

COMMERCIAL FISHERY PERMIT ELIGIBILITY

Agenda Item C.7
June 2018 Council Meeting



Federal Permits under Council FMPs

- Groundfish Limited Entry - Amendment 6 (1992)
- CPS Limited Entry - Amendment 8 (2000)
- HMS General Commercial - FMP (2004)
- Groundfish Quota Share - Amendment 20 (2011)
- DGN Limited Entry - Amendment 5 (2018)



Basis of Eligibility Restriction

- Cross references to 46 U.S.C. Chapter 121 Documentation of Vessels
- In addition to permit eligibility, definition of “person” — “eligible to own a documented vessel” under the terms of Chapter 121
- Cited sections
 - CPS & HMS, “person” and permit eligibility: section 12102(a) Vessels requiring documentation (erroneous?)
 - Groundfish “person”: section 12103(b) Eligible owners
 - Groundfish permits: section 12113 Fishery endorsement
- No matter the referenced section, internal references to 12103(b)



46 USC 12103 (b): Eligibility to Own a Documented Vessel

...the following are eligible owners:

- 1) An individual who is a citizen of the United States.
- (2) An association, trust, joint venture, or other entity if— (A) each of its members is a citizen of the United States; and (B) it is capable of holding title to a vessel under the laws of the United States or a State.
- (3) A partnership if— (A) each general partner is a citizen of the United States; and (B) the controlling interest in the partnership is owned by citizens of the United States.
- (4) A corporation if— (A) it is incorporated under the laws of the United States or a State; (B) its chief executive officer, by whatever title, and the chairman of its board of directors are citizens of the United States; and (C) no more of its directors are noncitizens than a minority of the number necessary to constitute a quorum.
- (5) The United States Government.
- (6) The government of a State.



Council Intent

- Groundfish LE Permit: “anyone not eligible to purchase a U.S. fishing vessel ... not ... allowed to acquire a groundfish LE permit” and “limit foreign ownership to the maximum extent allowable under the law.” Intent to exclude permanent resident aliens not explicit.
- Groundfish QS Permit: Intent for citizens and permanent resident aliens to be eligible. However, regulations limit to citizens only.
- CPS LE permit: Amendment 8 includes eligibility language as “suboption” but no rationale provided.
- HMS general permit: Eligibility not discussed in FMP
- DGN LE permit: Eligibility based on possession of CA state DGN permit; foreign ownership allowed.



Other Regions and States

- In most cases permit regulations in other regions do not describe requirements restricting eligibility based on citizenship. Exceptions:
 - Gulf aquaculture permit: U.S. citizens and permanent resident aliens
 - HI longline limited access permit, language identical to CPS/HMS regulations
 - American Samoa limited access permit: U.S. national or U.S. citizen
 - Alaska region: Only U.S. citizens
- Three West Coast states appear not to restrict eligibility based on citizenship



Conclusions

- MSA does not preclude non-citizen eligibility, consistent with other laws
- Council intent ranges from reasonably clear (Groundfish LE and QS permits) to non-existent (HMS general permit)
- To the degree the Council has expressed an intent on permit eligibility, regulations have not always faithfully implemented it
- Lack of consistency in regulatory language product of no blanket policy; eligibility limit may be an institutional “tradition” begun with 1992 groundfish LE permit
- Not clear that referencing 46 USC 121 is necessary or ideal way to frame eligibility requirement
- HMS general permit different from others; does not confer privilege
- Scope of action could be narrow to broad



Potential Options

- Eliminate the citizenship-based eligibility requirement entirely.
- Expand eligibility to include lawful permanent resident aliens. This status includes American Indians born in Canada lawfully residing in the U.S. pursuant to the Jay Treaty.
- Address the specific circumstance of the petitioner by making American Indians born in Canada lawfully residing in the U.S. eligible.

