

TRAILING ACTION PRIORITIES AND STATUS

The table of contents provided on the following pages contains both a list of the items covered under this agenda and the target implementation dates. Council action to be implemented for the start of a particular year should be completed by April of the preceding year. In the body of the document, at the end of each item slated for 2013, and for the stand alone items, a status summary is provided with an “O” indicating the need for Council attention.

Note on 2014 priorities. With respect to the list of items from National Marine Fisheries Service (NMFS) prioritized for the 2014 program improvement and enhancement rule (PIE rule 3), the Council consented to providing NMFS the flexibility to include those issues (or any other issue) in earlier rule makings, if it could be done without hampering progress on the identified priorities.

Status on Set-Aside Flexibility Issue: The Council did not take action in September to prioritize the set-aside issue because there was some uncertainty about what actions were needed. At its June 2011 meeting the Council adopted the attachment on set-asides but the maker of the motion spoke to the motion as follows (from the final June 2011 minutes):

“ . . . the Council is desirous of providing flexibility for management purposes and attainment of the optimum yield. . . . there is no process for how the flexibility would be implemented inseason. NMFS has indicated there needs to be an EA. That provides us an opportunity to develop the process and they have some regulatory language on page 2 and 3 of that document that we might use as a starting point, but I am not suggesting we adopt that with this motion. The process on how we actually do the set-aside or reapportion the set-asides still needs to be developed.”

The set-aside flexibility issue affects sectors other than the trawl sector. At the September Council meeting, NMFS indicated it would report by this meeting on options to address the intent of the June Council action.

Other Impacted Sectors: A number of issues prioritized as a trawl rationalization trailing action in this document may directly affect sectors other than the trawl sector:

- Stacking trawl permits on vessels that also have fixed gear permits (PIE 2)
- Adding a vessel monitoring system (VMS) declaration code for “transiting” with gear stowed (PIE 3)
- Revisions to weight conversion factors (PIE 3)
- Clarifying the sablefish at-sea exemption for processing in the individual fishing quota (IFQ) fishery (PIE 3)
- Clarifying fishery closure language (closure of fixed allocations vs. set-asides) (PIE 3)
- Permit renewal dates (PIE 3)
- Landing/offloading requirements for limited entry fixed gear and open access (PIE 3)
- General at-sea processing prohibition (PIE 3)

Set-aside flexibility has not yet been prioritized and so is not included in this list. Also excluded from this list are issues that were tentatively slated for consideration as part of the biennial specifications process.

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Ongoing Issues (For 2013 Implementation)

The following issues were originally included as priorities for the first program improvement and enhancement (PIE) rule but were not ready for that rulemaking or were scheduled for a separate rule making (e.g. cost recovery).

1. Cost Recovery

The Council completed work on the structure of the cost recovery program at its September meeting, specifying that the program start on January 1, 2013 and that the initial amounts to be recovered not exceed more than 3 percent of exvessel revenue for the shorebased sector, 2 percent for the mothership sector and 1 percent for the catcher-processor sector. The exact amounts to be used will be determined based on the best estimates available at the time the rule is ready to move forward. The process of identifying costs will continue, in coordination with the states, using the cost matrix developed by Pacific States Marine Fisheries Commission (PSMFC) for this purpose. National Oceanic and Atmospheric Administration General Counsel (NOAA GC) may report at this meeting on whether or not the states will be eligible to recover some costs through the cost recovery program. The details for some program elements such as the ongoing “role of the Council” and “the concept of accounting and adjustment between years” will be worked out in the regulatory deeming process. The Council operating procedures (COP) delegate deeming to the Executive Director, except for those circumstances for which the Council specifically desires that such deeming occur through the full Council process.

The Cost Recovery Committee (CRC) will begin its review of cost estimates and take up the task of looking for ways to reduce program costs after the NMFS Northwest Region and Northwest Fisheries Science Center have their cost tracking methodologies in place (expected to occur sometime in the earlier part of 2012). At that point, the information that the CRC needs for its work should be available.

	Summary: Status and Next Steps
	Council action on program structure complete and process for determining fee percentages complete.
	NOAA GC to report on state eligibility for cost recovery funds.
	Work to continue on matrix of costs for each agency. Recovery rates as a percent of exvessel value to be determined by NMFS and placed in regulations, (not to exceed specified percentages for each sector, see text)
	Regulations to be drafted by NMFS.
	Regulations to be deemed through process outlined in COP 1. ¹
	CRC to meet to discuss ways to reduce program costs (most likely in spring 2012).
	No action necessarily required at this time.

2. Quota Share/Quota Pound (QS/QP) Control Rules – Safe Harbors

a. Community Fishing Associations (CFAs)

Any further Council action indefinitely deferred. CFAs will continue to operate without an exception for the control limits. At such future time as a need for an exception is identified, the Council may again take up the issue of a safe harbor from control limits for CFAs.

	Summary: Status and Next Steps
	Action Tabled

b. Risk Pools (Moderate to Substantial Effort)

Council final action completed. The Council provided risk pools with a limited exception to the control rule, allowing them to operate under contracts which provide that a deficit from one year may be covered with QP issued for a subsequent year. Additionally, such agreements may be renewed for a series of consecutive years without necessarily violating control rules.

	Summary: Status and Next Steps
	Council action complete.
	Council staff to complete analysis.
	Regulations to be drafted by NMFS.
	Regulations to be deemed through process outlined in COP 1.
	No action necessarily required at this time.

