

MISCELLANEOUS REMAINING ISSUES

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Amendment 20

Eligible to Own Language

At its March meeting, the Council directed that the language on eligibility to own be adjusted as needed to (1) ensure that it is consistent with the Magnusen-Stevens Act (MSA), (2) ensure that it is consistent with the Amendment 6 license limitation program, and (3) include resident legal aliens among those eligible to own individual fishing quota (IFQ). At that time, the Council also indicated its desire to review that language when it is drafted. Based on these instructions the following language is presented for Council review.

No person can acquire quota shares or quota pounds other than 1) a United States citizen, 2) a permanent resident alien, or 3) a corporation, partnership, or other entity established under the laws of the United States or any State, that is 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).

The text below explains how the new eligible to own language above combined language in the Council’s current preferred alternative, and the MSA statutory language adopted after the Council developed the current preferred alternative.

- 1) This language adds to the Council preferred alternative the provision that a corporation, partnership or other entity must be established under the laws of the US or a State. We need to put this in to make it consistent with the law.
- 2) This languages continues to contain the language that restricts entities to ones that are eligible to own a US fishing vessel, which is in the Council’s current proposal, but not inconsistent with MSA law.
- 3) This language states that a permanent resident alien can own privileges. This language comes from the statute [MSA].
- 4) This does not contain the final language from the Council’s preferred alternative regarding mothership ownership under the American Fisheries Act (AFA). We understand that is not longer needed. If it is needed, it could be included, but you should restrict it to “any entity” rather than “any person or entity”, because, if it is a person who is not a US citizen or resident alien we don’t think they could be included.

Since this excludes entities formed under US or State law who cannot own fishing vessels, there should be some discussion of why they are not “substantial participants” in the fishery. See 303A(c)(5)(E). Additionally, if for some reason the Council wants to exclude permanent resident aliens, we would need a discussion of why they are not “substantial participants.”

See Agenda Item E.10,b GAC Report for the Groundfish Allocation Committee (GAC) recommendation to the Council regarding the proposed eligible to own language.

Carry-over and ACLs

With regard to the carry-over provision in the trawl rationalization program, the Council should be made aware of two potential issues with 1) changes in the optimum yield, and 2) working under the new annual catch limits policies.

- 1) Each individual trawl vessel account will be able to carry-over up to 10 percent of the total quota pounds (QP) held in its account during that year. If collectively the shoreside trawl sector had 10 percent unused QP and chose to use that in the following year AND the optimum yield (OY) goes down drastically, the collective effect of the carry-over could have unintended consequences. The Groundfish Management Team (GMT) and Scientific and Statistical Committee (SSC) have previously recommended that the Council consider modifying the carryover provision. For example, if the OY goes down substantially carry-over QP would be reduced by the same percentage as the OY decrease.
- 2) It is not clear from the new NS1 guidelines that the 10 percent carry-over would be allowed, because it could cause a species to exceed the annual catch limits (ACLs) in a given year. When setting ACLs for trawl dominant, fully exploited species the Council will need to consider the carry-over policy and how that will fit with the ACLs. Buffers might be used to account for a potential carry-over overage risk. As a next step, the Council may wish to identify this issue as a consideration that will need to be addressed when developing Groundfish Fishery Management Plan Amendment 23 – Annual Catch Limits.

Exclusion of Spiny Dogfish From the IFQ Program

In its November 2008 action, the Council excluded from the IFQ program a number of groundfish species that were taken in minimal amounts in the trawl fishery and one that is taken in larger quantities, spiny dogfish. However, the “Other Fish” category was maintained as part of the IFQ program.

The “Other Fish” stock complex contains all the unassessed Groundfish FMP species that are neither rockfish (family *Scorpaenidae*) nor flatfish. It includes dofish (Table 1). While there have been proposals in the past to remove dogfish from the “Other Fish” category it still remains part of that category.

Table 1. Groundfish species included under “Other Fish”	
Big skate, California skate, Leopard shark, Soupfin shark, Spiny dogfish, Finescale codling,	Pacific rattail, Ratfish, Cabezon (north of the California-Oregon border at 42E N latitude), and Kelp greenling

Therefore, the Council direction to include “Other Fish” but exclude dogfish needs to be addressed. There seem to be a number of possible approaches for resolving this issue.

