The Groundfish Advisory Subpanel (GAP) received a report from Mr. Seger and Mr. Boydstun on agenda item E.7. The GAP appreciates their excellent work on the development of the Draft Environmental Assessment (EA) on Control Limit Safe Harbors for Community Fishing Associations (CFAs) and Risk Pools.

Risk Pools

The GAP had a wide-ranging discussion on risk pools, and ultimately recommends a limited modification to the control rule to facilitate functioning of risk pools (see GAP Alternative described in detail below).

Essentially, the modification would clarify that it is not “control” of quota share for participants in qualifying risk pools to obligate quota pounds (QP) from the following year to the pool, if the purpose is solely to provide coverage to a risk pool participant who had incurred a deficit which could not be covered by the pool in the current year. We believe this satisfies concerns of risk pool proponents (i.e. negative incentives created if there is no guarantee the pool will be able to cover an overage in a given year), while carefully limiting the modification to prevent program abuse. Industry, risk pool proponents, and other GAP members were involved in collaboratively developing the GAP alternative.

Some members of the GAP feel that the action should be limited to dealing with the issue of allowing a risk pool to cure their deficit in the following year. Those members feel the need to develop risk pool regulations has not been demonstrated and adds to agency workload and administration.

GAP Alternative

The GAP supports a “limited modification” to the control rule language specifying that it does not constitute quota share (QS) control for “qualifying risk pools” to insure against catch events for specified “risk pool species” under certain circumstances, even where such agreement might otherwise exceed the QS control caps.

Limited modification –

The modification to the control language would state that it is not control of QS for participants in qualifying risk pools to obligate QP from the following year to the pool, where such obligation is only for the purposes of providing coverage to a risk pool participant who had incurred a deficit which could not be covered by the pool in the current year. Each of the individuals making up the risk pool structure, or operating under the risk pool structure, would be held to QS control limits individually.
**Option A**: Qualifying risk pool contracts would expire at the end of every calendar year, with the stipulation that QP from the following year could be obligated to the pool solely to cover overages that could not be covered by the risk pool in the year in which they were incurred. Uncoverable overages incurred in the current year would have to be covered within 30 days of quota being issued for the following year.

**Option B**: Qualifying risk pool contracts would run indefinitely, but any signatory to the risk pool agreement could opt out at the end of each calendar year subject only to satisfying its obligation.

**Qualifying risk pools** –

A qualifying risk pool is an entity developed solely to manage specified “risk pool species” (see below). This includes active and reactive risk management terms such as: Risk pool species quota pound sharing rules, harvest activity management (which may include provisions such as tie up provisions, area closures, or gear restrictions), and financial rewards and penalties over bycatch performance. Qualifying risk pools may not specify delivery terms or take any other action deemed to constitute control of QS outside of the limited modification to the control language described above.

**Risk pool species** –

Risk pool species means non-target overfished species as designated in the harvest specifications process and halibut. Currently, risk pool species are yelloweye, canary, widow, darkblotched, Pacific ocean perch, bocaccio, cowcod, and halibut.

**Eligible members** –

Qualifying risk pools are composed of limited entry trawl licensed vessel owners and quota share owners, or their representatives. Members may include (but are not limited to) independent harvesters, processors which own vessels, or quota share holders which neither process nor harvest. Entities which do not own trawl permitted vessels or quota shares may not participate in risk pool activities, including negotiations over governance structures, unless they are acting on behalf of a vessel owner(s) or quota share holder(s).

**Agents**

Risk pools may hire agents to enact and enforce the provisions of the risk pooling arrangement. These arrangements may include: monitoring vessel performance and enforcing the terms of any agreed-upon reward/penalty structure, or dictating harvesting activity with the intention of reducing bycatch. Risk pools may also form an entity which self-monitors and self-enforces the agreement rather than using a third party.
Option: Risk pools will be entitled to designate an agent for whom National Marine Fisheries Service (NMFS) will provide a “qualifying risk pool holding account” to which QP governed by the risk pool agreement may be transferred.