¹ COP 1: “Unless otherwise explicitly directed by the Council, after NMFS has prepared the regulatory language, the Council authorizes the Executive Director to review the regulations to verify that they are consistent with the Council action before submitting them, along with his determination, to the Secretary on behalf of the Council.”

c. Lenders (Moderate to Substantial Effort)

When it approved the initial issuance rule implementing the IFQ program, NMFS inserted into the QS control rule an exception for banks and financial institutions (underlined text in the following).

<p>660.140(d)(4) <i>Accumulation limits</i>—(i) <i>QS and IBQ control limits</i>. QS and IBQ control limits are accumulation limits and are the amount of QS and IBQ that a person, individually or collectively, may own or control. QS and IBQ control limits are expressed as a percentage of the Shorebased IFQ Program’s allocation.</p> <p>(A) <i>Control limits for individual species</i>. No person may own or control, or have a controlling influence over, by any means whatsoever an amount of QS or IBQ for any individual species that exceeds the Shorebased IFQ Program accumulation limits.</p> <p>(B) <i>Control limit for aggregate . . .</i></p> <p>(C) The Shorebased IFQ Program accumulation limits are as follows: [see Table of QS Control Limits]</p> <p>(ii) <i>Ownership—individual and collective rule</i>. The QS or IBQ that counts toward a person’s accumulation limit will include:</p> <p>(A) The QS or IBQ owned by that person, and</p> <p>(B) That portion of the QS or IBQ owned by an entity in which that person has an economic or financial interest, where the person’s share of interest in that entity will determine the portion of that entity’s QS or IBQ that counts toward the person’s limit.</p>	<p>(iii) <i>Control</i>. Control means, but is not limited to, the following:</p> <p>(A) The person has the right to direct, or does direct, in whole or in part, the business of the entity to which the QS or IBQ are registered;</p> <p>(B) The person has the right to limit the actions of or replace, or does limit the actions of or replace, the chief executive officer, a majority of the board of directors, any general partner, or any person serving in a management capacity of the entity to which the QS or IBQ are registered;</p> <p>(C) The person has the right to direct, or does direct, and/or the right to prevent or delay, or does prevent or delay, the transfer of QS or IBQ, or the resulting QP or IBQ pounds;</p> <p>(D) The person, through loan covenants or any other means, has the right to restrict, or does restrict, and/or has a controlling influence over the day to day business activities or management policies of the entity to which the QS or IBQ are registered;</p>	<p>(E) The person, <u>excluding banks and other financial institutions that rely on QS or IBQ as collateral for loans</u>, through loan covenants or any other means, has the right to restrict, or does restrict, any activity related to QS or IBQ or QP or IBQ pounds, including, but not limited to, use of QS or IBQ, or the resulting QP or IBQ pounds, or disposition of fish harvested under the resulting QP or IBQ pounds;</p> <p>(F) The person, <u>excluding banks and other financial institutions that rely on QS or IBQ as collateral for loans</u>, has the right to control, or does control, the management of, or to be a controlling factor in, the entity to which the QS or IBQ, or the resulting QP or IBQ pounds, are registered;</p> <p>(G) The person, <u>excluding banks and other financial institutions that rely on QS or IBQ as collateral for loans</u>, has the right to cause or prevent, or does cause or prevent, the sale, lease or other disposition of QS or IBQ, or the resulting QP or IBQ pounds; and</p> <p>(H) The person has the ability through any means whatsoever to control or have a controlling influence over the entity to which QS or IBQ is registered.</p>
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In the preamble to the final rule, NMFS explained that this change was adopted in response to public comment:

[Comment:] Proposed § 660.140(d)(4)(iii)(D) and (E) “could eliminate the ability of a quota share/quota pound owner to obtain necessary financing for fishing operations. Under these sub-clauses, a bank or other financial institution would be unable to provide loans using quota shares/pounds as collateral, a common practice in limited access fisheries. A quota share brokerage would be unable to take title or otherwise encumber quota shares/pounds beyond the accumulation limits, even if a fisherman requested the broker do so.”

[Response:] NMFS does not intend that these sections apply to banks or financial institutions, unless the financial documents specify control beyond normal business agreements. NMFS has modified the regulations accordingly. As for quota share brokerages, each transaction must comply with the accumulation or control limits; however, compliance does not prevent brokerage transactions. Compliance would be based on the facts of the transactions.

[. . .]

NMFS acknowledges that participants in the fishery may be concerned about whether potential actions would comply with the accumulation limits. It is the responsibility of the participants to comply with the regulations; if participants have questions about potential actions, NMFS encourages those participants to provide the agency with specific facts and questions prior to entering into agreements or taking action in order to understand NMFS's interpretation of the potential facts in relation to the regulation.

There are two issues to address with respect to the safe harbor provided to lenders. The first is determination of the entities eligible for the safe harbor and the second is the scope of the exception provided to such entities (i.e. the activities allowed under the safe harbor).

Lending Entities Qualifying for an Exception

Subsequent to the modifications described above, public comment has expressed concern with a need to clarify for policy and regulatory purposes the types of institutions to which the exception is expected to apply. What types of entities might qualify as a "bank or other financial institution?" For example, it is traditional in the fishery for processors to lend harvesters money for capital acquisitions. Adopting language in the control limit regulations with more specificity could provide more clarity as to whether the exclusions applicable to "banks and other financial institutions" should be construed more broadly or more narrowly. Regardless of whether construed broadly or narrowly, in the following options the intent is that the exception for lenders only applies that QS or IBQ used as collateral. The following are a few alternatives presented for Council consideration may include:

Status Quo: Retain existing language (no action).

