

NMFS WIDOW ROCKFISH REALLOCATION CONSIDERATIONS; INCLUDING AN OVERVIEW OF THE RANGE OF REALLOCATION ALTERNATIVES, THE INDIVIDUAL WIDOW QS CONTROL LIMIT, AGGREGATE NON-WHITING CONTROL LIMIT, AND DIVESTITURE CONSIDERATIONS

This document presents NMFS' perspective on widow reallocation and divestiture issues, as follows:

- I. Widow reallocation alternatives
- II. Widow control limit
- III. Aggregate non-whiting control limit
- IV. Methods to achieve compliance with aggregate non-whiting control limit

We will first start from each of the alternatives adopted for analysis under the Agenda Item J.2 motions passed by the Council at the 2014 November Council meeting. Some readers well versed in sections I through III may find value in first reviewing NMFS feedback on section IV.

I. Widow Reallocation Range of Alternatives Decision

Below this document provides the Council motion for the range of alternatives for widow rockfish reallocation with a summary of timeline and implementation considerations.

Motion: Council adopt the range of alternatives for widow rockfish re-allocation as shown in Agenda Item J.2.b, Supplemental GAP Report, November 2014. Maintain existing Alternative 3, but add Sub-option A–50% revenue across years 2003-2010 would include “drop years”; as done in the original analysis.

The Council adopted the following range of alternatives for widow rockfish reallocation as specified in Agenda Item J.2.b, Supplemental GAP Report, November 2014:

I.1. Widow Reallocation Alternative 1

Motion: No Action – Status Quo

- **NMFS Perspective on Alternative 1:** No change from current widow QS allocation formula and QS permit owners would retain their current widow QS percentages.
- **Potential Process & Timeline:** NMFS would need to publish a proposed and final rule that would remove the moratorium on widow quota share trading. This

process would take 6 or more months from the time of a Council FPA and could be affected by Council action on the aggregate non-whiting control limit.

I.2. Widow Reallocation Alternative 2

Motion: Reallocate widow quota shares using the Amendment 20 target species allocation formula (a portion to all permits equally and a portion to permits based on landings history between 1994 -2002).

- **NMFS Perspective on Alternative 2:** If the Council were to approve this alternative, widow rockfish would be reallocated. Widow would be treated as a target species (Group 1) in the allocation formula, rather than an overfished species (Group 2). Under this formula, a portion of the buyback permit history would be allocated equally to all permits, and a portion would be allocated based on landings history from 1994-2002.
- **Potential Process & Timeline:** NMFS would need to publish a proposed and final rule that would change the allocation formula for widow rockfish and remove the moratorium on widow quota share trading. NMFS would prefer to follow the same process used during the initial quota share allocation in 2010: provide an opportunity for QS recipients to review the state catch data that supports the preliminary calculation, review NMFS reallocation calculation, and provide an appeals process. This rulemaking and implementation process would take at least until January 1, 2017.

I.3. Widow Reallocation Alternative 3

Motion: Reallocate widow rockfish using non-whiting groundfish revenue between 2003- 2010 as a proxy for recent participation. The equal sharing component, set-aside for whiting, and adaptive management would come off the top and then the remaining quota is computed 50% by the revenue proxy (2003-2010) and 50% by the landings history 1994-2002.

- **Sub-Option A: 50% revenue across years 2003-2010 would include “drop years”;** as done in the original analysis.
- **NMFS Perspective on Alternative 3:** If the Council were to approve this alternative, widow rockfish would be reallocated. The new formula would allocate widow QS using landings history for the years where widow was a target species (1994-2002) - as in Alternative 2, but also adds non-whiting revenue for more recent years when widow was overfished (2003-2010).
- **Potential Process & Timeline:** NMFS would need to publish a proposed and final rule that would change the allocation formula for widow rockfish and remove the moratorium on widow quota share trading. NMFS would prefer to follow a similar process used during the initial quota share allocation in 2010: provide an opportunity for QS recipients to review the state catch and revenue

data that supports the preliminary calculation, review NMFS reallocation calculation, and provide an appeals process. Questions regarding ex-vessel revenue data would have to be well vetted in order to determine if there may be any issues or problems with using revenue as an allocation metric instead of pounds. This rulemaking and implementation process would take at least until January 1, 2017; however, it may take longer because NMFS has not yet used revenue data as part of an allocation formula.

