

The Design and Use of Limited Access Privilege Programs

(EXCERPTS)

Lee G. Anderson and Mark C. Holliday, Editors
NOAA Fisheries Service – Office of Policy

From technical contributions by the editors and:

Soren Anderson; Mark Fina; Adam Issenberg; Dave McKinney; Richard Newell; James Odlin;
Phil Smith; Phil Steele; Wayne Swingle; and Galen Tromble.

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U.S. Department of Commerce
Carlos M. Gutiérrez, Secretary

National Oceanic and Atmospheric Administration
Vice Admiral Conrad C. Lautenbacher, Jr., USN (Ret.)
Under Secretary for Oceans and Atmosphere

National Marine Fisheries Service
William T. Hogarth, Assistant Administrator for Fisheries

D. Eligibility to Acquire/Hold Privileges

The issue here is the selection of the individuals or entities that are allowed to participate in a LAP program. Eligibility relates to the initial allocation issue because those who are chosen to be part of the initial program must be eligible to acquire harvest privileges.

However, all parties that are eligible may not necessarily receive privileges during the initial allocation. Eligibility also relates to the transferability issue. If the set of entities that are eligible subsumes the set receiving initial allocations, transferability must be allowed if all in the larger set are to have access to privileges.

As with other components of the nature of the harvest privilege, the criteria to acquire or hold LAPs should be selected according to the goals and management objectives of the FMP, as constrained by the MSA. To set the stage, at one end of the widest possible continuum is to allow any person or entity to hold harvest privileges. This is not allowed under the MSA. At the other extreme, acquisition can be restricted along a number of margins. For example, only licensed fishermen and certified boat owners who have participated in the fishery for X years using an owner operated boat outfitted with Y gear, and fishing out of Z port are eligible. Moving from broader to more restrictive criteria may help achieve certain management objectives but it can also limit the potential benefits provided by an active market in the trading of privileges. In addition, such moves may affect implementation, operation, and monitoring costs. These are the types of trade-offs that Councils will have to consider.

The MSA does put some constraints on what the Councils can choose to do. As previously discussed, Section 303A(c)(5)(E) links privileges to be acquired or held by persons to those who substantially participate in the fishery.

In MSA Section 3(36) a “person” is defined as:

(36) The term "person" means any individual (whether or not a citizen or national of the United States), any corporation, partnership, association, or other entity (whether or not organized or existing under the laws of any State), and any Federal, State, local, or foreign government or any entity of any such government.

Before interpreting this however, it is necessary to note a general requirement for any LAP in Section 303A(c)(1)(D):

(D) prohibit any person other than a United States citizen, a corporation, partnership, or other entity established under the laws of the United States or any State, or a permanent resident alien, that meets the eligibility and participation requirements established in the program from acquiring a privilege to harvest fish, including any person that acquires a limited access privilege solely for the purpose of perfecting or realizing on a security interest in such privilege;

Since Councils must prohibit any person other than those listed, in plain language this means that only those on the list may be granted LAPs. Therefore the range of applicable “persons” that may own or control harvesting privileges is more circumscribed than the general definition of a “person.” For example, non-citizens, other than permanent aliens, and entities established under foreign laws may not acquire/hold harvest privileges. As a counterpoint, in the 1996 version of the MSA, IFQs could be given to persons in the broadest sense of Section 3(36) and with none of the restrictions specified in Section 303A(c)(1)(D). Even with the introduction of FCs and RFAs (see below), the revised

MSA places more restrictions on who can acquire/hold harvesting privileges than did the previous version.

While the Councils have some latitude in determining who may or may not acquire harvesting privileges, it is certainly more restrictive than the “anybody can own” criterion mentioned above, because of the citizenship requirements and the “substantially participate in the fishery” clause. It is the responsibility of the Council to determine what “substantially participate” actually means based on the fishery management objectives. In addition to vessel owners, who have been recipients in previous IFQ fisheries, presumably recipients could include captains, crew members, processors, or participants in fishery dependent support businesses. At the same time, the Council, to meet management objectives, can prohibit certain citizens, permanent aliens, and U.S. entities from acquiring harvest privileges by specifying eligibility and participation requirements in the FMP. It is interesting to note that there are no specific restrictions in the law on non-U.S. citizens participating through ownership of, or membership in, one of the permitted entities. Presumably this could be addressed independently by the Council.

