ENFORCEMENT CONSULTANTS REPORT ON FISHERIES MANAGEMENT PLAN
AMENDMENT 20-TRAWL RATIONALIZATION

The Enforcement Consultants (EC) have evaluated the alternatives for the Fishery Management Plan Amendment 20-Trawl Rationalization, and have the following comments.

Where indicated, our comments will reference the Groundfish Allocation Committee (GAC) October 8th and 9th meeting minutes (Agenda Item F.3.e), Appendix A, (Agenda Item F.3.c Attachment 2, Analysis of Components, Elements, and Options for the individual fishing quota (IFQ) alternative trawl individual quota [TIQ] Components Analysis) or Appendix B, (Agenda Item F.3.c, Attachment 3, Analysis of Components, Elements, and Options for the Harvest Cooperative Alternative Cooperative Components Analysis). Although the EC is prepared to comment on a number of the proposals and options, the EC will have no comments on allocation of quota share (QS).

SHORESIDE IFQ PROGRAM

A-1.1 Scope of IFQ Management
The EC endorses the GAC recommendation that Amendment 20 exclude certain species for all sectors as listed in Table A-1, top block on page A-14, Appendix A.

For the shoreside trawl sector, IFQ is not required for:

- Longspine South of 34° 27´
- California Scorpionfish
- Minor Nearshore Rockfish N
- Cabezon
- Minor Nearshore Rockfish S
- Kelp Greenling
- Black Rockfish (WA)
- Shortbelly
- Black Rockfish (OR-CA)
- Other Rockfish
- Spiny Dogfish

Gears and Fisheries Covered
The EC endorses the GAC recommendation that vessels with a limited entry (LE) trawl permit using the following gear type should fall under the scope of the program: legal groundfish trawl; anchored longline (except when used with a fixed gear permit); anchored fishpot (except when used with a fixed gear permit); anchored vertical hook and line; dinglebar; hand jig; setnet, vertical hook and line to include rod and reel; and California halibut gear.

Gear Switching /Gear Conversion
The EC supports the GAC recommendation that gear switching be allowed at a frequency that is not constrained beyond what is necessary for the integrity of the program. Gear switching and gear conversion will add complexity to regulation development and tracking mechanism. For this reason, the EC supports the GAC recommendation that gear conversion be considered as a trailing amendment some time after implementation of the program.
A-1.3 General Management and Trawl Sectors
The EC endorses the preliminary preferred alternative calling for three trawl sectors; shoreside, mothership, and catcher-processor as described on page A-36 of Appendix A.

A-1.4 Management of Non-Whiting Trips
The EC endorses A-1.4, Management of Non-Whiting Trips as described on page A-39 of Appendix A.

A-1.5 Management of Whiting Trips
The EC endorses A-1.5 Management of Whiting Trips as described on page A-40 of Appendix A.

A-1.6 Groundfish Permit Length Endorsement
The EC endorsed A-1.6, eliminating the length endorsement restrictions for vessels using limited entry trawl gear described on page A-41 of Appendix A.

A-2.2 Permit/Holding Requirements and Acquisition

A-2.2.1 Permit/IFQ Holding Requirement
The EC endorses Elements 1 and 2, Element 3 as amended (see A-2.2.2.b Surplus and Deficit of this statement), Element 4 as amended, and Option 3 of Element 6, (page A-182, Appendix A). Under these provisions, four management components will define and direct an LE trawl vessel’s groundfish harvesting privilege.

1. The vessel itself will need to be eligible; i.e. USCG doc number, state registration, hull was not built in a foreign country, etc.
2. A limited entry groundfish trawl permit must be assigned to the vessel.
3. The vessel holds a current observer certification declaring the vessel is safe and can appropriately accommodate an observer.
4. Quota pounds have been assigned to the vessel IFQ account controlled by the vessel owner or operator.

