

Eligibility to Own IFQ
Council Staff Report to the GAC on Trailing Action Considerations

Current Preferred Option - Any U.S. citizen or legal entity¹

Any individual or legal entity eligible to own a U.S.-documented fishing vessel² is also eligible to own IFQ. The IFQ owner need not actually own a U.S.-documented fishing vessel to own quota shares or quota pounds. This option is the most open and flexible, but does not require any connection to fishing in order to own IFQ. Quota shares would behave more like shares of stock in a company, which anyone can own, and could be bought, sold or traded through a broker.

November 2008 Council Decision: *The Council moved to initiate a trailing action process to require eligibility criteria to own or hold QS (e.g., ownership interest in a vessel or permit) to help ensure that QS holders have direct ties or investments in the fishery. Requirements should not be so onerous so as to preclude or discourage crew members, for example, from acquiring QS and entering the fishery.*

Proposed Focus of Additional Analysis

General

During scoping, a flexible ownership eligibility alternative was offered as a simple alternative to developing myriad options for communities, crew, and other groups to own IFQ. **To greatly restrict the ownership eligibility now, would require a re-examination of the possible owner-groups who may wish to obtain IFQ and the rationale for other provisions of the program.** For example, one of the rationales for not specifically allocating to communities was that, if they wished to be involved, communities could acquire IFQ. For crew members no special provisions were provided to facilitate new entry because they would be able to make incremental investments in the acquisition of IFQ.

Initial allocation currently is to LE permit holders (SS whiting and non-whiting IFQ), processors (SS whiting IFQ only) and undefined entities (adaptive management IFQ).

¹ Exact language in A-2.2.3 on who is eligible to own quota shares is: “(i) any person or entity eligible to own and control a US fishing vessel with a fishery endorsement pursuant to 46 USC 12113 (general fishery endorsement requirements and 75% citizenship requirement for entities) and (ii) any person or entity that owns a mothership that participated in the west coast groundfish fishery during the allocation period and is eligible to own or control that US fishing vessel with a fishery endorsement pursuant to Sections 203(g) and 213(g) of the American Fisheries Act (AFA).”

² Originally, AFA exceptions were included to ensure that all current participants would be allowed to continue in the fishery under trawl rationalization. However; it is our understanding that due to changing ownership structures in the fishery this exception would no longer be needed.

For consistency with current provisions, those receiving an initial allocation should also be legally eligible to own IFQ. For ease of trading and tracking, **the simpler the eligible to own definition is the easier it will be to monitor and enforce** the eligible to own provision.

Alternative 1. Tie IFQ ownership to the fishery via a listing of eligible owners.

Those eligible to own IFQ could include harvesters, processors, crew members, fishing/coastal communities and/or entities that represent communities (such as a community fishing associations), states, local governments, and non-governmental organizations with a fishery-related connection. **This option would provide a great deal of flexibility in who can own IFQ while still requiring some kind of tie between the quota share holder and the act of harvesting.** If separate categories of participants are created, the Council may want to be sure that the qualification to be a member of that group cannot be contrived. For example, if only the purchase of a state processing license is required to qualify as a processor, the purchase of such licenses by entities that never process might become widespread.

Potential Additional Analysis Not Currently in Queue

In relation to the eligible to own topic, there has been discussion of other potential alternatives that are not currently in queue for further development or analysis.

One potential alternative is an “owner on board” provision, as has been used in the Alaska halibut/sablefish fishery (see below). An “owner on board” provision would be problematic in a multi-species IFQ fishery with transferable QS in that the QS of various species initially allocated to an owner may ultimately be fished on several vessels. Furthermore, the initial allocation of some QS in the shoreside whiting fishery to processors makes an owner on board provision somewhat complicated.

Additionally, in the Alaska halibut/sablefish³ IFQ fishery, only individuals are eligible to own IFQ; however, for liability protection an individual can form a limited liability company after purchasing IFQ. There was a grandfather clause for corporations existing at the time of initial allocation. Many west coast harvesting businesses are organized as corporations and partnerships. To use the Alaska halibut/sablefish approach, the west coast groundfish IFQ would have to be held outside the corporate/partnership structure.

Another alternative discussed is a “use or lose” provision. This provision was discussed at length in the TIQC, where several problematic aspects were discussed. Further, the Council did not select this alternative from the preliminary DEIS, where analysis was presented.

³ Those who are eligible to own quota shares in halibut/sablefish are either 1) individuals with an initial allocation, 2) individuals with proven crew experience in any U.S. commercial fishery for at least 150 days, or 3) an eligible community non-profit. The community non-profit can hold quota shares, but must lease out annual quota pounds to community residents. Of the 27 eligible Gulf of Alaska communities, 20 have formed a non-profit; however, only one community non-profit is functional. Many do not have the funds to buy quota shares, while others lack organizational infrastructure.