The reauthorized MSA explicitly allows Councils to permit harvesting privileges to be held by two new types of entities: FCs and RFAs. FCs, previously defined in the MSA, now appear in Section 2(17):

(17) The term "fishing community" means a community which is substantially dependent on or substantially engaged in the harvest or processing of fishery resources to meet social and economic needs, and includes fishing vessel owners, operators, and crew and United States fish processors that are based in such community.

The concept of a RFA was introduced in Section 2(14) of the reauthorized MSA:

(14) The term ‘regional fishery association’ means an association formed for the mutual benefit of members—
(A) to meet social and economic needs in a region or subregion; and
(B) comprised of persons engaging in the harvest or processing of fishery resources in that specific region or subregion or who otherwise own or operate businesses substantially dependent upon a fishery.

If Councils are to use either of these two new options in a LAP program, they must specify criteria that, in addition to conditions set out in the Act, are to be used to officially designate organizations as RFAs or FCs for purposes of the Act. Presumably the designation will be an official Council process carried out under the authority of an approved LAP FMP.

According to Section 303A(c)(3)(A)(i)(I) to (IV), the eligibility requirements for FCs are that they must:⁶

(I) be located within the management area of the relevant Council;

⁶ It is interesting to note that while recreational participants are not mentioned in the formal definitions of a FC and a RFA, they are included in the discussion of eligibility requirements.

(II) meet criteria developed by the relevant Council, approved by the Secretary, and published in the Federal Register;

(III) consist of residents who conduct commercial or recreational fishing, processing, or fishery-dependent support businesses within the Council's management area;

(IV) develop and submit a community sustainability plan to the Council and the Secretary that demonstrates how the plan will address the social and economic development needs of coastal communities, including those that have not historically had the resources to participate in the fishery, for approval based on criteria developed by the Council that have been approved by the Secretary and published in the Federal Register.

The eligibility requirements for RFAs are not quite the same. The first and second are identical but the remainder of 303A(c)(4)(A)(i)-(vi) make for some striking differences between the two types of organizations.

(i) be located within the management area of the relevant Council;

(ii) meet criteria developed by the relevant Council, approved by the Secretary, and published in the Federal Register;

(iii) be a voluntary association with established by-laws and operating procedures;

(iv) consist of participants in the fishery who hold quota share that are designated for use in the specific region or subregion covered by the regional fishery association, including commercial or recreational fishing, processing, fishery-dependent support businesses, or fishing communities;

(v) not be eligible to receive an initial allocation of a limited access privilege but may acquire such privileges after the initial allocation, and may hold the annual fishing privileges of any limited access privileges it holds or the annual fishing privileges that its members contribute; and

(vi) develop and submit a regional fishery association plan to the Council and the Secretary for approval based on criteria developed by the Council that have been approved by the Secretary and published in the Federal Register.

Given the differences, it appears that FCs must be actual communities which can be identified as a location on a map, and they may be selected out as a qualifying entity because they are in need of, or merit, regional economic development. On the other hand, RFAs are voluntary organizations that are not necessarily geographically specified. There is no reference to the need for regional economic development. Most important, RFAs can not receive LAPs as part of an initial allocation, but they can use those of its members, or may purchase them on the open markets as part of an ongoing LAP program.

The Councils must stipulate criteria that potential groups must meet to be classified as an FC or an RFA and hence be eligible to receive harvesting privileges. In developing the participation criteria for FCs, the Council is directed by Section 303A(c)(3)(C) to consider:

(i) traditional fishing or processing practices in, and dependence on, the fishery;

(ii) the cultural and social framework relevant to the fishery;

(iii) economic barriers to access to the fishery;

(iv) the existence and severity of projected economic and social impacts associated with implementation of limited access privilege programs on harvesters, captains, crew,

processors, and other businesses substantially dependent upon the fishery in the region or subregion;

(v) the expected effectiveness, operational transparency, and equitability of the community sustainability plan; and

(vi) the potential for improving economic conditions in remote coastal communities lacking resources to participate in harvesting or processing activities in the fishery.