What happens when a vessel upon making a landing incurs a deficit in its IFQ account? Although the details will need to be developed administratively, one option may be the immediate issuance of a letter, notifying the account holder that they have thirty days to cover their deficit. After thirty days, the deficit will be investigated as a violation of Federal law. If the vessel is found fishing using gear covered by the scope of IFQ management while in deficit, an additional charge would be investigated.

Element 4 expands the list of prohibited fisheries while a vessel is in deficit. The application of this element should be restricted to only those fisheries that fall within the scope of the IFQ program.

Element 5 reads: for vessels with an overage, the limited entry permit may not be sold or transferred until the deficit is cleared. The original intent of this element was to “freeze” the fishing asset by freezing the LE permit. Quota pounds will be assigned to the vessel’s IFQ account and not the LE permit. Couple this with the fact that numerous latent LE permits will be
available because of the expected consolidation within the fishery, and this element may not achieve the original intent.

The EC has had initial discussions with NOAA General Counsel (GC) and General Counsel for Enforcement Litigation (GCEL) on enforcement of the TIQ program elements found in Appendix A, with particular emphasis on enforceability and due process. NOAA GC and GCEL have noted that Element 5 would require NMFS to promulgate a rule which pre-determines a sanction flowing from a violation where a vessel exceeds its quota pound allotment. It was also noted by NOAA GC and GCEL that Element 5 lacks due process. The EC has concluded Element 5 is unnecessary and more importantly, procedurally unacceptable.

Some may ask why this “permit sanction” is different than being prohibited from fishing with a deficit account. Analogy to a past primary whiting fishery provides the explanation for why the prohibition on fishing while in deficit is not a sanction. The primary whiting fishery received an allocation of whiting and bycatch, and was closed upon attainment of that allocation, in this case the canary cap. A vessel’s IFQ account is in essence, an individual allocation. And just as with the whiting fishery, when the allocation was reached and the fishery was closed, upon attainment of an individual allocation, the individual vessel’s season is closed. Fishing with an IFQ deficit is analogous to fishing during a closed season. After 30 days the initial deficit violation and subsequent closed fishing violations would be addressed through the enforcement process where discovery, investigation, penalties, permit sanctions, and reconciliation of the account deficit would all be addressed.

Element 6 began as a discussion of how to deal with covering overages that involve overfished species where QS or quota pounds (QP) may not be available to cover landed catch deficits. Options 1 and 2 of Element 6 have expanded this discussion to cover all species. The EC believes this is beyond the scope of the concern regarding QP availability. QS and QP for workhorse stocks will be readily available for sale or lease. An exception to the requirement to cover a landed deficit as articulated in Element 4 for these stocks is unwarranted.

Options 1 and 2 of Element 6 have given the EC notable concern regarding tracking and compliance monitoring. As with Element 5, NOAA GC and GCEL have concerns that Options 1 and 2 lack due process, and would again require the NMFS to promulgate a rule which pre-determines sanctions flowing from an event where a vessel exceeds its quota pounds. Therefore, we find Options 1 and 2 of Element 6 procedurally unacceptable.

We have noted since the beginning of the discussions around this issue that fishermen have discussed entering into contracts amongst themselves to create by-catch insurance coops where by-catch allocations will be pooled with other fisherman to give coverage to fishermen who experience a “lightning strike” involving overfished species. This may be in fact the “best alternative.” The EC recommends Option 3 of Element 6, (No exceptions to Element 4 of this provision) be included in the preferred alternative.

A-2.2.2 IFQ Annual Issuance

A-2.2.2.a Annual Quota Pound Issuance.
The EC endorses A-2.2.2.a, as described on page A-195, Appendix A. Upon initial issuance, QP will be issued to QS holders on an annual basis. Once issued, QP are assigned by the QP holder
to a vessel’s IFQ account. Once QPs are assigned to a vessel IFQ account, the QP are controlled by the vessel owner. The QP themselves will hold no ownership distinction throughout the assigned calendar year other than their assignment to a vessel IFQ account. This lack of distinction will allow for overage and rollover issues to be administered through the vessel IFQ account without having to track ownership of the multiple QS holders who may have assigned QP to the IFQ account.