Qualifying Risk Pool Holding account –

Option A: Qualifying risk pools would be assigned a holding account into which all risk pool species managed by the pool would be deposited until used. No limited entry permit or vessel designation required.1

Option B: Qualifying risk pools could elect to open a holding account into which all risk pool species managed by the pool would be deposited until used. No limited entry permit or vessel designation required.

Option C: No risk pool holding accounts allowed. All qualifying risk pool QP would be held in accounts established under current program rules.

Application, oversight, enforcement, and monitoring – As a condition for receiving the privilege of forming a risk pool, the risk pool and its members agree to make public the identities of those entities participating in the risk pool and all information pertaining to the amounts of QS and QP controlled and harvested under the terms of the risk pool agreement (but not the exvessel value of such product), regardless of confidentiality protections that might otherwise restrict the release of such information.

Option A: Risk pools are able to form and function without direct acceptance of their formation agreement by NMFS and without a requirement that they submit performance reports to an oversight body such as the Council or NMFS. However, risk pool contracts must be made available to NMFS or state agencies upon request.

Option B: Risk pools are able to function only after review and acceptance of their formation agreement and related contracts by NMFS. Annual performance reports must be submitted to NMFS and provided to the Council.

Risk pool agreement –

Any risk pool contract must include standards and requirements consistent with the elements, exceptions, and criteria above. Such agreements must be signed by risk pool members and those members (names of any person or corporation) must be clearly identifiable next to the signature.

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1 Option A frees up limited entry permits for use by active fishermen. It also facilitates auditing of QP controlled by the pool and its usage. Finally, NMFS OLE states a holding account will save money to the program overall by reducing enforcement/auditing costs.
CFAs

As with risk pools, the GAP had a lengthy discussion on CFAs. The GAP considered, but ultimately rejected three potential modifications to the control rules.

The GAP considered whether a higher cumulative cap for species in aggregate (1.5-2 times the current QS limit) should be considered for CFAs. **The GAP continues to feel that higher caps for CFAs are unnecessary and would create many inequities, while also impairing program functioning overall.** Among the objections were issues surrounding the need for the exception, lack of access to fish by those not in a CFA, the fact that quota movement into one community necessarily means it leaves another, concern over community enhancement rather than mitigation, and many others. Because the GAP resoundingly rejected this modification to the control caps, we did not discuss CFA requirements.

The GAP also considered a higher accumulation limit for sablefish south of 36° to accommodate a request by the City of Morro Bay. The GAP believes that much of this fish will be landed in Morro Bay simply because it has to be caught south of 36° and there are few other viable landing options. The GAP believes Morro Bay is actually likely to benefit as a result of trawl rationalization, in the form of landings significantly above the levels to which they dropped after initial overfished species designations and the loss of the primary processor. Based on that belief, **the GAP does not support any adjustment to the sablefish cap.**

Finally, the GAP considered a more limited modification to the control language to allow CFAs to leverage multi-year landings into a port without any change to the accumulation limits themselves. In the past (November 2010 and April 2011), the GAP has stated that safe harbors for CFAs are unnecessary as a single control cap could be used to leverage additional landings into a port. However, as the draft EA makes clear, multi-year landing agreements, which may be necessary in order for communities to be able to raise the funds to purchase quota, would violate the QS control rules. After significant discussion, **the GAP rejected a modification to the control language to allow communities to form long-term leverage agreements.** The primary reasons for this were that it is unnecessary as landings can be attracted in different ways, no other fishery participants have the long-term security the communities would receive under that exemption, and it is unfair to allow one fishery participant to conduct activities in this manner while forbidding all other fishery participants from doing so.

