

North Pacific Fishery Management Council

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June ?, 2016

Mr. Alan Risenhoover
NOAA Fisheries

Dear Mr. Risenhoover:

I am writing to provide additional comments on the agency's DRAFT Guidance for Conducting Reviews of Catch Share Programs (CSPs). We commented extensively, along with the other regional Councils, expressing very significant concerns on the first draft of this document, and we are pleased that the agency has been so responsive to those comments. This second draft of the guidance has addressed many of our concerns and is much closer to what we feel is useful guidance, rather than overly prescriptive mandates. However, we do wish to highlight some specific, lingering issues and to make some additional general comments.

Generally, we want to reiterate that the Magnuson-Stevens Act requires reviews of Limited Access Privilege Programs (LAPPs), but does not require review of all CSPs. The guidance should recognize that many CSPs are far simpler than most true LAPPs (simple sector allocations are one example), and that the particular aspects of reviews of such programs may be accordingly more simple and straightforward, and that some of the provisions of the guidance would not logically apply at all. The guidance should also be clear that it is in fact guidance, and that the parameters of review will vary across different programs and regions, and will depend upon the specific components of each CSP. While we appreciate the desire for some level of national consistency, the guidance must allow for flexibility across regions and particular CSP designs. And importantly, such program reviews should not be so onerous in their analytical requirements as to subsume all available personnel resources, at the expense of numerous other Council and NMFS priorities.

In terms of specific remaining issues, we would like to provide the following comments we hope will be useful in finalizing this guidance:

Section IV (C) Interim Reports: As we commented previously, interim reports (either annually or biennially) are neither required by the MSA, nor would they provide any useful, marginal benefit, but would require a significant amount of staff resources. Most CSPs are in a continuous state of review through the normal, ongoing Council process. The revised guidance now asserts that “*the Councils have already developed annual or biennial reports for existing CSPs that should be considered when completing 5/7 year reviews*”. It is unclear what the revised guidance is referring to. We do not conduct annual or biennial reviews per se, but if indeed there are reviews or analyses produced during the normal course of Council events which are pertinent to a particular CSP, we agree they should be used to inform the 5/7 year formal reviews. In any case the guidance should be very clear that the formal program reviews occur on a 5/7 year basis, and not imply the need or expectation of annual or biennial interim reviews.

Section V (B) Scope of review: In this section the guidance states that “*...in cases with significant interdependencies or spillover effects between programs, the review could also consider whether the current scope of the program is still preferable to other alternatives.*” This statement causes a bit of concern, in that the range of “other alternatives” is potentially infinite, and the review of a specific program should not be intended to create a new and extensive analysis of an open-ended range of new alternatives. This is neither practical nor is it consistent with the Council process as prescribed by the MSA.

Section V (C) Use of Standardized Approaches: This section specifies the use of particular analytical tools, such as the “Herfindal-Hirshman Index” and the “Gini coefficient” to examine changes in concentration and distributional changes. While such tools may in fact be useful and appropriate in some cases, it may also be that other analytical tools, or indexes, are far more appropriate depending on the design aspects of a particular CSP. It is unnecessary for the guidance to contain this level of prescriptive detail – the Council and NMFS analysts in each region are in a far better position to determine the specific analytical tools necessary to competently review programs developed in that region.

Section VI (B) Allocations: The revised guidance recognizes and addresses a key comment we provided on the original draft – the issue of ‘Allocation reviews’ vs CSP reviews, given that allocations are a primary component of any CSP, and that the agency and the CCC working group developed specific guidance on when and how to conduct allocation reviews. The revised guidance appropriately recognizes that the trigger for an allocation review can indeed be the 5/7 year CSP review itself, and that the

allocation review would be contained within that 5/7 year review, rather than a separate analysis based on some other trigger mechanism. Most of the programs in the North Pacific would likely fit this scenario.

Section VI (C) Eligibility: This section still contains language suggesting an assessment of *“the effects on ‘historical’ participants who were previously but no longer involved in the fishery...including...a survey to assess current and historical participants’ satisfaction with the program and changes in their well-being...”*. Putting aside the difficulty associated with the terms “satisfaction” and “well-being” (which are highly subjective), it is impractical to attempt a survey of persons no longer involved in the fishery, nor is such a resource-intensive survey likely to yield any useful analytical insights.

Section VI (F) Accumulation limits/caps: This section states that *“Reviews should analyze and evaluate the equity and distributional impacts of existing caps and the impact those caps have had on the creation of market power by effected entities”*. Assessing “market power”, and particularly attempting to isolate the cause to a particular variable such as a possession or use cap, is an extremely difficult analytical challenge. The guidance recognizes this challenge in the following paragraph, where it also states that *“...thus, it may be appropriate to conduct the detailed review separately from the other components of the review”*. Separating the overall CSP review into individual components does not diminish the analytical challenge or the resource demands upon the analytical staff conducting the review – 2 plus 2 still equals 4. This underscores our lingering, general concern with the guidance; i.e., that overall it proposes a level and scope of analysis that is highly impractical and would subsume all available Council and NMFS resources, to the exclusion of all other Council and NMFS priorities and ongoing management actions.

Section VI (H) Data Collection, reporting, monitoring, and enforcement: With regard to data collection and reporting, this section contains the suggestion that *“A customer satisfaction survey may be useful in determining participant’s views on this issue”*. Again, conducting such surveys is resource intensive, it is questionable whether such a survey would provide useful input, and it seems to go well beyond the intent of the MSA provisions for (LAPP) program reviews. Again, in terms of the collective workload implied by the guidance overall, this suggestions seems to fall into the category of ‘over the top’.

Section VI (I) Duration: This section (and other sections as well) refer to ‘recommendations’ being contained within the program review. For example *“Recommendations to change the duration should keep this in mind”*. It may be inappropriate for the members of the review team (Council and NMFS staff) to be making ‘recommendations’ on major policy issues that are the purview of the Council. The guidance should recognize that the primary purpose of the reviews is to provide the information to managers and policy makers which allow them to determine whether adjustments to the program elements or program objectives are warranted.

In conclusion, we wish to again thank the agency for the improvements contained in this iteration of the guidance, and to urge you to make further refinements as suggested above. We also want to reiterate our primary, overall concern with the guidance – that program reviews not be so unnecessarily complex and analytically demanding that they subsume available resources, and overtake our ability to address numerous other, ongoing management initiatives and priorities.

Sincerely,

Chris Oliver
Executive Director

CC: Jim Balsiger
Glenn Merrill
Regional Fishery Management Councils

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