When developing participation criteria for RFAs, the list of things the Council is directed to consider is the same except that item (vi) is omitted and the following phrase is added in Section 303A(c)(4) as new item (v): “the administrative and fiduciary soundness of the association.”

These participation criteria demonstrate again that assisting regional economic development can be used as a justification for choosing to use FCs. In addition they clarify a potential underlying purpose for establishing either of the new entities: they may be used to mitigate any severe untoward effects of establishing a harvest privilege program. This likely refers to direct and indirect effects on fishery dependent businesses, community disruptions, and the argument made in some quarters that in a fishery with redundant vessels and processing plants, there can be serious distributional effects on processors if harvesting privileges are given only to vessel owners.

An important difference between FCs and RFAs is the ability of FCs to receive LAPs as part of the initial allocation. Operationally, this means the RFAs can not be formed until after initial allocation is complete and the LAP program is operational. Further RFAs will be organized from the bottom up. The Council will have to make provision for organizations to be designated as RFAs and specify the eligibility criteria, but the decision to form an organization and to apply for designation will be up to willing sub-groups of the existing participants in the fishery. They can become participants through either initial allocations or purchase of harvesting privileges.

While the Councils can presumably treat FCs the same way and let groups apply for designation on their own after the program is in operation, Councils may also include FCs in the initial allocation. This requires a different level of planning during the construction of the LAP FMP. There is even a minor chicken-and-egg problem. FCs can not be designated until the eligibility criteria have been designed, approved by the Secretary, and published in the Federal Register. This approval can likely be made concurrent with the approval of the overall FMP, but it may not be possible to get that approval prior to the approval of the FMP. Until the FCs have been designated, it is not possible to know for certain how much of the TAC should be allocated to the overall FC segment.

One way to envision the process is as follows. The Council decides that it wishes to design and to implement a LAP program. It determines whether it will use IFQs or the more general form of a LAP. It determines that it will allocate X percent of the TAC to traditional types of recipients which will be allocated according to a specified eligibility criteria and an allocation formula or procedure. This is essentially what was done in the Halibut/Sablefish program. The remainder of the TAC will go to FCs that meet the specified eligibility criteria using another allocation procedure. These will have to be

simultaneous decisions based on participant comments and staff analysis during the FMP development process. The whole procedure will be based on the best estimate of how many traditional recipients will meet their allocation criterion, and how many FCs will likely form and be capable of meeting the eligibility criteria. If the plan is approved, the various participants will be given time to show that they meet the appropriate criteria and then the allocations will be made.

In summary, it appears that a FC can be designated as an entity that is entitled to receive harvesting privileges if those privileges would assist in regional economic development. In addition, that designation could be made if the way in which the privileges are used by the FC can ameliorate serious economic or social impacts that would likely occur if the privileges were only given to individuals. The latter reason is the only specific reason noted in the Act for which RFAs can be established. Presumably RFAs can also be used in other cases if the Council can demonstrate that their use will help achieve management objectives, especially those related to maintaining “traditional fishing or processing practices,” the “cultural and social framework of the fishery,” or if they address “economic barriers to access to the fishery.” They can not however receive initial allocations.

At this point, it is worth recalling from the general specifications discussed above that Councils may grant privileges to any “entity established under the laws of the United States or any State.” So even if one accepts the strict interpretation of RFAs and FCs, Councils can still allocate to other types of entities to accomplish fishery management objectives. A city or a town is an entity established under the laws of a State. Further some States may grant legal status to certain forms of fisheries organizations. Therefore if these types of entities can achieve the same goals as can RFAs or FCs, then they are also able to hold or acquire LAPs. This is especially true if the specifications are carefully crafted. Small fishing towns in need of economic development could receive privileges which could be used in approved ways by its citizens. Similarly, organizations of industry participants, broadly or narrowly defined at the will of the Council, could be treated in a similar manner, as long as they have obtained legal status as an entity. This could include a properly authorized fishery cooperative formed under the American Fisheries Act or other similar legislation. Indeed, sectors as introduced by the New England Fishery Management Council could conceivably receive and hold LAPs under the revised MSA if they met the MSA specifications such as legal recognition as an entity.