1. Keep dogfish together with “Other Fish”
 - Exclude “Other Fish” from the IFQ program.
 - Include “Other Fish” under the IFQ program.
2. Separate dogfish from “Other Fish” and
 - Exclude dogfish from the IFQ program but include “Other Fish”
 - Include dogfish under the IFQ program as an IFQ management unit separate from “Other Fish”

Under the second set of approaches dogfish would have to be split out from “Other Fish” during the next biennial management cycle or some other method used to derive an amount of dogfish for the trawl fishery. There are a number of challenges that are entailed in a separation of dogfish from “Other Fish” at this time, including the lack of a biological basis for such a separation and the possible need that would be created to develop standards and criteria for dogfish that meet the requirements of National Standard 1. For these reasons, the focus here is on the options that keep dogfish with all other unassessed species in a single management unit (as part of “Other Fish”).

The following is background that may be useful in considering this issue .

- There is some targeting by trawlers on the “Other Fish” category Table 2 and Table 3.
- Gear switching opportunities mean that the effects of IFQ coverage needs to be considered not just with respect to the potential for trawl gear to target each species but also with respect to the opportunity to use other types of vessels and gears (e.g. surplus trawl permits transferred to nontrawl vessels and fished under the IFQ program).
- For any species within the “Other Fish” category conservation protection may be somewhat limited. For example, if IFQ is issued for “Other Fish” and a high value skate fishery develops, much of the “Other Fish” IFQ might be purchased by vessel’s which would use it to increase target on skate, changing the mix of species harvested under the category.
- The OY for this group is typically substantially under-harvested. For 2007, the observer program reports that only 62% of the “Other Fish” OY was caught (including discards, see Table 2). Depending on the amount of “Other Fish” allocated to the trawl fishery,

current under-harvest could create opportunity to increase targeting on one species without substantially diminishing the opportunity of other vessels to hold the IFQ needed to cover incidental catch of other species in the category.

- Landings for the “Other Fish” category have been relatively stable, except for reported tribal deliveries.
- Under status quo regulations, there are no limits on “Other Fish” for any commercial gear group. For dogfish there are 2-month landing limits of 100,000 to 200,000 pounds, depending on the period. The dogfish limits are the same for all commercial sectors.
- There are several elasmobranchs in the other fish category. They have a life history such that they typically cannot handle much fishing pressure and they are the focus of some targeting activity.
- There are observer program estimates of “Other Fish” bycatch that might be used to estimate needs for trawl vessels but the estimates for other sectors may be more limited.
- There will be 100% observer coverage under the IFQ program. Therefore, the fleet of trawl licenses vessels will be fully accountable for its “Other Fish” catch, including dogfish, regardless of how catch is controlled. Without sector allocations there may be more management flexibility than if sector allocations are made and there is a split out for trawl IFQ.

Table 2 “Other Fish” ABCs, OYs, and catch by sector for 2007.

	2007	
	MT	% of OY
ABC	14,600	200%
OY	7,300	100%
Total Estimated Catch (mt)	4,516	62%
Shoreside Trawl		
Kelp Greenling	-	0%
Dogfish	703	10%
Skates (including longnose) ^a	1,940	27%
Other	584	8%
Total	3,227	44%
All Other Commercial and Tribal		
Kelp Greenling	20	0%
Dogfish	782	11%
Skates (including longnose)	246	3%
Other	109	1%
Total	1,157	16%
Recreational		
Kelp Greenling	32	0%
Dogfish	5	0%
Skates (including longnose)	2	0%
Other	31	0%
Total	70	1%
Totals Including Research		
Kelp Greenling	52	1%
Dogfish	1,503	21%
Skates (including longnose)	2,194	30%
Other	765	10%
Total	4514	62%

^a Longnose skate has since been moved out of the “Other Fish” category.

Table 3 “Other Fish” groundfish landings in metric tons (including Spiny dogfish and longnose skate)

	2001	2002	2003	2004	2005	2006	2007	2008
WA	579	860	439	398	473	382	412	557
OR	237	261	254	119	104	110	94	142
CA	471	405	439	348	311	288	228	222
Total	1,288	1,526	1,131	865	887	780	734	922
LE Trawl	581	650	425	266	321	215	201	195
LE Fixed Gear	293	480	246	159	261	213	221	209
Other Gear	216	226	232	274	163	122	110	134
Recreational*	197	168	224	125	136	154	82	81
Tribal	0	1	4	40	6	77	119	302

* RecFIN type "A" landings only.

Table 4. Spiny dogfish landings in metric tons.