This alternative would not clarify the types of institutions to which the exceptions would apply, but would not include the limitation of Alternative 1, as it would not require the institution to be state or federally chartered. This alternative would also not be as broad as Alternative 2, as it would be limited to banks and financial institutions.

Strawdog Alternative 1: Replace "*banks and other financial institutions that rely on QS or IBQ as collateral for loans*" with "*a state or federally chartered bank or other state or federally chartered financial institution that relies on QS or IBQ as collateral for loans.*"

This alternative would result in a narrower application of exemptions for lending institutions from the control rule. While this alternative provides a clear test for whether the lending institution qualifies (i.e., whether it is state or federally chartered), it may result in some lending institutions not being able to avail themselves of the exemptions from the control rule. For instance, private equity funds may not be state or federally chartered.

Strawdog Alternative 2: Replace "*banks and other financial institutions that rely on QS or IBQ as collateral for loans*" with "*any person that relies on QS or IBQ as collateral for loans.*"

This alternative would result in a broader application of exemptions for lending institutions from the control rule, as "person" includes not only banks and other financial institutions, but other entities as well (such as processors, for instance) and individuals.

Strawdog Alternative 3: Leave unaltered the language "*banks and other financial institutions that rely on QS or IBQ as collateral for loans*" but add an amplification indicating that to qualify as a bank or financial institution for purposes of this paragraph the entity must be regularly or primarily engaged in the business of lending and not engaged in or

controlled by entities whose primary business is the harvest processing or distribution of fish or fish products.

This alternative would be intended to broaden the entities qualifying for this exception, similar to Alternative 2, but to also indicate that the provision is not intended to apply or benefit entities otherwise engaged in the fishery, which might use such an exemption to gain advantage through the control of amounts of quota shares in excess of the control limits.

Scope of the Exception Provided

Another concern with exempting certain activities of lending institutions from the control rule has to do with overlaps of the activities covered by the various paragraphs of the control rule and the need to provide clarifications to the public regarding the how the paragraphs might be applied. For example, banks and financial institutions are provided an exception with respect to the use of loan covenants to “restrict, any activity related to QS or IBQ or QP or IBQ pounds” (paragraph E) but are not provided an exception with respect to directing, delaying or preventing the transfer of QS or individual bycatch quota (IBQ) or having the right to do so (paragraph C). This concern could be addressed in a number of ways. One would be by adding the lender exemption to paragraph (C). However, there are also other conflicting overlaps between the paragraphs, for example between paragraphs (E) and (D). Again, paragraph (E) provides an exception for certain lenders pertaining to the direction of “any activity related to QS or IBQ or QP or IBQ pounds” while paragraph (D) does not provide those lenders an exception for “day to day business activities or management policies of the entities to which the QS of QP are registered.” Paragraphs (G) and (C) also overlap. Some alternatives for addressing these issues are as follows:

Status Quo: No change

Strawdog Alternative 1: Add the appropriate language providing an exception for lenders to paragraph (C).

Strawdog Alternative 2: Same as Alternative 1 but also remove the exceptions provided to lenders in all other paragraphs and add at the end of each of the other paragraphs language to the following effect: “*with the exception of those activities allowed under paragraph (C)*”

Suboption 2a: Further limit the exception under paragraph C so that the lenders exception pertains only to control over the transfer of QS and IBQ and not the affiliated QP or IBQ-pounds. All associated QP will be distributed to the borrower unless the bank or financial institution provides evidence that the borrower is in default on the loan, in which case the related QP will be distributed to the adaptive management program until such time as any the QS/IBQ held by the bank or financial institution is sold, or the QS/IBQ holdings of the bank or financial institution are below the QS control limits. (from the April 2011 strawdog option on which the Council requested further discussion).

Suboption 2b. Provide lenders with an exemption to all activities covered by paragraph (C) (i.e. do not select Suboption 2a)

Strawdog Alternative 3: Add exceptions for lenders to all paragraphs.

Alternative 1 would make it clear that lenders could control the transfer of QS, IBQ, QP, and IBQ but leave other possible inconsistencies in place. Alternatives 2 and 3 would eliminate any inconsistencies due to overlap among the paragraphs. Alternative 2 would achieve this end by restricting the exception for lenders to lender influence over the transfer of quota, as specified in paragraph C. Suboption 2a would restrict the exception just to QS and IBQ, not to the QP and IBQ-

pounds; and Suboption 2b would not add that limitation. Alternative 3 would achieve this end by providing lenders exceptions under all paragraphs.

	Summary: Status and Next Steps
	Prioritized for implementation in 2013.
<input type="radio"/>	Lending Entities Qualifying: Are the alternatives the ones the Council would like analyzed?
<input type="radio"/>	Scope of the Exception: Are the alternatives the ones the Council would like analyzed?

3. Other Lender Issues (Moderate to Substantial Effort)

- a. Third party verification of quota share ownership (i.e. National Marine Fisheries Service informing a third party as to the ownership of particular QS)

NMFS is exploring whether or not the registered ownership of QS and QP accounts and the amounts in those accounts should be considered public information. A determination is expected soon. If this information is determined to be public information, then the needs that lenders have for verification may be addressed and there may be no need for further Council action on this issue.

	Summary: Status and Next Steps
	Prioritized for implementation in 2013.
<input type="radio"/>	Based on the NMFS report on this issue, is there any further action needed at this time (e.g. identification and analysis of an option under which NMFS would provide lenders independent confirmation regarding what QS is owned by an entity borrowing money from the lender?)