The potential to include a wide range of entities in a LAP program introduces another policy consideration. The types of entities that have been used in traditional ITQ programs include partnerships and corporations. For the most part, they can be treated like individuals in LAP programs. They receive harvesting privileges and they must use them according to the rules of the plan. When the U.S. Ocean Commission introduced the concept of DAPs they discussed them in terms of a continuum between private control and community control. IFQ programs with privileges allocated to individuals, partnerships, and corporations are at one end of that continuum. Granting LAPs to RFAs, FCs, coops, and fishermen’s organizations is at the other end. Councils may feel that these types of programs may be better able to achieve fishery management objectives because many of

the operational decisions are made by a group of participants rather than by a single authority in a traditional firm. However, they may want to ensure that the internal operating rules for operating these entities are constructed such that they will indeed lead to beneficial results. This is why Congress specified the necessity of Council approval of the operation plans for FCs and RFAs. If Councils choose to use community based entities other than RFAs and FCs, they should still consider the necessity of, and the criteria for specifying, operational plans.

At the same time, it may be possible to devolve some management authority to community-based entities which receive LAPs. For example, the Cape Cod Commercial Hook Sector is responsible for regulating the activities of its members so as to maintain the sector's allowable catch limit. This has the potential to improve overall compliance and to lower government management costs. In these cases, it may be prudent to establish operational plans in the form of a sector allocation proposal between the entity and the Council/NOAA Fisheries.

In summary, the revised MSA sets up procedures which allows Councils to create FCs or RFAs using a specific set of eligibility criteria and a second set of considerations for developing participation criteria. Once formed, both can hold LAPs if they meet the legally recognized criteria, however only FCs can receive LAPs in an initial allocation. Apparently, Councils can also develop LAP programs whereby LAPs can be held by or allocated to any other legally recognized entity, which do not necessarily have to be specified as RFAs or FCs. The program would have to comply with the general LAP mandates contained in the revised MSA. If community-based entities are used, Councils have the option of requiring operation plans to ensure stated criteria are met.

Given the possibility of designating FCs and RFAs or allocating LAPs to other types of entities, the continuum of choice facing the Council is actually more complex than the one used to set the stage for discussion in the introductory paragraph, although the basic points apply. Under the reauthorized MSA, the Councils have the ability to establish a harvesting privilege program following the IFQ model used under the previous versions of the law. But they have much more flexibility. And, in addition, harvesting privileges can be made available to FCs, RFAs, and other entities, as well as to traditional recipients. But as mentioned above, Councils could have issued harvesting privileges to other entities under the prior version of the MSA.

The choice between a traditional IFQ program and a more broadly defined LAP program is an important one that, in addition to the long-term effects on the fishery, may have serious implications for the complexity and cost of the plan development process. It would be quite difficult to give specific advice on the range of options that are available when using the expanded LAP program since this is uncharted territory. The eligibility and participation criteria spelled out in the Act are very general. FCs are likely intended to be cousins of CDQs, but given the lack of specificity it is doubtful that Congress was considering something quite so elaborate. Similarly RFAs may be related, conceptually at least, to Co-ops on the west coast or the cod hook sector in New England, but the analogy is far from perfect. More importantly, the range of other eligible entities is very broad

indeed. When faced with the opportunity to use them to address management objectives of specific fisheries, Councils will likely come up with some very innovative ideas. This is likely exactly what Congress intended. However, the decision to go beyond the basic IFQ model should be a very deliberate one.