	2001	2002	2003	2004	2005	2006	2007	2008
WA	544	850	429	386	457	370	404	551
OR	21	15	10	5	4	9	9	42
CA	12	25	29	30	12	18	15	47
Total	578	890	469	421	473	398	428	640
LE Trawl	346	466	201	155	222	119	108	128
LE Fixed Gear	216	404	193	131	230	191	195	180
Other Gear	4	5	53	91	11	7	2	27
Recreational	11	14	18	2	4	4	3	2
Tribal	0	1	4	40	6	77	119	302

* RecFIN type "A" landings only.

Impacts of Each Approach

In considering advantages and disadvantages, status quo conditions should be kept in mind as a reference point. Currently

- stocks in the “Other Fish” category are unassessed
- the “Other Fish” OY is substantially under harvested
- there are no trip limits on “Other Fish,” but there are trip limits on dogfish

Option 1: Dogfish as Part of “Other Fish” Under IFQs

Impact Category	Description of Effect
Biological Protection	<p>Protection for any species within the complex is somewhat limited because the “Other Fish” OY is under harvested and there is substantial potential to shift targeting among species.</p> <p>If it is determined that an undesirable effort shift is occurring, 2-month cumulative limits could be imposed to discourage targeting.</p> <p>A 2-month <u>landing</u> limit could achieve the effect of reducing targeting without inhibiting the flexibility provided by the IFQ program. On the other hand, a 2 month <u>catch</u> limit could reduce that flexibility.</p>
Potential Fishery Constraint	Depends on amount of “Other Fish” allocated to trawl relative to need (observer program catch estimates are available) and amounts left for other sectors.
Economic Development and Efficiency	If markets develop and harvest grows to the point where restrictions are needed, IFQs provide more flexibility for continued fishery development than a 2-month cumulative trip limit.
Contingency Considerations	If an assessment is developed for dogfish and it is split out from “Other Fish,” under the rules of the IFQ program all “Other Fish” QS holders would receive a comparable share of the dogfish QS (i.e. a person holding 1% of the “Other Fish” QS would receive 1% of the dogfish QS).

Option 2: Dogfish as Part of “Other Fish” Not Under IFQs

Impact Category	Description of Effect
Biological Protection	<p>Similar to status quo, including opportunity to impose cumulative limits as needed.</p> <p>See Option 1 for a discussion of the differential effects of cumulative landing and catch limits.</p>
Potential Fishery Constraint	Depends on whether cumulative limits are imposed. Greater flexibility to adjust limits if there is not a sector allocation.
Economic Development and Efficiency	If markets develop and harvest grows to the point where restrictions are needed, a 2-month cumulative limit on “Other Fish” or a species within the complex may constrain and even set back development of the fishery.
Contingency Considerations	If IFQs are needed in the future a new allocation formula will need to be developed (permit based allocation formulas will be of limited relevance after QS trading begins).

Another approach would be to figure out a way to split dogfish from “Other Fish” in the upcoming biennial specifications process. The following table lists some of the effects of managing “Other Fish” with IFQs but not dogfish.

Separate Dogfish from “Other Fish” and Only Manage “Other Fish” under IFQs.

Impact Category	Description of Effect
Biological Protection	<p>Dogfish: Similar to status quo, including 2-month cumulative limits.</p> <p>Remaining “Other Fish”: Similar to Option 1.</p>
Potential Fishery Constraint	<p>Dogfish: Greater flexibility to adjust limits if there is not a sector allocation.</p> <p>Remaining “Other Fish”: Depends on amount allocated to trawl relative to need (observer program catch estimates are available) and amounts left for other sectors.</p>
Economic Development and Efficiency	<p>Dogfish: Under status quo 2-month limits are already in place to control targeting.</p> <p>Remaining “Other Fish”: Same as Option 1.</p>
Contingency Considerations	<p>Dogfish: If IFQs are needed in the future a new allocation formula will need to be developed (permit based allocation formulas will be of limited relevance after QS trading begins).</p>

Measurement of Catch History in the Mothership Whiting Co-op Alternative

The IFQ program specifies that the initial allocation formulas will measure catch history in “relative pounds” (i.e. an entity’s catch history for a particular year will be measured as its share (%) of the total catch for that year rather than the total pounds for the year). When the co-op alternatives were presented they were silent on this issue, indicating only that catch history would be evaluated. When this issue was raised with the TIQC in the context of both the shoreside and mothership co-ops, those present at the time indicated they did not want the complexity of using relative pounds for the co-op alternatives. The analysis proceeded assuming that catch history for a permit would be measured as a straight sum of the pounds across all years.