**Recommendation Summary:**

- The GAP continues to feel that higher caps for CFAs are unnecessary and would create many inequities, while also impairing program functioning overall.
- The GAP does not support any adjustment to the sablefish cap.
- The GAP rejected a modification to the control language to allow communities to form long-term leverage agreements.
Cost Recovery

The GAP believes program costs have the potential to make or break the trawl rationalization program overall. This issue is much larger than the issue of cost recovery alone. Before delving into specific recommendations, the GAP offers the following guiding principles:

1) The Magnuson-Stevens Act, NOAA Catch Share Policy, other applicable law, and council motions to date should form the basis for determining program costs and cost recovery parameters.
2) It is critical that program costs are streamlined to the extent possible.
3) Possible future cost efficiencies should be anticipated and steps should be taken to facilitate cost reduction (e.g. If it is anticipated that a given position may no longer be necessary if the expected fleet consolidation occurs, then perhaps a contract rather than full term hire position should be considered).
4) A clear nexus to the trawl rationalization program needs to be demonstrated for all costs attributed to this program.
5) Costs should be fully transparent.
6) Cost savings from previous management should be accurately accounted for and credited to the fishery.

Based on those guiding principles, the GAP recommends that a program cost review committee be created. The GAP believes there are three strong justifications for the creation of this committee. First, the committee could be tasked with identifying total program costs. In preliminary discussions with certain agencies, it is unclear to the GAP whether certain cost requests should be attributable to the trawl rationalization program, or whether they are better formulated as general groundfish management costs. Second, there is clearly a great deal of disagreement and confusion about what constitutes incremental costs. The committee could be tasked with reviewing the applicable law and policy and recommending appropriate incremental costs to the council. Finally, the committee could be tasked with identifying long term cost efficiencies which could run the gamut from changes in fleet behavior to bring costs down to how to structure program management so it is flexible to anticipated changes rather than locking in significant cost increases.

CFAs Recommendation Summary:

- The GAP recommends that a program cost committee be created. The committee could be tasked with:
  - Identifying total program costs.
  - Reviewing the applicable law and policy and recommending appropriate incremental costs to the council.
  - Identifying long term cost efficiencies

On the specific issues raised in Agenda Item E.7.b, Supplemental NMFS Report 2, the GAP offers the following recommendations.
1) Should the cost recovery program be developed for the trawl fishery as a whole or further subdivided?

The GAP recommends option a.

   a. Development of separate cost recovery programs for each sector is consistent with our previous recommendations and is the most equitable option.

2) What entity should pay the fee?

The GAP recommends:

   • For the CP Sector: Option a
     o Charge each vessel based on the value of whiting harvested by that vessel.
   • For the MS Sector: Option b (as modified).
     o Charge each mothership based on the ex-vessel value of whiting processed received by that MS
   • For the shorebased IFQ Sector: Option b.
     o Charge each first receiver based on the ex-vessel value of IFQ species processed.

These options are in line with the pre-existing buyback structure (50 C.F.R. 600.1013). Duplicating the existing process will be most efficient.

3) How should fee collection be structured?

   • For the CP Sector: The GAP recommends Option a
     o Bill entity chosen under #2 in last quarter of the calendar year.
   • For the MS Sector: The GAP recommends Option b.
     o Bill entity chosen under #2 in last quarter of the calendar year.
   • For the Shorebased IFQ Sector: The GAP recommends Option b.
     o Fishermen billed at time of landing by first receiver, and collected monthly by the Agency in coordination with the buyback fee.

As in #2 above, this is in line with the buyback process (50 C.F.R. 600.1014) and will be most efficient.

4) Linkage to permitting requirements?

   • For all Sectors: The GAP recommends Option a.
The GAP is concerned with the potential for a fisherman to be unfairly penalized if his cost recovery fee is deducted by the buyer (as is the case with buyback fees), but is not paid by that buyer to NMFS.

5) How are agency costs identified? (depends on choice made in #1)
   • The GAP believes the issue of cost identification is premature. If it is clear costs will be well over 3% for the shoreside quota share program, then a quick, inexpensive cost recovery identification process makes sense. The GAP believes that is not yet clear and this decision should be made after the review committee has completed its tasks. once this becomes more clear.

6) How is the ex-vessel value of the fish harvested under the LAPP calculated to insure fee does not exceed 3%?
   • For the CP sector: The GAP recommends Option c.
   • For the MS Sector: The GAP recommends a new option, which would calculate the fee based on information from the buyback form as is done in option c for the shoreside sector. This will be easiest administratively.
   • For the shoreside sector: The GAP recommends Option c.

PFMC
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