For the most part, economic development, even in the most general sense, has not been considered as a management objective except in CDQ fisheries. However, given the option, some Councils may wish to rethink this issue. This will be discussed in further detail below. For now we will focus attention on developing LAP programs to achieve the more common range of fisheries management objectives.

How should a Council make the, at least partially simultaneous, decisions of whether or not to use RFAs or other entities, and if so, what eligibility criteria should be established? On the one hand, they could adopt a process of thinking “outside the box.” Set the management objectives, and design a RFA alternative or select a range of other possible alternatives *de novo* on the basis of these objectives. On the other hand, there may be advantages, at least for conceptualizing the problem, to take a marginal approach. For example, the one stipulated reason for establishing a RFA is to mitigate the untoward distributional or social effects of traditional IFQ programs. But it will not be possible to predict if such things will occur, to what extent and to whom until the various aspects of the program have been selected and studied. Further, it may be possible to address potential untoward effects or certain management objectives by tweaking the IFQ system rather than initiating a more complex system.

Following this logic, consider the issue of determining the eligibility criteria when the focus is on a program that exclusively grants IFQs to traditional recipients such as individuals or firms. At this point, the Council has the option of allowing for broad or restricted participation. To be more specific, under an IFQ program, the range of choices open to the Council could include the following:

- Allow any legal entity permitted by the Act to acquire or hold privileges;
- Allow only individuals or partnerships to acquire or hold privileges but exclude corporations; or
- Establish other restrictions to ensure that only certain types of participants, or sub-groups thereof, acquire or hold privileges.

The use of the first option is constrained by “substantially participate” rule, but the Council may wish to define the term to provide for real and viable options for entry into the fishery. This option provides the most flexibility with respect to allowing changes in the fishery. As such it may be useful in potentially inducing long-term economic efficiency in harvesting and processing. Also, as mentioned earlier, in the context of a traditional IFQ program, the entities that have been selected were from the private end of the continuum.

The second option might be chosen because some think that preventing corporations from participating may help maintain industry and community structure. At the same time, the

limited flexibility may prohibit owners of harvest privileges the opportunity to organize their activities to their best advantage. Currently, many small “mama/papa” operations take advantage of the opportunities provided by incorporation. The point is that the pros and cons of any restrictions should be carefully considered. What may help one section of the industry may hurt another.

The third option can work at two levels. The Council may restrict the type of fishery participant to certain segments of the industry. For example, a Council may stipulate that only individuals in the harvesting sector would be allowed to own privileges, which would prohibit processors from holding privileges. It could also exclude members of unrelated professions who perceive the purchase of IFQ as an investment, or prevent non-fishing interest groups who wish to restrict the activities of commercial fishermen from acquiring privileges. In addition, there may be tighter restrictions placed on the permitted groups. In the example where eligibility is restricted to the harvester sector, tighter restrictions might be used if there are concerns that harvest privileges will be removed from the control of regional fishermen by individuals from other areas. At one extreme, quota ownership may be restricted to vessel owners from a certain area who must be onboard during a fishing trip and in attendance during the off-loading period.

While the Councils do have the flexibility to impose either the general or more specific type of restrictions, it must be acknowledged that the reauthorized Act is quite clear that a wider range of potential owners is now possible. The Councils need to be sure that any limitations are necessary to achieve the management objectives. The full economic and social impacts of various types of limits should be carefully considered when making these decisions.

While the Act does not give specific direction with respect to where in the above range the eligibility criteria should be set, it does address the subject with respect to the related topic of criteria for making the initial allocation of harvest privileges. To ensure fair and equitable initial allocations, the Councils are directed by Section 303A(c)(5) to consider:

- (i) current and historical harvests;
- (ii) employment in the harvesting and processing sectors;
- (iii) investments in, and dependence upon, the fishery; and
- (iv) the current and historical participation of fishing communities.

