Accumulation Limits
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The PFMC’s Groundfish Allocation Committee (GAC) and Groundfish Trawl Individual Quota Committee (TIQC) met May 13-15, 2008 and May 15-16, 2008, respectively.

The GAC reviewed issues and alternative in the IFQ program with the purpose of developing a recommendation to the PFMC on preferred alternatives for selection at the June 2008 meeting of the PFMC. The TIQC focused on issues that the GAC did not have time to discuss. One of the issues the TIQC developed recommendations on was that of the establishment of Accumulation Limits and their relationship to the possibility of a "Grandfather clause" within the program. Grandfather provisions generally provide exemptions to individuals from restrictions such as Accumulation limits.

At the TIQC meeting, I made a proposal on how to establish the Accumulation Limits and to not provide for a Grandfather clause. This proposal was accepted by the full committee and is reported in the TIQC report Agenda Item F.6.d TIQC Report, June 2008. Following the TIQC meeting, I drafted a statement laying out the rationale for the proposal and submitted it to the members of the GAC. My explanation follows:

Accumulation Limits and Control Dates

The establishment of accumulation caps is something that must be done in the IFQ program. This is important to: 1) ensure that quota is distributed and remain in the hands of relatively many individuals, and 2) satisfy the Magnuson Act requirement that there are not excessive shares being held by any single entity.

The IFQ committee proposed that accumulation caps (or control caps) be established as the greatest percentage of catch, for any entity, that occurred during the window period for each species where quota will be issued. The window period is the time frame that will be used to determine catch history in calculating quota shares. The IFQ committee further recommended that in calculating the greatest catch for any entity, that the ownership arrangements that existed on the control date (suggested using January 1, 2004) should be used to define “entity” for the purpose of this calculation.

The IFQ committee also recommended that there not be exceptions to the accumulation limits through mechanisms such as a “grandfather clause”. This is critical because exceptions would create two classes of entities within the program. Most people would be limited in accumulation to the establish cap levels while the other class would be allowed to exceed these caps. Since many entities in this program will be corporations,
the opportunities for “grandfather” exceptions to expire are very limited. Ownership of shares would remain within a corporation even after the death of corporate owners.

Additionally, since quota shares will be issued to the current owner of permits when the program is implemented, it is impossible to know what level of accumulation will exist on January 1, 2010. If individuals know that they will be provided a grandfather exception 18 months from now, there would likely be an effort to further acquire permits in advance of the implementation date; thus threatening the goal of ensuring wide distribution of shares and preventing excessive share ownership.

When the development of this program began the Council set a “control date” and NMFS published this in the Federal Register. This control date put the world on notice that activities after this date may not qualify for the issuance of quota shares. If any entity has acquired trawl permits, after the control date, in an attempt to increase quota share holdings on the date of issuance and these holdings are greater than the accumulation limits, they should not be “grand fathered” into this program. They were on notice that this would not count. Anyone that did engage in this behavior either was not paying attention to the business or was gambling that some exception would be provided. In either case they should not be rewarded now with an exception to the accumulation rule that the vast majority of permit holders must live with.

One last detail, the IFQ committee recommended that if the Council were to choose to set the accumulation limits at levels lower than those recommended by the IFQ committee, the allocation should be made with a limited time grand fathering to allow the entity to divest the holdings that would be in excess of the Council’s approved level but only up to the amount recommended by the IFQ committee.

The IFQ committee recommended setting the accumulation limit at the maximum that any one entity actually had caught. So if the Council were to set the accumulation limit at some low level, then it is possible that someone would exceed this limit at the out set of the program. This is a very different situation than described above where an individual may have ignored the control date warning. In this case the individual simply caught more fish during the window period than the Council believes is good for the industry.

If this situation were to occur, then it is important for the integrity of the program that the initial allocation made not exceed the maximum percentage realized by any one entity during the window period. In other words, the grand fathering only applies to the amount over the level approved by the Council and up to the maximum that any one entity actually had caught during the window.

Resource stuffing can not be rewarded.

Peter Leipzig
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