- b. A lien registry

At the September 2011 meeting, the Groundfish Advisory Subpanel (GAP) supported “a centralized lien registry and note[d] that this is a mandate under the Magnuson-Stevens Act (MSA), but recognize[d] that after many years and attempts at establishing this, it has never occurred” (Agenda Item G.6.b, Supplemental GAP Report). It is the Council staff’s understanding that there continues to be limited resources within NMFS for implementing a centralized lien registry. This issue might be partially addressed by the option suggested for consideration as an alternative to unique identifiers for QS, in the following section.

Status Quo: No central lien registry. There may be other ways by which lenders can register their liens.

Strawdog Alternative: Establish a central lien registry for the West Coast trawl IFQ program. (Should the mothership catcher-vessel permits also be included?)

	Summary: Status and Next Steps
	Prioritized for implementation in 2013.
<input type="radio"/>	Does the Council wish to adopt the strawdog or other alternatives for analysis?

- c. Unique identifiers for QS to facilitate financial transactions

At present, QS are highly divisible. Creating unique identifiers for QS would either be very costly or require a modification to the program to reduce the degree of divisibility. An alternative to unique identifiers might be to add a lender field to the QS ownership data table. Transfer of QS from the account would then require authorization from both the owner and the lender. The lender would

have no other authority with respect to the disposition of the QS or the QP from the account. The position of the lender with respect to the QS in the account would be similar to the position of a lender on the title for a car loan. If only some of the QS held by a particular individual were to be pledged as collateral, then the individual would be allowed to establish a separate account for the QS obligated to a lender. The approach might work as follows.

1. A QS holder wishing to pledge QS as collateral and the lender desiring to use the QS as collateral would sign a form provided by NMFS.
2. The form would state that a separate account would be opened with one field designating the owner and a separate field designating the binding party (lender). The form would also specify the amounts of QS held by the QS owner that would be placed into this account.
3. The only difference between this account and any other account would be that QS in the account could be transferred out of the account only through the filing of a QS transfer form signed by both the QS owner and the lender. The lender's only authority with respect to the account would be the ability to prevent QS transfers from the account.
4. With respect to any disputes that might arise between the QS owner and the lender regarding the terms and conditions on which the QS owner or lender is required to authorize QS transfers, these issues would be settled privately, through the courts if necessary, but not be a matter of concern for NMFS.

This provision might also begin to address the lien registry issue but would not be definitive in that regard. It would not provide the lender a way to determine whether there were any previous commitments of the QS for which the lender is securing transfer authorization authority (i.e. whether the same QS was already or subsequently obligated or bound through a separate transactions or lien).

Status Quo: No change.

Strawdog Alternative: Add a lender field to the QS ownership records. A lender name would only be added to the record with the agreement of QS owner but removal would require agreement of both the QS owner and the lender. While a lender is listed, transfer of QS from the account would require authorization from both the owner and the lender. To facilitate commitment of only part of an owners QS to a particular lender, a single QS owner would be able to establish additional QS accounts.

	Summary: Status and Next Steps
	Prioritized for implementation in 2013.
<input type="radio"/>	Does the Council wish to adopt the strawdog or other alternatives for analysis?

Trailing Actions for PIE 2 (For 2013 Implementation)

4. Develop a process to certify new observer providers

The current regulations authorize as west coast observer providers those entities certified to provide observers for the North Pacific fisheries. There is no independent means by which an entity can qualify as a West Coast observer provider without also having to qualify under the North Pacific programs. During previous Council deliberations on this issue there was discussion of the possibility that the states might act as observer providers, particularly with respect to shoreside monitoring.

No modifications to the Fishery Management Plan (FMP) or the trawl rationalization program appendix are required for this issue. The next steps are for NMFS to develop draft regulations and determine what types of analysis might be required under National Environmental Policy Act (NEPA). The Council may wish to provide guidance on whether the regulations should be drafted in a manner allowing states to qualify as observer providers or on other matters.

	Summary: Status and Next Steps
	Prioritized for implementation in 2013.
	NMFS to draft regulations and evaluate need for NEPA analysis.
O	Does the Council have any guidance regarding the development of regulations, particularly with respect to state ability to qualify as an observer provider?

5. Allow a fixed gear permit and a trawl permit to be registered to the same vessel at the same time

Originally, the license limitation program allowed a trawl and fixed gear (longline or fishpot) permit to be registered to the same vessel at the same time (additionally, there are a few permits endorsed for both trawl and one of the fixed gears). At a later time, because of enforcement and/or monitoring needs, regulations were modified to prohibit stacking of trawl permits with permits endorsed for other gears. Since then VMS and declaration systems may have reduced or eliminated the need for this restriction.

The trawl rationalization program was intended to allow vessels to move between the use of trawl and other gears while continuing to operate under the IFQ program (gear switching). Additionally, it allows vessels to participate in the IFQ fishery without ever using trawl gear. However, the flexibility of any vessel that wants to participate in both the IFQ program and the limited entry fixed gear fishery is limited by a limit on the number of times a permit may be transferred to a vessel in any year (one time per year).²

One option to address this issue would be to increase the number of transfers allowed per year. This would increase a vessel's flexibility to move between the limited entry trawl and fixed gear fishery and it would also allow more flexibility for vessels to move between the limited entry and open access fisheries, reducing the wall between these sectors. Such a provision would also increase administrative costs. The alternative presented here would keep the current limit on the number of transfers per year but allow a trawl and fixed gear permit to be on the same vessel at the same time. This would reduce administrative costs by reducing the need for vessels to transfer their permits on and off a vessel in order to move between limited entry fisheries. A determination is needed as to whether it would create any enforcement or monitoring complexities.