I.4. Widow Reallocation Alternative 4

Motion: Leave a base amount of quota share unallocated such that in 2016 every permit would receive the same amount of quota pounds that they received in 2014 and reallocate the remainder using the historic landings formula (a portion to all permits equally and a portion to permits based on landings history between 1994-2002). By base amount the GAP means the difference between the top of the 2014 column and the top of the 2016 column depicted in the figure below taken from Agenda Item J.2.a Attachment 2.

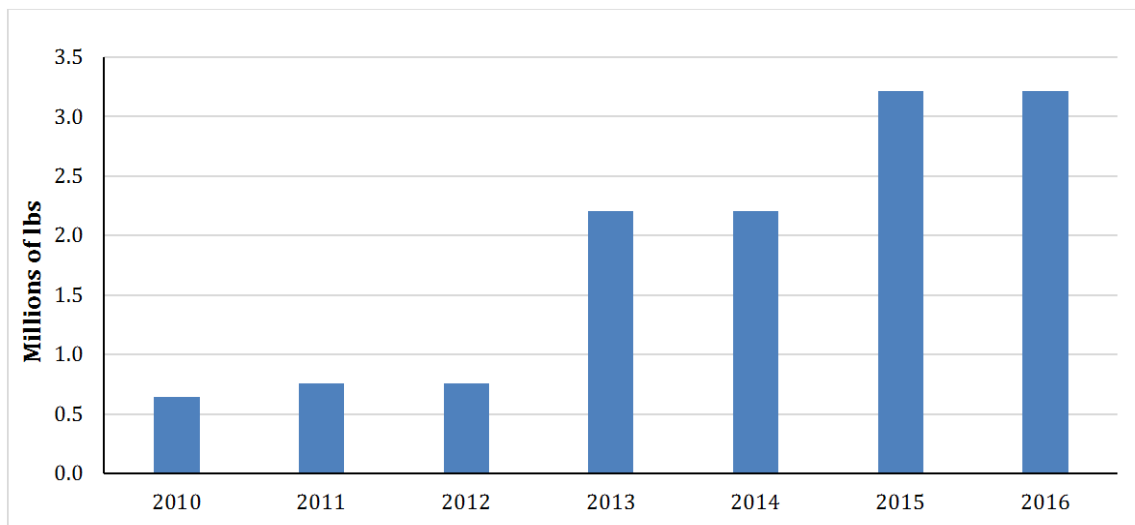


Figure 1: Figure referenced in 2014 November GAP statement, and the Preliminary Preferred Alternatives (PPA) Council motion (Agenda Item J.2) from the 2014 November Council meeting. Source: Council generated analysis from Agenda Item J.2.a, Attachment 2.

- **NMFS Perspective on Alternative 4:** If the Council were to approve this alternative, widow rockfish would be reallocated. Because the widow rockfish sector allocation is larger in 2016 than in 2014, this alternative would reallocate widow QS to provide QS permit owners with the same amount of widow quota pounds they received in 2014. The remaining QS would be reallocated using the same formula described in Alternative 2: based on the target species formula and landings history from 1994-2002. If the Council were to use 2014 and 2016 sector allocations, each QS permit owner would keep about 70% of their current widow holdings, and about 30% would be reallocated based on the Alternative 2 formula. NMFS would like to point out that the Council motion refers to 2016 pounds;

however, it is not likely that this Alternative could be implemented by that time. *The Council may want to choose a set ratio (i.e., 70% / 30%) rather than basing the alternative on a projected year of implementation that could change.*

- **Potential Process & Timeline:** NMFS would need to publish a proposed and final rule that would change the allocation formula for widow rockfish and remove the moratorium on widow quota share trading. NMFS would prefer to follow the same process used during the initial quota share allocation in 2010: provide an opportunity for QS recipients to review the state catch data that supports the preliminary calculation, review NMFS reallocation calculation, and provide an appeals process. This rulemaking and implementation process would take at least until January 1, 2017.

II. Widow Rockfish Individual QS Control Limit & Divestiture Deadline

Motion: I move the Council adopt the alternative for the widow rockfish divestiture deadline as shown in Agenda Item J.2.b, Supplemental GAP Report, November 2014.

- **“The GAP recommends that Widow rockfish divestiture should occur twelve months following implementation of reallocation of widow rockfish.”**

Each species has an individual QS control limit, and the limit for widow rockfish is 5.1%. Currently, there are 3 or less QS permit owners with widow holdings that exceed the limit, but a reallocation of widow rockfish may result in additional QS permit owners exceeding this limit.