Recently, members of industry have come forward stating that it was their understanding that relative pounds were to be used for the co-op alternative and noting that while the document does not say that relative pounds would be used it also does not indicate that catch history would be measured in a straight summing of pounds.

Summary of Analysis of Measuring Catch History Using Relative Pounds (Annual Shares) (From Appendix A of the EIS)

The impact of using a relative history (annual shares) to calculate an allocation is to weight each year’s catch by the ratios displayed in Table A-58. For example, a pound of whiting caught in the mothership sector in 1998 would give a permit about half as much credit toward an allocation as a pound caught in 2003.

Table A-58 (Rows Excerpted from EIS). Illustration of relative lb “weights” (sector catch in year 2003 divided by annual catch): 1994 to 2004.

Stocks or Stock Complex	1994	1995	1996	1997	1998	1999	2000	2001	2002	2003	2004
Pacific Whiting											
Shoreside Whiting	0.70	0.68	0.62	0.59	0.58	0.61	0.60	0.70	1.12	1.00	0.55
At-Sea Whiting (MS)	0.46	0.79	0.58	0.53	0.52	0.55	0.61	0.73	0.98	1.00	1.08
At-Sea Whiting (CP)	0.48	0.67	0.63	0.58	0.59	0.61	0.61	0.70	1.13	1.00	0.56

On the one hand, relative history may be considered more fair and equitable because it weighs each vessel’s performance each year based on how it did in its competition with the rest of the fleet given the opportunities present that year (its relative effort level). On the other hand, the amount and distribution of private and community capital involved in the fishery may be more related to total harvests than the proportion of harvest each year. It should also be noted that under a relative weighting scheme, as compared to a straight summing scheme, catch histories that diverge from the pattern exhibited by the entire fleet tend to be rewarded when determining an initial allocation.

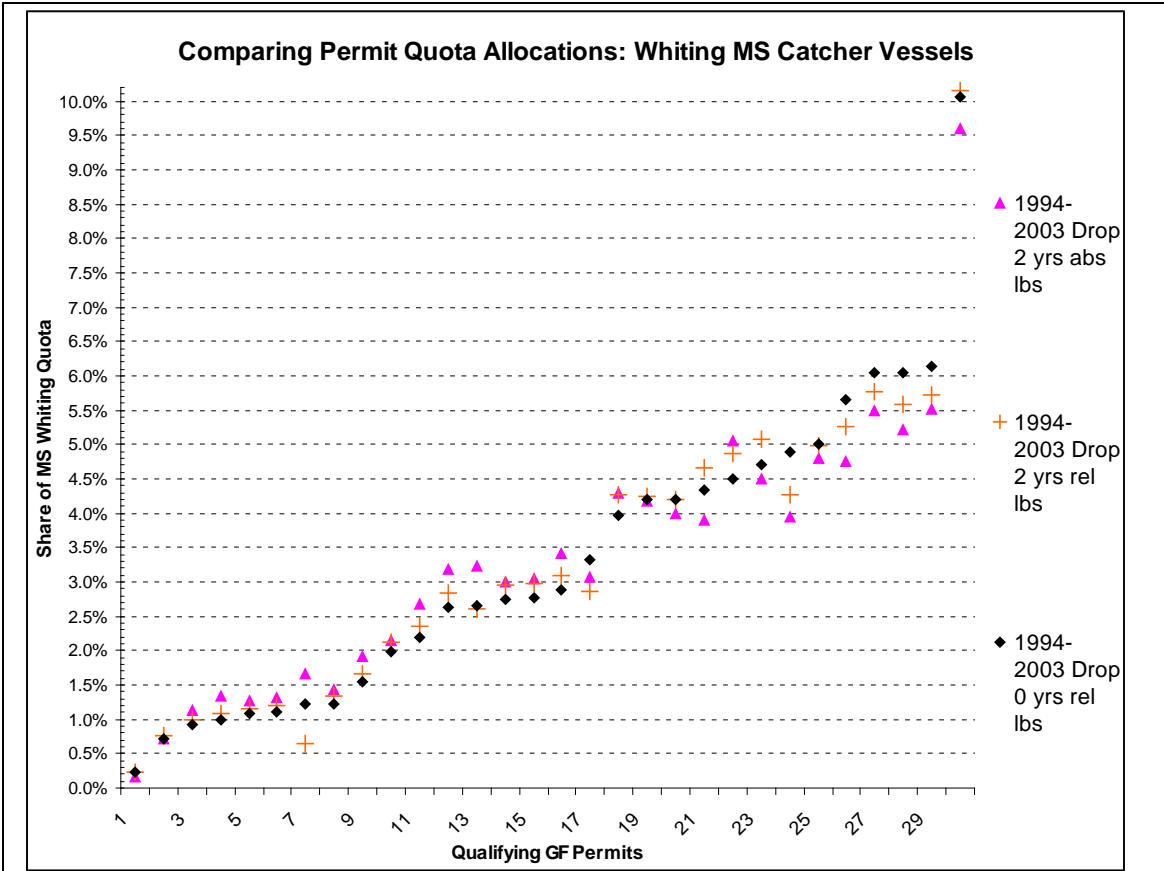
The relative pounds (annual share) measure of history puts a heavier emphasis on more recent landing history because landings of whiting have declined during the 1994-2003 allocation period. This may be consistent with MSA language that encourages consideration of current harvests when making an initial allocation. Increasing the emphasis on more recent years through the mechanism of relative weighting could better reflect the distribution of capital and labor in the fishery, depending on how long the capital persists in a particular use after the