Schemes that would tie QP use to an owner on board provision would require QP to have an ownership designation. This would be expensive. Ownership distinction of QP is analogous to a bank tracks dollars in an account, not only by dollar amount, but by individual serial number of the dollars in that account.

A-2.2.2.b Surplus or Deficit
The EC supports allowing a deficit in a vessel’s QP account from one year to be carried over and covered with QP from a subsequent year, but does not support allowing a surplus in a vessel’s QP account to be carried over from one year to the next (page A-196 of Appendix A).

Carryover of a deficit is necessary to administer A-2.2.1 Element 4 and is therefore justified, but we have identified a complication in administering A-2.2.1 Element 3 that we believe needs to be addressed. Per Element 3, all catch taken on a trip must be covered with QP within 30 days of the landing for that trip unless the overage is within the limits of the carryover provision.

The EC’s original support of the carryover provision contained within Element 3 was made with an assumption. Allowing overages within the carry over limits assumed that the QP assigned to a vessel IFQ account in the year a deficit occurs would again be assigned to the vessel IFQ account in the following year, whereupon the vessel IFQ account would reactivate, be made whole, with little risk to the resource.

But this may not be the case. Example: A vessel owner owns 100 pound of quota and has an additional 1900 QP assigned to his vessel by other QP holders for a total of 2000 QPs. On May 1, the vessel incurs a deficit of 199 QP, which is within the 10 percent (the proposed carryover allowance) of the QP assigned to the vessel and thus the vessel discontinues fishing. On January 1, when it is assumed that the vessel would have 2000 new QP assigned to the vessel, of which 199 QP would be deducted to cover the deficit, the vessel IFQ account in fact only contains the vessel owner’s 100 QP. The other 1900 QP have been reassigned to other vessels by the other contributing QP holders. As a result, the vessel owner still has a 99 QP deficit, but has in fact delayed investigation and potential prosecution of the alleged overage violation for seven additional months.

QS/QP holders are not bound to a vessel in subsequent years and cannot be held accountable for a QP deficit incurred by a vessel owner without due process. Delaying investigation and subsequent prosecution of a violation is not and can not be the intent of the carryover provision. The EC recommends that the carryover provision contained within Element 3 of A-2.2.1 be eliminated.

LEP Trawl groundfish, whether managed under trip limits or IFQs, will be constrained by overfished species into the foreseeable future. This summer’s experience in the whiting fishery is our most recent example. Under IFQ management, workhorse stock OY allocations might not
be achieved in the near term. They will be constrained to some level. Carryover of allocation at a ten to thirty percent level through a one year cycle is at best a marginal benefit which needs to be examined in relationship to cost.

Throughout this process, we have been reminded that there are three variables to cost. You can have it accurate, fast, or cheap. You can have any two in combination, but you can’t have all three. The EC believes IFQ accounting needs to be accurate. We have heard from industry that they want IFQ accounting to be fast. Presumably this includes reconciling IFQ accounts at the end of the year. A carryover provision will make “fast” IFQ account reconciliation very expensive.

The Alaska Region included a roll over provision in its initial foray into IFQ programs, the Halibut and Sablefish IFQ program, but has since not included carryover in any of the numerous rationalization programs which have followed. The Sablefish/Halibut program closes in November and opens in March. It takes three months to reconcile IFQ accounts. Some of this delay can be attributed to the carryover provision. The advice received from the NMFS Alaska Region IFQ and Coop administrators on this issue has been “don't go there.” “It is unnecessary and costly.”