Regardless of which widow reallocation alternative is chosen by the Council, in November the Council moved to adopt a new divestiture deadline for widow rockfish, which will be 12 months after implementation of reallocation or status quo alternatives. NMFS understands this to mean 12 months after the reallocated (or status quo) widow shares are available and transferrable in QS accounts.

Because the regulations already exclude widow from the November 30, 2015 divestiture deadline, this action could be included in the reallocation rulemaking to set a specific date for widow divestiture, 12 months after widow quota shares become transferrable. NMFS notes that quota shares are not transferrable in December of each year because the Agency must print QS permits with final QS balances and allocate QPs to QS accounts based on these QS balances for the start of the following year. *So the Council may want to consider an 11-month deadline or continue to use 12 months but exclude December from that timeline.*

III. Aggregate Non-Whiting QS Control Limit & Divestiture Deadline

Motion: I move the Council adopt the range of alternatives for the aggregate limit divestiture deadline as shown in Agenda Item J.2.b, Supplemental GAP Report, November 2014.

1. **No Action (current divestiture deadline of November 15, 2015)**

2. **Exclude widow rockfish from the non-whiting aggregate control limit until 12 months following the implementation of the widow reallocation.**
3. **Extend the aggregate control limit deadline to coincide with the widow control limit**
4. **Delay the non-whiting aggregate control limit deadline until the implementation of any regulatory changes developed pursuant to the first program review for the trawl rationalization program (the November 15, 2015 deadline would still apply to all individual species except widow)**

In addition to individual control limits (explained above), there is also an aggregate non-whiting control limit of 2.7% across species, which is more restrictive than the sum of individual species limits. The limit is calculated by converting an entity's QS percentages into pounds based on the 2010 OYs, then dividing those pounds by the total 2010 OY to convert it back to a percentage. Pacific whiting and Pacific halibut are excluded from this calculation.

Widow rockfish is one of 28 species that are part of the aggregate calculation, but widow QS is not transferrable at this time. Currently, there are 3 or less QS permit owners with QS holdings that exceed the aggregate limit. A reallocation of widow rockfish may theoretically result in additional QS permit owners exceeding this aggregate limit.

NMFS understands the motion to mean that regardless of which widow reallocation alternative is chosen, the Council will consider the range of alternatives for the aggregate non-whiting limit divestiture deadline separately. NMFS is seeking clarification on this point.

NMFS notes that the current divestiture deadline in regulation is November 30, 2015 - not November 15, 2015 as stated in the November Council motion. The discussion of the aggregate non-whiting control limit alternatives below reflects the correct date:

III.1. No Action (current aggregate limit divestiture deadline of November 30, 2015)

- **NMFS Perspective on Aggregate Deadline Alternative 1:** Under this alternative, the current aggregate non-whiting divestiture deadline would remain November 30, 2015. The aggregate limit calculation would include QS permit owner's current widow percentages, even though they may change through reallocation. QS permit owners that are currently over the aggregate limit of 2.7%, including their widow percentage, would have to divest of one or more of the other 27 species¹ by November 30, 2015 to get under the limit (unless the moratorium on widow trading was lifted before the deadline).
- **Potential Process and Timeline:** No further analysis would likely be required to implement this alternative.

¹ Excluding Pacific whiting, Pacific halibut, and widow rockfish – because widow is not transferable.

III.2. Temporarily Exclude Widow Rockfish from the Aggregate Limit Calculation until 12 months after the implementation of the widow reallocation

- **NMFS Perspective on Aggregate Deadline Alternative 2:** under this alternative, the current aggregate non-whiting divestiture deadline would remain November 30, 2015. The aggregate calculation would **not** include QS permit owner's current widow percentages since they are not transferable and may change through reallocation. QS permit owners that are currently over the aggregate limits, excluding their widow percentage, would have to divest of one or more of the other 27 species² by November 30, 2015. Once either a reallocation or status quo alternative has been implemented, widow quota share would be reincorporated into the aggregate calculation. QS permit owners who exceed the aggregate limit at that time would have 12 months to divest to the 2.7% aggregate limit. NMFS understands this to mean 12 months after the reallocated (or status quo) widow shares are available and transferrable in QS accounts.
- **Potential Process and Timeline:** Because, by regulation, widow is currently included in the aggregate limit calculation, NMFS would have to modify the regulations in 2015 to temporarily exclude widow from aggregate limit calculation. As part of a reallocation rule, NMFS would need to reinstate widow into the aggregate limit calculation.