investment is made. The MSA also encourages consideration of historic harvests. In a situation where the harvest in recent years has diminished, such as is the situation here, recent year harvest could be less of a driver of the current distributions of capital than older history. Because capital is generally a long lived asset, harvests during years of higher production may drive the current distribution of capital in the fishery more than years of lower harvest, even if those higher years of harvest were in the more distant past.

Alignment of the initial allocation to existing patterns of investment and participation in the fishery reduces disruption to labor, capital, the fishing sector and communities. Reduced disruption implies greater net benefits because there will be less need for transactions to bring the distribution of capital and labor into line with the distribution of QS.

Additional Analysis

A choice to use relative pounds (annual shares) will benefit those expected to receive the largest amount of the initial allocation (those with the most catch history) while a choice to use a straight summing of the pounds (absolute pounds) will tend to benefit those that would receive a lesser initial allocation (Figure 1). This pattern of effect on initial allocation is likely a result of a harvest pattern whereby those receiving more have a greater catch history from having participated more consistently over a larger number of years (including significant participation in more recent years) while those receiving less tend to have stronger participation in earlier years relative to their participation in more recent years.



Mothership whiting sector permit allocation formulas:

- ▲ 1994-2003 catch history, at least 500 mt, use absolute lbs, drop lowest 2 years.
- + 1994-2003 catch history, at least 500 mt, use relative lbs, drop lowest 2 years.
- ◆ 1994-2003 catch history, at least 500 mt, use relative lbs, no drop years.

Figure 1. Effect of the choice between using relative pounds (shares) and absolute pounds (straight sum of pounds) on the allocations to individual permits.

Amendment 21

Application of Amendment 21 Action on Halibut to Amendment 20 IBQ Limits

An adjustment is needed to make Amendment 20 (trawl rationalization) consistent with the Council final action on Amendment 21 (intersector allocation). The Amendment 20 individual bycatch quota (IBQ) provisions had been based on a limit on an individual vessel’s bycatch catch, while the final alternative adopted in Amendment 21 infers a limit on an individual vessel’s halibut mortality.

Under a catch based IBQ, fleet average bycatch mortality rates would be used to adjust the amount of IBQ issued to ensure that fleet mortality limits are not exceeded. Under an IBQ

provision based on individual vessel mortality, individual vessel bycatch mortality estimates would be based on condition of the fish at time of discard.

Under Amendment 21 a number of halibut allocation alternatives were presented. The analysis of the alternative selected by the Council (Alternative 4) indicated that it was the only alternative which addressed all of the objectives, including the provision of incentives to reduce bycatch mortality (not just reduce bycatch). On this basis, the Amendment 21 action is interpreted to signal the Council's intent that the Amendment 20 IBQ provisions should apply to halibut mortality rather than halibut catch. Applying IBQ to vessel specific mortality will require that observers record the weight and survival viability for each halibut a vessel catches and that the estimated mortality be fed into the catch/QP accounting system.

The Amendment 20 language and analysis needs to be modified to reflect the Amendment 21 action. The GAC reviewed this issue at its May meeting and concurred that such a modification should be made.