Status quo: A trawl endorsed permit cannot be on a vessel at the same time together with a limited entry longline or fishpot endorsed permit. A permit may only be transferred to a vessel one time per year.²

Alternative: Allow both a trawl permit and a longline or fishpot endorsed permit to be registered to the same vessel at the same time. No change to the number of transfers allowed per year.

² The transfer of a permit from a vessel to a vessel "unidentified" status does not count against the transfer limit but if the permit is then transferred to a vessel (whether back to the same vessel from which it was transferred or a different vessel) that transfer counts against the limit. Thus a permit can be moved from and back to the same vessel one time per year.

The Council might consider whether it wants to add an alternative that would increase the number of times a permit may be transferred per year. If this is done, notice should be provided to the fixed gear fleet that they may be affected by this change.

	Summary: Status and Next Steps
	Prioritized for implementation in 2013.
	NMFS to evaluate need for NEPA analysis.
<input type="radio"/>	Should allowing multiple permits per year be considered as a viable alternative or as an alternative considered but rejected early on?
<input type="radio"/>	Consider recommendations from the TRREC

6. Change the opt-out requirement for QP deficits (may become standalone item)
(Minor Effort)

Change the opt-out requirement for QP deficits lasting more than 30 days, in order to allow vessels to rejoin the fishery after deficits are cleared. *The following indented text repeats information provided at the September 2011 Council meeting.*

Any vessel with a documented deficit is prohibited from fishing groundfish and is required to cure the deficit within 30 days. Under the current provision, if a vessel carries a deficit for more than 30 days and the amount of the deficit is within the carry-over allowance, then the vessel can stay within compliance of the program by opting out of the fishery for the remainder of the year. Vessels which do not opt out, but instead incur a violation, are allowed to rejoin the fishery as soon as the deficit is cured. One proposal is to allow a vessel which opts out to re-enter the fishery in the same year if it subsequently covers the deficit. Another proposal is to allow a vessel with a deficit that is within the carry-over limit to continue to fish.

In the following discussion, all references to a vessel’s ability to opt-out of the fishery to avoid a violation due to a QP deficit apply only to those deficits which are less than the carryover allowance, unless otherwise noted. Deficits greater than the carryover allowance must be brought to within the carryover allowance before the 30-day clock expires, otherwise the vessel will incur a violation.

Status Quo: Vessels that have carried a known deficit for more than 30 days may avoid a violation by opting out of the fishery for the remainder of the year (so long as the deficit is less than the carryover allowance).

Alternative: Vessels that have carried a known deficit for more than 30 days may avoid a violation by opting out of the fishery (so long as the deficit is less than the carryover allowance). Such vessels may opt back in once they have cured their deficit.

The 30-day clock with the provision allowing vessels to opt-out for the remainder of the year was originally intended to encourage vessels to cover their overages sooner rather than later. However, as described at the September Council meeting, it created a situation in which a vessel which incurs a deficit and goes into violation (exceeds the 30-day clock) is able to re-enter the fishery sooner than a vessel that stays within the provisions of the program by opting out (for the year) before the 30-day clock expires (see following table). At the same time, changing the opt-out requirement (the alternative) might make the 30-day clock for covering a deficit less meaningful (relevant only for those vessels with deficits greater than the carryover provision). The alternative, while resolving the

inequity, eliminates a vessel's incentive for resolving deficits earlier rather than later, except with respect to deficits greater than the carryover allowance. Under the IFQ program, once it is established that a vessel has a deficit it must stop fishing until the deficit is covered. If the vessel is able and chooses to "opt-out," there is no cost in doing so; under the proposed alternative it could opt back in as soon as the deficit is covered, also at no cost. Since the vessel can't fish anyway, the steps of opting out and opting back in don't carry much meaning. This raises the question as to whether the alternative, if adopted, should also eliminate the 30-day provision, except with respect to overages greater than the carryover amount. Vessels with overages greater than the carryover allowance are not able to avoid violation by opting out of the fishery. They must get themselves to within the carryover allowance or face a violation.

Related to this issue, the Council has received public testimony expressing concern about the opt-out provision: it can be difficult to find QP for some species (constraining species) until late in the year and the opt-out provision potentially forces a vessel incurring a deficit for those species to forgo fishing for the entire year if it wishes to maintain a clean compliance history.

Table. Implications of the alternatives for vessels incurring a deficit that is *within the carryover amount*.

Situation of Vessels Incurring a Deficit	Status Quo	Alternative
Vessel covers deficit within 30 days	Vessel not in violation. Vessel can re-enter as soon as deficit is covered.	Vessel not in violation. Vessel can re-enter as soon as deficit is covered.
Vessel opts out by 30 days and covers deficit later	Vessel not in violation. Vessel must stay out of the fishery the entire year.	Same as above.
Vessel does not opt out and covers deficit later	Vessel in violation. Otherwise same as covering deficit within 30 days.	Vessel in violation. Otherwise same as above.

The trade-off at issue between the two alternatives identified thus far is: resolving the inequity that occurs when vessels that have violated the program are able to re-enter the fishery sooner than vessels that have remained in compliance (resolved by the alternative) in contrast to the incentive to resolve a deficit that is less than the carryover amount before the 30-day clock expires (provided under status quo).

Summary: Status and Next Steps	
	Prioritized for implementation in 2013.
	NMFS to evaluate need for NEPA analysis.
<input type="radio"/>	Should the alternative also explicitly eliminate the 30 day clock for deficits that are less than the carryover amount?
<input type="radio"/>	Is there another alternative which is both perceived to be more equitable and maintains the full incentive to comply with the 30 day clock?

7. Revise the calculation of mothership processing ownership (Minor Effort)

The processing ownership limit is phrased as a usage limit but references ownership.