III.3. Delay the Divestiture Deadline for the Aggregate Limit to Coincide with the Widow Rockfish (Individual Limit 5.1%) Divestiture Deadline, 12 months after Implementation of Widow Reallocation

- **NMFS Perspective on Aggregate Deadline Alternative 3:** Under this alternative, NMFS would delay the current aggregate limit divestiture deadline of November 30, 2015 until 12 months after implementation of widow rockfish reallocation. NMFS understands this to mean 12 months after the reallocated (or status quo) widow shares are available and transferrable in QS accounts. This alternative would coincide with the individual species limit divestiture deadline for widow rockfish that the Council moved to adopt in November 2014.
- **Potential Process and Timeline:** Because the current aggregate limit divestiture deadline is November 30, 2015, NMFS would need to modify the regulations in 2015 to temporarily delay this divestiture deadline for the aggregate limit. As part of reallocation rule, NMFS would need to set a new aggregate limit divestiture deadline, 12 months after the widow rockfish reallocation rule.

III.4. Delay the Divestiture Deadline for the Aggregate Limit until Implementation of Any Regulatory Changes Resulting from the 5-Year Review

- **NMFS Perspective on Aggregate Deadline Alternative 4:** Under this alternative, NMFS would delay the current aggregate limit divestiture deadline of

² Excluding Pacific whiting, Pacific halibut, and widow rockfish – because widow is not transferable and would not be included in the calculation under this alternative.

November 30, 2015 until implementation of any regulatory changes resulting from the 5-year review. *Because there could be no rulemakings or several rulemakings resulting from the five year review, NMFS is seeking clarification on a more exact date if the Council chooses this Alternative.* NMFS notes that if the Council chooses this alternative, the aggregate control limit may continue to be exceeded by those who are currently over it for several more years. We also note that some QS permit owners have been divesting in anticipation of the current November 30, 2015 deadline.

- **Potential Process and Timeline:** Because the current aggregate limit divestiture deadline is November 30, 2015, NMFS would need to modify the regulations in 2015 to delay the divestiture deadline for the aggregate limit. As part of a rulemaking following the 5-year review, NMFS would need to set a new aggregate limit divestiture deadline.

IV. METHODS TO ACHIEVE COMPLIANCE WITH THE AGGREGATE NON-WHITING CONTROL LIMIT

Motion: I move the Council recommend the approaches for revoking forfeited quota shares as described in Agenda Item J.2.b, Supplemental GAP Report, November 2014 and in Agenda Item J.2.b, NMFS Report, November 2014.

- **“The GAP believes a non-punitive option that allows participants to “abandon” quota share should be developed. In some cases there may be no market for quota share that needs to be divested. If a participant is unable to transfer that quota share for reasons beyond his control, he should not be penalized. An option that allows the quota to be “abandoned” to NMFS should be developed.”**

There are 3 or less quota share permit owners who are currently over the aggregate non-whiting control limit, and NMFS hopes that these permit owners will divest of their excess shares by whichever divestiture deadline alternative the Council chooses. But if a permit owner did not divest of enough shares to put them under the 2.7% aggregate non-whiting control limit by the specified deadline, there are two approaches for Council consideration:

1. Allow QS permit owners to voluntarily abandon excess shares to NMFS *prior* to the divestiture deadline, followed by NMFS redistribution of excess shares (proportional reduction) for any entity not in compliance by the deadline.
2. NMFS redistribution of excess shares (proportional reduction) for any entity not in compliance by the deadline., as currently provided for in groundfish regulations.

Further discussion of each approach follows.

1. Voluntary Abandonment Prior to Divestiture Deadline

The Council recommended the development of a process approach that would allow QS permit owners who are over the aggregate limit to abandon QS of their choice (species

and amount) to NMFS, rather than having NMFS reduce shares proportionally to get QS permit owners under the aggregate limit.

