*

For the initial allocation of harvest shares, catch history is attached to the LLP license at the time of harvest, except that if multiple licenses were assigned to a vessel that authorized catch by a vessel in either the BS or AI, the catch history from either area will be assigned to any such LLP license in accordance with the terms of any written lease or sale agreement applicable to the license. In the absence of a written agreement signed by both parties provided by the license holder at the time of application, history will be:

Option 2.3.1: divided equally between those licenses.

Option 2.3.2: assigned to an LLP license by the owner of the vessel that made the catch.