Once the eligibility criteria have been specified (even if only in a preliminary or draft manner) and taking into account the other selected elements of the proposed program, the Council will be able to make initial estimates of the distribution and other effects of implementation. If some of the projected effects of the traditional IFQ program appear to be incongruent with the objectives of management, it may be wise to consider the use of RFAs or other entities, and to use the expected problems as a focus in determining how they should be designed or selected. It bears repeating that it may make sense to consider tweaking the system to address these issues, rather than to take the plunge and move beyond a traditional IFQ program. For example granting harvesting privileges to both harvesters and processors could address distributional effects on processors. Although it

would likely not find much support with harvesters, it may be preferred to certain types of RFAs.

If the Council wishes to expand its range of choice and consider a more broadly-based LAP program which includes IFQs for individuals and LAPs for RFAs or other entities, it will still be necessary to make the choice with respect to ownership criteria for individuals. In addition, it will be necessary to make an analogous but slightly more complex decision with respect to acceptable types and institutional structures for RFAs or analogous institutions. Again, the choice of the latter may depend on the nature of perceived untoward effects of the traditional IFQ program.

At the first level, the possible range of institutional structures would fall between the following:

1. A group of individuals each holding and using harvest privileges independently, but who may choose to share vessels and processing capability.
2. A corporate entity is granted privileges and those privileges are used by or on behalf of its members according to an agreed upon annual plan that specifies, among other things, who will harvest, and where the product will be landed, processed and sold.

From a loosely-joined collection of individuals to a monolithic centrally (but democratically) controlled union is a very broad range indeed. One reason why a Council may choose to use a more broadly based entity is because designing the structure is part of the game. There will likely not be that much flexibility if they choose to use existing entities. But no matter what, Councils need to determine what kinds of entities will be most useful in allowing for the achievement of the overall management objectives, and then write participation guidelines to ensure that only those types of entities will be used.

If FCs are primarily for economic development, then the process of determining when to use FCs should be different than for RFAs. While the concept of a FC may be related to the CDQ program, the conditions where they can be used in existing fisheries throughout the country are likely to be very different. Originally, CDQs were given to isolated communities with weak economies composed of very poor ethnic minority individuals. The quota shares that they were given were part of a very large TAC of a healthy stock. Moreover, while there was heavy utilization of the stock, giving a small percentage of the TAC as CDQ did not have dramatic effects on the current users. In addition, some of the current users favored the program because they foresaw the opportunity to gain access to these shares through the market place rather than racing across the high seas.

In contrast, most fisheries in the U.S. today are fully utilized and some are overfished and will be, or are, undergoing rebuilding plans which means there will be short-term reductions in harvest. At the same time, while there is a need for economic development in many small and remote fishing ports throughout the U.S., the conditions are seldom as harsh as in the remote parts of Alaska.

It follows that if Councils choose to use FCs that mimic CDQ programs, they will be taking part of a decreasing-sized pie away from current users, who because of restrictive regulations may not be in the best financial shape themselves. If constituents weakly support LAPs in the first place, then the addition of FCs to a program will not be cheered.

On the other hand, economic development can be interpreted in a slightly different way. Granting existing or historical users harvesting privileges in the context of a FC or a similar entity may provide for economic development that was not possible when those users were involved in a competitive open-access race for the fish. They will have the opportunity to cooperatively determine ways to harvest, process, and market the fish so as to increase the net returns and then distribute the gains amongst the members. It is also possible to target these developmental gains because of the ability to specify harvesting privileges as part of the initial allocation. In this case the eligibility criteria will have to be designed so that those eligible for economic development benefits are properly circumscribed. It should not be forgotten that there may be certain existing entities that can be used when Councils are considering economic development. For example, using the municipal governments of small villages may be more convenient than going through the whole process of developing a FC. Depending on the circumstance, municipal governments can be entities which are established under the laws of a State, and if they meet the other criteria in the MSA or those specified in the FMP, they could be an eligible recipient.

If the Council decides to use either FCs or RFAs, it will have to specify the criteria that will be used to evaluate the operational plans that privilege recipients must develop as part of the Council and Secretarial approval process. While operational plans may not be mandated when using other types of eligible LAP entities, Councils would be prudent to consider requiring them especially for initial allocations to entities which are on the community side of the continuum to ensure that the allocations are used as intended.