The EC is also reminded of the advice given to us by our Canadian neighbors who have spoken to the Council on IQ issues on numerous occasions. “Walk before you run.” “Keep it simple to begin with.” The discussion of carryover used in the Canadian fishery found on pages A-204 and 205 of Appendix A underscores our concern regarding complexity. Suspension of permits as done in Canada is not an option. Due process is again a concern.

Carryover of surplus adds an unnecessary administrative and enforcement burden and complication to an already overly complicated tracking and monitoring responsibility. For these many reasons, the EC recommends that rollover of surplus shares be held back from the initial implementation of the TIQ program, and if deemed necessary and affordable, be implemented as a trailing amendment.

A-2.2.3 IFQ Transfer Rules
The EC supports A-2.2.3.a, Eligible to Own or Hold IFQ Provisions and Options as stated on page A-212 of Appendix A.

Those eligible to own QS/QP will be restricted to (i) any person or entity eligible to own and control a US fishing vessel with a fishery endorsement pursuant to 46 USC 12108 (general fishery endorsement requirements) and 12102(c) (75 percent citizenship for entities) and (ii) any person or entity that owns a mothership that participated in the West Coast groundfish fishery during the allocation period and is eligible to own or control that US fishing vessel with a fishery endorsement pursuant to sections 203(g) and 213(g) of the AFA.

A-2.2.3.b and c Transfers and Leasing
The EC supports the transfer and leasing provisions, options, and preliminary preferred alternative as stated on pages A-220 and A-222 of Appendix A.

QS/QP will be transferable and transfers must be registered with NMFS. NMFS will not differentiate between a transfer for a lease and a permanent transfer.
QS will not be transferred in (Sub Option 2) the first two years of the program. QP will be transferable.

A-2.2.3.d Divisibility
The EC supports QS being highly divisible and the QP being transferred in whole pound units, (page A-225, Appendix A).

A-2.2.3.e Accumulation Limits (Vessels and Controls)
The EC supports the concept of Vessel Use Limits and Control Accumulation Limits as defined on page A-226 of Appendix A, and the Control Accumulation Limit Rule found on page A-230.

The EC supports Option 3 of the Grandfather Clause found on page A-237 of Appendix A.

There will not be a grandfather clause.

Grandfathering of QS is an additional complexity, with an additional tracking and monitoring cost, inserted into an already overly complex tracking and monitoring system.

A-2.3.1 Tracking, Monitoring, and Enforcement

A-2.3.1.a Discarding
The EC supports the preliminary preferred alternative for discarding found of page A-313 of Appendix A.

A-2.3.1.b Monitoring
The EC supports the preliminary preferred alternatives for At-Sea Catch Monitoring and Shoreside Landings Monitoring as described on Page A-314 of Appendix A.

A-2.3.1c Catch Tracking Mechanisms
The EC supports the preliminary preferred alternative listed on page A-316 of Appendix A.

The EC believes this element should not include reference to Vessel Monitoring System (VMS) based transmittals at this time. While the EC believes this is the future of logbook transmittals, the infrastructure which allows for VMS transmittal may not be in place at the time of IFQ implementation. We do not want to see an e-logbook requirement delayed because the VMS transmittal component is not yet in place. We recommend the reference to “VMS based” be removed from the preliminary preferred alternative.

A-2.3.1.d Cost Control Mechanisms
The EC supports the preliminary preferred alternatives of limited landing hours, shoreside site licenses, and vessel certifications, as described on page A-317 of Appendix A.

Shoreside site licenses will insure delivery sites have the infrastructure to support delivery and reporting of landing as required by the program. Vessel certifications will insure vessels are safe and can properly accommodate observers assigned to the vessel. Shoreside landing hour restrictions will facilitate scheduling of catch monitors.
In analyzing the concept of landing hour restrictions, the EC has identified an additional cost issue that needs to be addressed. Per this element, processors and vessel owners will be required to report landing immediately after off-load. What happens when the technology fails and the equipment precludes reporting “immediately?” There will need to be a backup plan, in this case, perhaps a real person to call and report the landing. This will require staffing, not necessarily dedicated staffing, but someone who can be called during business hours or extended business hours, 24/7 would be very costly. Controlling costs starts with a restricted landing hour provision.