- B-2.2.2.d Usage Limit - No individual or entity owning an MS permit(s) may process more than 45 percent of the total MS sector whiting allocation.

Because ownership is referenced, during the deeming process the Council determined that the individual and collective rules should be applied.

The following indented text repeats information provided at the September 2011 Council meeting.

The Council set a mothership processing ownership limit of 45 percent with the intent of ensuring there would be at least three buyers available to catcher vessels. However, the regulations were drafted in a manner which reduced the minimum number of buyers to two. Specifically the individual and collective rule used for the IFQ program QS control limits was applied to the processing ownership limits for the co-op program. Applying this rule when there is a limit on only ownership, and not one on control, yields a result different from the stated Council intent. As an example, a single entity could own 60 percent of two entities which each receive 30 percent of all deliveries. That single entity would effectively control 60 percent of the market (effectively control 2 entities which each receive 30 percent of deliveries) and still be within the 45 percent processing ownership cap when the individual and collective rule is applied (60 percent ownership x 2 entities x 30 percent of deliveries = 36 percent). A single buyer could then service the remaining 40 percent of the market, leaving only two buyers in the market, rather than the three intended by the Council. Under a worst case scenario, a single entity could control close to 90 percent of the market. If this situation is a concern, possibilities for resolving this issue include specifying the ownership limit as a control limit or applying an ownership calculation rule other than the individual and collective rule.

While the Council concern has been ensuring at least three independent buyers are available, experience from the 2011 fishery indicates that requiring a minimum number of buyers in this fashion can create a situation in which not enough processors are available for the fleet to harvest its allocation without a processor exceeding its limit. For example, if there are only two independent buyers available and their processing is limited to 45 percent each, then 10 percent would be left unharvested. As part of this action, the Council may wish to consider modifications to the processing limits which would allow the fleet to fully harvest the allocation. For example: under the mothership co-op program, before each season starts every vessel commits its allocations to a particular processor. There is a mutual agreement exception that allows those commitments to be released and transferred to a different processor (with agreement of both the vessels and processors). The control rule might be expanded such that so long as the start of year commitments are within the processing limits, the mutual agreement exception may be exercised in a manner that results in the 45 percent processing limit being exceeded.

Status Quo: Usage Limit - No individual or entity owning a MS permit(s) may process more than 45 percent of the total MS sector whiting allocation.

Strawdog Alternative 1: Change the ownership rule to a control rule so that ownership is not the only type of control which is limited. Maintain the current individual and collective rule for determining the amount of control over processing exerted directly through ownership.

Strawdog Alternative 2: Revise the rule for determining the amount of processing controlled through ownership (METHOD TO BE DETERMINED). An example might be a threshold rule under which any entity which owns a certain percentage (e.g. 50 percent) is considered to effectively own the entire entity for purposes of applying the ownership rule).

Note: if the Council changes its intent from ensuring there will be at least three markets to ensuring there is at least two markets, then it might be that no action is needed on this issue (status quo may suffice).

	Summary: Status and Next Steps
	Prioritized for implementation in 2013.
	NMFS to evaluate need for NEPA analysis.
O	Identify alternatives for analysis.
O	Consider whether to add an alternative allowing a co-op to deliver amounts in excess of the processing limits, through the mutual agreement exception.

8. Eliminate double filing of co-op reports (November and March)

(Minor Effort)

Currently both mothership and catcher-processor co-ops are required to submit to the Council a preliminary annual report in November and to NMFS a final annual report by March 31 of the following year. Those reports were provided at this meeting under Agenda Item E.6. While the mothership sector provided a presentation at this meeting, in future years the reports might be provided only as information items. Since the fishery is not completed on time for the November meeting and a subsequent final report must be provided by March 31 of the following year, question as been raised about the necessity of providing the preliminary report.

Status Quo: Require that co-ops provide a preliminary annual report to the Council in November and a final annual report to NMFS by March 31 of the following year.

Alternative: Require that co-ops provide only final annual reports for a particular year but require that it be provided to both NMFS and the Council. The annual report must be provided to NMFS by March 31 of the subsequent year. The annual report should be provided to the Council on time for distribution with the April briefing book, i.e. by the briefing book deadline for the April Council meeting (but no earlier than March 10).

	Summary: Status and Next Steps
	Prioritized for implementation in 2013.
	NMFS to evaluate need for NEPA analysis.

9. Move the whiting season opening date (may become standalone item)

(Minor to Moderate Effort)

The TRREC will provide recommendations on this issue based on their October 27 meeting.

	Summary: Status and Next Steps
	Prioritized for implementation in 2013.
	NMFS to evaluate need for NEPA analysis and other needed processes.
o	Respond to TRREC Report

Standalone Priorities

Stand alone priority items are high priority items on which the Council may need to start work well in advance of the identified target implementation date.

10.Reduce observer costs (2013-2014 Implementation)

(Substantial Effort)

Numerous means have been identified for reducing observer costs. One of these is the use of cameras and alternative technologies. Other cost reduction measures include looking at educational requirements and the need for 100 percent observer coverage. The most likely area for rapid progress might be reconsideration of the need for observers on whiting trips and whether cameras might be used instead, as was done in the past for the shorebased whiting fleet. Other changes would likely require more extensive effort and substantial progress is not likely to occur prior to the completion of the biennial specifications process and Council action on PIE 2 issues.

For changes to be in place by the start of 2013, action must be taken by April 2012. However, changes to observer coverage requirements could happen mid-year and still provide relief to the industry. At the same time, there are administrative efficiencies to be gained when regulatory changes are moved through as a package rather than separately.