On the GAP floor, members had mentioned that these shares might move into a separate account, managed by NMFS. The Council's motion on abandonment leaves open what NMFS would do with these shares if placed in an abandonment account. After further review, NMFS prefers that any abandoned shares would be redistributed to current QS permit owners in proportion to their current QS holdings, up to the accumulation limits, rather than being held in a separate account. Note: no QS permit owner that abandoned shares would receive these redistributed shares. NMFS believes that any abandoned QS percentages should be available to existing QS permit owners and should not be held by NMFS. This will allow for abandoned QS to be available for use, and/or available for sale or lease in the marketplace. NMFS thinks industry should have full control over the 90% (non-AMP) quota shares.

NMFS proposes the following process for abandonment of QS if the Council moves forward with abandonment:

- A QS permit owner who is over the aggregate limit must submit in writing a request with the following information: QS permit number, IFQ species, and the QS percentage to abandon.
- This request must state that the permit owner permanently relinquishes to NMFS any right to the abandoned QS.
- The request must be signed by either the QS permit owner or an authorized representative of the QS permit owner.
- The request would be due no later than 30 calendar days *prior* to the aggregate limit divestiture deadline, as specified in whichever aggregate divestiture alternative the Council adopts.
- Redistribution of abandoned QS would be effective at the start of the following year. For example, if a QS permit owner submitted an abandonment request by the abandonment deadline, NMFS would make an administrative transfer of the quota shares from the requesting QS permit owner prior to the divestiture deadline to get them into compliance. The abandoned shares would then be reallocated to other QS permit owners (up to the accumulation limits) at the start of the following year.

For any QS permit owner that was still over the aggregate limit by the established deadline (the deadline is different in each of the aggregate divestiture alternatives), NMFS would reduce shares in proportion to the amount each species is contributing to the overage, as discussed in Agenda Item J.2.b, Supplemental NMFS Report 2 from the November 2014 Council meeting.

We have provided a discussion of how each of the aggregate divestiture alternatives would impact the proposed abandonment request deadline:

IV.1. No Action

- If the Council chooses the No Action alternative for the aggregate non-whiting divestiture deadline, the current November 30, 2015 deadline would remain in place.

Following the proposed process above, QS permit owners wishing to abandon shares would need to submit a letter stating their intentions to NMFS by November 1, 2015 in order to provide NMFS sufficient time to process and implement such requests by the November 30, 2015 deadline.

IV.2. Temporarily Exclude Widow Rockfish from the Aggregate Limit Calculation

- If the Council chooses this alternative for the aggregate non-whiting divestiture deadline, the current November 30, 2015 deadline would remain and would apply to all species except widow. Following the proposed process above, QS permit owners wishing to abandon shares would need to submit a letter stating their intentions to NMFS by November 1, 2015 in order to provide NMFS sufficient time to process and implement such requests by the November 30, 2015 deadline.

IV.3. Delay the Divestiture Deadline for the Aggregate Limit to Coincide with the Widow Rockfish (Individual 5.1%) Limit Divestiture Deadline, 12 months after Implementation of Widow Reallocation

- If the Council chooses this alternative for the aggregate non-whiting divestiture deadline, the deadline would be delayed until 12 months after the implementation of the widow reallocation rule. Following the proposed process above, QS permit owners wishing to abandon shares would need to submit a letter stating their intentions to NMFS by at least one month before the new divestiture deadline in order to provide NMFS sufficient time to process and implement such requests.

IV.4. Delay the Divestiture Deadline for the Aggregate Limit until Implementation of Any Regulatory Changes Resulting from the 5-Year Review

- If the Council chooses this alternative for the aggregate non-whiting divestiture deadline, the deadline would be delayed until 12 months after the implementation of any regulatory changes resulting from the 5-year review. Following the proposed process above, QS permit owners wishing to abandon shares would need to submit a letter stating their intentions to NMFS by at least one month before the new divestiture deadline in order to provide NMFS sufficient time to process and implement such requests.

A rulemaking may be required to implement the abandonment of QS. At a minimum, NMFS would need to modify its PRA package to account for abandonment requests prior to implementation.

2. NMFS Proportional Reductions and Redistribution

Under this approach, the current regulations would stay in place and there wouldn't be an abandonment option available, in contrast to approach 1. For any QS permit owner that was over the aggregate limit by the established deadline (the deadline is different in each of the aggregate divestiture alternatives), NMFS would reduce shares in proportion to the amount each species is contributing to the overage and redistribute, as discussed in Agenda Item J.2.b, Supplemental NMFS Report 2 from the November 2014 Council meeting.