Notification of Offload Times
Notification of offload times is a twist on the concept of designated landing hours that the EC would like added to the preferred alternative. Under this proposal, processors would be required to call and report anticipated offloads three hours (or some designated appropriate time period) prior to offload. This will allow enforcement the option of dispatching an officer/agent to monitor the offload. This is a program element that has proven beneficial in Alaska IFQ programs. Some have suggested that VMS would serve this purpose. But VMS can only tell you a vessel’s location, not when an offload will commence. Given that processors will be scheduling offloading crews, processing crews, and catch monitors, it is assumed that the processors know well in advance when offloading of a particular vessel will begin.

A-8 Regional Landing Zones
The EC recommends A-8 regional landing zones be rejected. We recommend QS/QP carry designations for the species/species groups, area, and trawl sectors which reflect the OYs specified in the acceptable biological catch (ABC)/optimum yield (OY) table that are generated through the current groundfish biennial specifications process. The EC is concerned the alternative approaches creating regional landing zone restrictions, or splitting the species or species groups at the 40º 10’ line, other than to address a specific biological concern or management objective will lead to undue complexity for managing QS or QP.

AT-SEA COOPERATIVES

B-1 Whiting Sector Management under Co-ops

B.1.2 Annual Whiting Rollovers
The EC supports the preliminary preferred alternative, no roll over from one sector to another, (page B-20, Appendix B).

B-1.3 Bycatch Species Management

B-1.3.1 Bycatch Allocation Subdivision
The EC supports the preliminary preferred alternative found on page B-22, Appendix B.

B-1.3.2 Bycatch Management
The EC supports the preliminary preferred alternatives found on pages B-22-23, Appendix B.
B-1.4 At-sea Observers/Monitors
The EC recommends:
1. The current observer program is retained for motherships and catcher/processors.  
   The sorting, weighting, and discarding of any IFQ or IBQ species must be monitored by an observer.
2. Require observers on catcher vessels delivering to motherships.
3. VMS required for catcher vessels, motherships, and catcher/processors
4. Mandatory logbooks for catcher/processors, motherships, and catcher vessels delivering to motherships.

B-2 Whiting Mothership Sector Co-op Program

B-2.1 Participation in the Mothership Sector
The EC endorses the concept of requiring catcher vessels (CV) to have a CV mothership (MS) endorsed permit to participate in the mothership sector.

B-2.4.1 Formation and Modification of Processor Tie Obligations.
The EC’s concerns for processor linkage are three fold: creating a race for fishing within the non coop mothership sector, creating a third regulatory program in the at-sea sector, and increased regulatory complexity and costs for enforcement. Alternatively, negating processor linkage in the at-sea sector reduces the need for government regulated coops. Absent processor linkage, a catcher vessel will receive quota, whereupon catcher vessels can form private contractual coops. Catch vessel coops can have formal relationships with motherships without the need for government regulations. Catcher/Processors have already demonstrated their ability to conduct business as a coop in the at-sea sector absent government regulation.

B-2.2.2 Mothership Processor Permit
The EC endorses the concept of a MS permit.

B-2.5 NMFS Role
The EC endorses the provisions of B-2.5 found on pages B-85-86.

Costs, what is Essential?
The proposed preliminary preferred alternative for Amendment 20 is not one LAP program, but in fact four: IFQs for shoreside; coops for catcher processors; coops for motherships; and within the mothership sector, an open access sector necessitated by processor linkage. As presented, these multiple programs will be very costly in terms of both agency costs, and continued need for Council meeting time. Prudent management would dictate that the preferred alternative be crafted in a manner that allows Amendment 20 to achieve the goals and objectives of the program within the three percent cap. This will require the Council to make hard choices about what is essential and what is not.