	Summary: Status and Next Steps
	Prioritized for implementation in 2013 - 2014.
	Substantial progress not likely prior to spring 2012, except possibly for whiting trips,
O	Should consideration of the use of cameras for whiting trips be the first priority item?

11.Adaptive Management Program quota pound allocation (2015 Implementation)

(Moderate to Substantial Effort)

Previously, the GMT has discussed this issue extensively and developed analysis of a number of alternatives. As a first step, the Council may wish to ask the Groundfish Management Team (GMT) to review and update their previous analysis and provide it to the Council, as their workload allows.

	Summary: Status and Next Steps
	Prioritized for 2015. Work to begin.
O	Should the Council prioritize this as a task for the GMT?

12.Revise the widow rockfish QS allocation (2015 Implementation)

(Substantial Effort)

Originally slated for 2015, the mop-up panel has now determined that widow rockfish may be rebuilt. If this is confirmed through the Council process, the Council may wish to consider alternatives for reallocation at this time. QS trading starts in 2013, so it would be useful for QS traders to know what might be expected with respect to reallocation. The following are a few stawdog alternatives to consider (Note: For simplicity, examples in the following alternatives reference 100 percent of the QS. In fact, 10 percent of the QS is in the adaptive management program. Therefore the percentages referenced would need to be adjusted to take into account the 10 percent set-aside for adaptive management):

Status quo. No reallocation. Allow reallocations to occur through QS trading among QS holders.

Strawdog Alternative 1: Full Reallocation. Complete reallocation QS based on catch history using the same formulas used for the original allocation of target species QS (based on permit history from 1994 through 2003).

Strawdog Alternative 2: Pounds neutral reallocation. Based on rebuilt status, the trawl allocation for widow will likely increase substantially in 2012. Determine the percentage of the total QS that would result in an individual holding QS in 2013 receiving the same amount of QP they received in 2012. For example, if the 2012 trawl allocation was 600 mt and the new allocation will be 1,200 mt, if everyone keeps 50 percent of their QS then they will receive the same amount of nonAMP QP in 2013 that they did in 2012. This would leave 50 percent of the nonAMP QS for redistribution based on the allocation formula specified in Alternative 1.

Strawdog Alternative 3: Split the Difference. Same as Alternative 2 but reallocate only one half the difference between full reallocation and pounds neutral reallocation. For the example provided in Alternative 2 this would mean that 25 percent would be reallocated based on the Alternative 1 formula, and everyone would experience a 50 percent increase in the amount of nonAMP QP they receive as compared to 2013, i.e. 75 percent (50 percent plus 25 percent) of the QS would not be reallocated

Note: Because Alternative 1 would reduce the annual amount of QP received by some individuals, as compared to the 2011 and 2012 fisheries, Alternative 1 might entail the need for more rigorous analysis than the Alternatives 2 or 3.

	Summary: Status and Next Steps
	Prioritized for 2015 in anticipation of rebuilding in 2015.
	Mop-up panel found the stock to be rebuilt.
<input type="radio"/>	Should deliberations on this be accelerated if widow is declared rebuilt?

Trailing Actions for PIE 3 (2014 Implementation)

The following issues have been slated for PIE 3, to be implemented by 2014. No new information is provided on these issues at this time. The information below is from September 2011 Council documents.

13. Observer coverage exemption when testing trawl gear

(Minor Effort)

Trawl vessels have inquired into the requirements for testing trawl gear or adjusting the trawl net at-sea, with and without trawl doors deployed and without a cod end attached. Currently, it is recommended that the vessel declare into the IFQ fishery and obtain observer coverage.

14. Add a VMS declaration code for “transiting” with gear stowed

(Minor Effort)

If a vessel is strictly transiting between ports with gear stowed, the current regulatory interpretation is that the vessel must declare “other” through the VMS phone-in declaration system and observer coverage is not required. The development of a

VMS declaration code for “transiting” would provide more accurate reporting and monitoring.

15. Consider revisions to weight conversion factors based on new information

(Minor Effort)

Coastwide standards may be needed or need revising for some species. Also, consider a conversion factor for glazed fish.

Trailing Actions for PIE 3 – NMFS List (2014 Implementation)

16. Longterm resolution of QP surplus carryover provision (may become standalone item)

If it is determined that the surplus QP carryover provision creates a problem with respect to annual catch limit (ACL) requirements, develop a long-term solution.

17. Observer coverage on vessels processing groundfish at-sea

Correct regulations to require observer coverage for all vessels processing groundfish at sea (with some exceptions).

18. Clarify sablefish at-sea processing exemption for the IFQ fishery

The Council prohibited processing under the IFQ program except as already specifically allowed under the groundfish regulations. The groundfish regulations contained a prohibition against processing in the primary limited entry fixed gear sablefish fishery but grandfathered in existing processing vessels. There is one vessel that qualified for this exemption. This vessel is allowed to process sablefish taken during the primary sablefish season. The Council action on the IFQ program was interpreted as intending to allow this fixed gear processing vessel to also process in the trawl IFQ program, if it chose to enter that fishery. At present it cannot enter that fishery except by transferring its fixed gear permit off the vessel. This would invalidate the vessel’s exemption from the processing prohibition. If the Council wishes to provide this vessel an opportunity to process in the trawl IFQ fishery, an adjustment to the regulations may be needed. Alternatively, if it becomes permissible for a trawl permit to be stacked with a fixed gear permit, then this fixed gear vessel will be able to process fish caught under the trawl IFQ program during the period of time the fixed gear primary season is open. If it is the Council’s intent that this vessel should be allowed to process in the IFQ program, then the Council may wish to consider whether it is appropriate to extend the grandfather provision beyond the duration of the limited entry primary season for the purpose of participating in the trawl IFQ program.