While the appropriate content of these plans will likely vary according to management objectives and the way in which the Councils choose to construct the entities, the following items will likely be useful or necessary.

1. A statement of how the entity as organized meets the eligibility criteria specified by the Council.
2. A list of members including any pertinent information such as address, vessel or plant name, catch or processing history, taxpayer identification number or other data required for the initial allocation process.
3. The name and contract information of the representative or agent for service of process.
4. A plan on how the harvesting privileges will be used and by whom.
5. A plan to show how actual harvest of the group will not exceed the allotted harvesting privileges. This should include provisions for monitoring of all catch.

6. Rules for entry to and exit from the organization, including procedures for removing or disciplining members who do not abide by the rules, and for informing NMFS of such actions.
7. A contract signed by all parties that they will agree to abide by the plan.
8. A statement of operational rules including collection of fees, voting rules, etc.
9. A commitment to produce a periodic report indicating how it is meeting program requirements.

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Eligibility to Acquire/Hold Privileges

The specification of eligibility criteria will have a direct bearing on the design of other components. Some are quite straight-forward and will follow from simple LAP programs. For example, the initial allocation procedure will have to be designed to ensure that entities that are not eligible do not receive QS. Further, the transferability rules and trade approval processes will have to ensure that non-eligible entities do not acquire QS or AHP through market trades.

There are some other rather more subtle issues dealing with the introduction of RFAs and FCs. One has to do with the denomination of the LAP unit. The concept of the LAP based on a portion (rather than a percentage) of the TAC and the possibility of using RFAs and FCs were introduced in the most recent reauthorization. Congress presumably felt that allowing the opportunity to allocate permits based on a portion of the TAC would potentially be better for these organizations than traditional IFQs. So if nothing else, it may be necessary to select the denomination type taking into account what will work best for the types of entity that will receive the quota share.

For example, Councils may feel that FCs, and perhaps certain types of RFAs or similar entities, will be better suited to meet management objectives if their harvesting privileges are more protected. That is, in the case of TAC declines, Councils may feel that they do not want to rely on mandatory percentage cuts. They may desire the option to structure the necessary cuts in some other fashion. Similarly, they may want the option of being able to allocate increases in TAC so that more of the increase goes to specially selected entities. Apparently these options are available under the reauthorized MSA. Two things should be clear, however. First, going to a portion-based QS does not in any way do away with the absolute necessity of keeping the allowable harvest at or below safe biological levels. When the TAC falls, cuts in allowable harvest will be necessary. The discretion will be on who takes the cut, not on whether the cut will be taken. Second, allowing for discretion in the way changes in the TAC are reflected in changes in the AHP of different entities will lead to very difficult and costly political negotiations, as well as the possibility of litigation.

The percentage based system has certain advantages. It is simple to administer, transparent, and likely to be viewed as more fair. It also provides more of the incentives that are the basis for using LAPs in the first place. The harvesting privileges of all participants are more secure which will provide incentives for both biological sustainability and production efficiency. Councils should take a hard look at the pros and cons of choosing either a percentage or a portion based program.

The use of RFAs, FCs, and similar entities will also affect the criteria used to define MO sharelimits. One of the notions behind these organizations is that groups of fishery participants, especially if they are from different sectors, will be able to make fishery operational decisions that will be mutually beneficial to all. Or at least they will make decisions where the effects on all participants are taken into account. As such, it may be permissible, or even desirable, for such organization to control a larger portion of the outstanding QS. One purpose of setting MO share limits is to ensure that one entity can not adversely affect other participants. Since a wider group of participants may be involved in these cases, the concern for this happening may be less.

The eligibility component can also be related to a “yes or no” decision on transferability. With respect to RFAs and FCs, Councils will have to decide whether transferability between either RFAs or FCs, or among RFAs, FCs, and other entities, and if so, in what direction, will help or hinder the achievement of management objectives. The same sort of decision may be necessary even in a traditional IFQ where there are different types of participants who use different types of gear or work out of different ports. This is discussed in more detail above in the initial section on Transferability.