If IFQ management is adopted, allocation, catch accounting, tracking, and monitoring elements are essential. Enforceability is essential. When considering IFQ as a management tool, essential enforceability elements include: site licenses, vessel certification, landing hour restrictions, and notification of offload times.
In Summary

The EC recommends the following elements be included in the Council’s preferred alternative for Fisheries Management Plan Amendment 20-Trawl Rationalization:

1. A-1.1, Scope of IFQ Management
   1. Exclude certain species for all trawl sectors as listed in Table A-1, Top Block on page A-14, Appendix A.
   2. Scope of the IFQ program to include: legal groundfish trawl; anchored longline (except when used with a fixed gear permit); anchored fishpot (except when used with a fixed gear permit); anchored vertical hook and line; dinglebar; hand jig; setnet, vertical hook and line to include rod and reel; and California halibut gear.
   3. Gear Switching be allowed at a frequency that is not constrained beyond what is necessary for the integrity of the program.
   4. Gear conversion is considered as a trailing amendment sometime after implementation of the program.


5 A-1.6, Eliminating Permit Length Endorsement, (page A-41, Appendix A).

   1. Elements 1, 2, and 4 as written.
   2. Element 3, but strike “unless the overage is within the limits of the carryover provision (Section A-2.2.2.b).”
   3. Amend Element 3 to only include those fisheries that fall within the scope of the IFQ program.

7. A-2.2.2.b Surplus or Deficit (page A-196, Appendix A).
   Carryover of deficit only for purposes of administering A-2.2.1, Element 4

8. A-2.2.3 IFQ Transfer Rules, (page A-212, Appendix A)

   1. QS/QP will be transferable and transfers must be registered with NMFS.
   2. NMFS will not differentiate between a transfer for a lease and a permanent transfer.
   3. QS will not be transferred in (Sub Option 2) the first two years of the program.
   4. QP will be transferable.
10. A-2.2.3.d, Divisibility, (page A-225, Appendix A).

11. A-2.2.3.e, Vessel Use Limits and Control Accumulation Limits as defined on page A-226 of Appendix A.
   1. Adopt the Control Accumulation Limit Rule found on page A-230.
   2. Set control limits lower than vessel limits.
   3. Modify implementation rule #2, (page 1 of Agenda Item F.3.c Additional Analysis November, 2008 to read: both QP and QS ownership count against the control limits but the vessel account is exempt from the control limit.
   4. No grandfathering clause.


16. Add Notification of Offload Times to A-2.3.1.d Cost Control Mechanisms and to the preferred alternative:
   Processors are required to call and report anticipated offloads three hours (or some designated appropriate time period) prior to offload.

17. B.1.2 Annual Whiting Rollovers, preliminary preferred alternative found on page B-20, Appendix B.

18. B-1.3.1 Bycatch Allocation Subdivision, preliminary preferred alternative found on page B-22, Appendix B.

19. B-1.3.2 Bycatch Management, preliminary preferred alternative found on pages B-22-23, Appendix B.

20. B-1.4 At-sea Observers/Monitors, include elements:
   1. The current observer program is retained for motherships and catcher/processors.
   2. The sorting, weighting, and discarding of any IFQ or IBQ species must be monitored by an observer.
   3. Catcher vessels delivering to motherships be required to carry observers.
   4. VMS required for catch vessels, motherships, and catcher/processors.
   5. Mandatory logbooks required for catch/processors, motherships, and catcher vessels delivering to motherships.
21. B-2.1 Participation in the Mothership Sector, require catcher vessels to have a CV (MS) endorsed permit to participate in the mothership sector.

22. B-2.2.2 Mothership Processor Permit, require motherships to have a MS permit to participate in the mothership sector.

23. Include the provisions of B-25, pages B-85.86 Appendix B.

PFMC
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