19. Clarify fishery closure language

Consider adding trawl closure to automatic actions at 660.60(d). Specify how to address closure of a fixed allocation versus a set-aside.

20. Language describing whiting season start dates

Review the regulatory language describing the whiting season start dates. This issue is separate from changing the start date.

21. Reducing site inspection requirements

Revise the site inspection requirements for reissuance of first receiver site license such that an inspection is not required if there have been no changes to the catch monitoring plan.

22. Catch monitor briefings

Revise the catch monitor certification requirements to broaden the scope of monitor briefings.

23. QS transfer regulations

In preparation for the start of QS trading, NMFS needs to review regulations on transfers of quota share (QS) and may be providing recommendations on changes.

24. Permit renewal dates

Revise renewal process for limited entry permits, vessel accounts, and QS permits to start by September 15 each year.

25. Landing/offload language

Revise landing/offload language for limited entry fixed gear and open access to state all fish must be off vessel before next trip.

26. General at-sea processing prohibition—except whiting and existing exceptions (may become standalone item)

Add a prohibition on processing groundfish at-sea for other sectors (limited entry fixed gear and open access)

Issues Tentatively Slated for Biennial Specifications

27. Clarification of catch accounting among sectors

(Minor to moderate effort, depending on need for committee work)

There is currently some confusion regarding whether the groundfish catch of a limited entry permitted vessel (trawl, not fishing under the IFQ program, or fixed gear) and using open access gears counts against the limited entry allocation or the open access allocation.

28. Consider allowing multiple gears onboard a vessel participating in the IFQ fishery

(Minor Effort)

At its September 2011 meeting, the Council specified this as a PIE 2 priority and assigned it for review by the Trawl Rationalization Regulatory Evaluation Committee (TRREC) but also included it under the biennial specifications process. The TRREC will provide recommendations on this issue based on their October 27 meeting.

29. Allow trawl gear modifications that increase efficiency and selectivity

(Minor to Moderate Effort)

At its September 2011 meeting, the Council specified this as a PIE 2 priority and assigned it for review by the TRREC but also included it under the biennial specifications process. The four seam net issue is included here but the chaffing gear issue is included as a separate item. The TRREC will provide recommendations on this issue based on their October 27 meeting.

30. Chaffing Gear

At its September 2011 meeting, the Council specified this as a PIE 2 priority but also included it under the biennial specifications process and for possible inseason action.

31. Sablefish and Lingcod Survival Credits and Lingcod Size Limit

Because 100 percent of the IFQ species catch by trawl vessels is counted against QP (with the exception of Pacific halibut) small sablefish are being caught and retained (rather than discarded). Fishermen believe it would be of biological and economic benefit to discard small sablefish (for which some discard survival is expected) and receive credit for discard survival. With respect to lingcod, fishermen are forced to discard small lingcod because of the lingcod size limit but receive no credit for discard survival. This issue might be partially addressed by lowering or removing the lingcod size limit. Discard survival credit for lingcod could also be considered. These issues were raised during the trailing action discussion at the September Council meeting but prioritized for action as part of the biennial specifications.

Candidate Trailing Actions from September 2011 Not Prioritized for Active Status

Text for each of these items is the same as was provided at the September 2011 Council meeting.

32. Revising the Carryover Percent

“The percentage used for the carryover provision may be changed during the biennial specifications process” (*Amendment 20, Section A-2.2.2.b*). (Minor to Moderate Effort)

33. Revising the Unused QP Limits

“The vessel unused QP limits may be revisited in the first biennial specifications process after implementation of the program.” (*Amendment 20, Section A-2.2.3.e*). (Minor to Moderate Effort)

34. Revisions to the initial QS/IBQ allocations

- a. Revise the yelloweye QS allocation. (Substantial Effort)
- b. Revise the QS allocations for other overfished species--other than canary rockfish (which was revised prior to implementation), widow rockfish (see Item 12), and yelloweye rockfish (see Item 34.a.) (*September 2010 Council discussion and GAP Report*). (Substantial Effort)

- c. Revise the initial allocation of Pacific Halibut IBQ (not the intersector allocation). (Substantial Effort)

35. Observer coverage exemption when stowing gear at-sea

April 2011 Agenda Item E.6.b, EC report. (Minor to Moderate Effort)

Pot vessels often have more gear at-sea than can be carried on the vessel on a single trip. In some situation, it may be more cost-effective for vessels to move pot gear without retaining fish, if that would allow the vessel to have an exemption from the requirement to carry an observer.

36. Provisions for pot vessel activity across management lines on the same trip

Based on public comment. (Minor Effort)

When moving between management areas, it would be efficient for these vessels to pull gear and move it to the new area before delivering their fish. However, this would be considered fishing in two management areas on the same trip, which is a violation. There may also be a need for pot gear at-sea storage areas.

37. Changes to the RCA boundaries

March 2011 Agenda Item H.5.b, and April 2011 Agenda Item I.7.b, GAP Reports. (Moderate to Substantial Effort)

The GAP has proposed that boundaries of the RCA not be eliminated at this time, but be relaxed so fishermen can experiment using modified gear types in areas that are now closed to reduce bycatch and more selectively access target species.

38. Clarify difference between the “cease fishing report” for whiting and a similar report for observer program

April 2011, Agenda Item I.7.b, Supplemental NMFS Report 2. (Minor Effort)

PFMC
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