

*October 2019*

## **NATIONAL MARINE FISHERIES SERVICE (NMFS) REPORT**

NMFS provides the following comments and feedback on the alternatives under consideration by the Sablefish Management and Trawl Allocation Attainment Committee (SaMTAAC).

### **Sunset Provisions**

Alternatives 1 and 3 contain options for sunset provisions. NMFS recommends that the SaMTAAC develop justification for the sunset provisions and the objectives/criteria against which an end or a continuation of a program would be decided upon at the time of the sunset. Otherwise, it is difficult to evaluate the benefits of a sunset provision and the timeframe within which we would be able to evaluate specific results.

Sunset provisions create uncertainty for program participants and require Council floor time to either confirm or modify program elements. The Council can revisit program elements at any time should there be concerns that the original purpose and need for action is not being met or if unintended consequences have developed since implementation of such an action. Therefore, in lieu of a sunset provision, NMFS recommends that the SaMTAAC consider establishing a timeframe for evaluating the performance of the action and considering modifications, as necessary. Such an evaluation could be identified as a priority for the next or subsequent review of the Rationalization Program (slated for 2022) or allocation review.<sup>1</sup>

### **Discards**

Under Alternative 4, vessels that are ineligible for gear switching must discard northern sablefish caught with fixed gear, which reduces consistency with National Standard 9 - minimize bycatch to the extent practicable and Objective 3 of the Trawl Rationalization Program<sup>2</sup> - promote practices that reduce bycatch, discard mortality, and minimize ecological impacts. All actions require a balancing act of sometimes conflicting goals, however, those tradeoffs should be made explicit. For example, if an alternative would be less successful in achieving a particular objective, we would expect that the tradeoff is that it better addresses another objective. Since required discarding is the primary difference between Alternatives 3 and 4, NMFS recommends the SaMTAAC determine the goal or objective that requiring discards would fulfill, as compared to allowing some limited bycatch retention as under Alternative 3.

---

<sup>1</sup> <http://www.pcouncil.org/wp-content/uploads/cop27.pdf>

<sup>2</sup> [https://www.pcouncil.org/wp-content/uploads/1\\_Pacific-Coast-Groundfish-Limited-Entry-Trawl-Fishery-FEIS.pdf](https://www.pcouncil.org/wp-content/uploads/1_Pacific-Coast-Groundfish-Limited-Entry-Trawl-Fishery-FEIS.pdf)

### **Quota Pound (QP) Debiting**

In Alternative 1, the vessel would provide direction to the buyer or first receiver regarding the preferred QP debiting structure (e.g., debit against unrestricted or trawl only). The proposed method under Alternative 1 could have the potential to create fish ticket correction issues that are an unnecessary burden for the states and Pacific States Marine Fisheries Commission.

Another option to determine which sablefish QP are debited would be to develop a formulaic approach established in the IFQ database system. Under such an approach, all sablefish landed with trawl gear would be automatically debited as “trawl-only” QP, until that QP type is fully utilized (or following the annual QP conversion date). All sablefish landed with fixed gear would be debited as unrestricted “any-gear” QP, since that is the only type of QP that could be used with fixed gear. This approach trades some operational flexibility provided by Alternative 1, but could prevent unnecessary complications to the offloading process and reduce the burden of fish ticket submission for first receivers. A standard formulaic approach to gear-specific QP would be the most simple to implement, reduce administrative costs, and reduce potential fish ticket bookkeeping complexity.

### **Using QS Accounts for Determining Initial Eligibility for Gear Switching Provisions**

Over the summer, NMFS received a detailed presentation from Mr. Corey Niles from Washington Department of Fish and Wildlife on the development and mechanics of the “QS Proportional Method”.<sup>3</sup> This methodology is a departure from previously approved methods used by the WCR for issuing endorsements, determining qualifications, or establishing eligibility for the receipt of fishing privileges. Further, the methodology has potential data confidentiality issues as outlined below. NMFS and General Counsel continue to review the methodology, evaluate the underlying assumptions, and will provide additional feedback at the October meeting. In the interim, we offer the following thoughts.

In past actions where fishery privileges were issued, eligibility was based on fishing activity tied to a specific vessel or permit (i.e., issuance of limited entry permits, endorsements on permits, or quota shares). The information upon which those eligibility decisions were made were fish tickets and logbooks, which reflect business decisions made in connection with that vessel and or permit. New owners could contact previous owners to request confidential information on the full history of their vessel or permit. This information could allow the current owner to review NMFS’ assessment of their vessel or permit qualifications, and make appeals as necessary. In a typical allocation, NMFS provides fishery participants with the full data record upon which the determination was based to allow each participant to review the information and supplement if data is missing or was incorrect. For the QS Proportional Method, the number of individuals that would need to be contacted to release information to applicants could be challenging as well as pose confidentiality issues associated with releasing the identity of other owners.

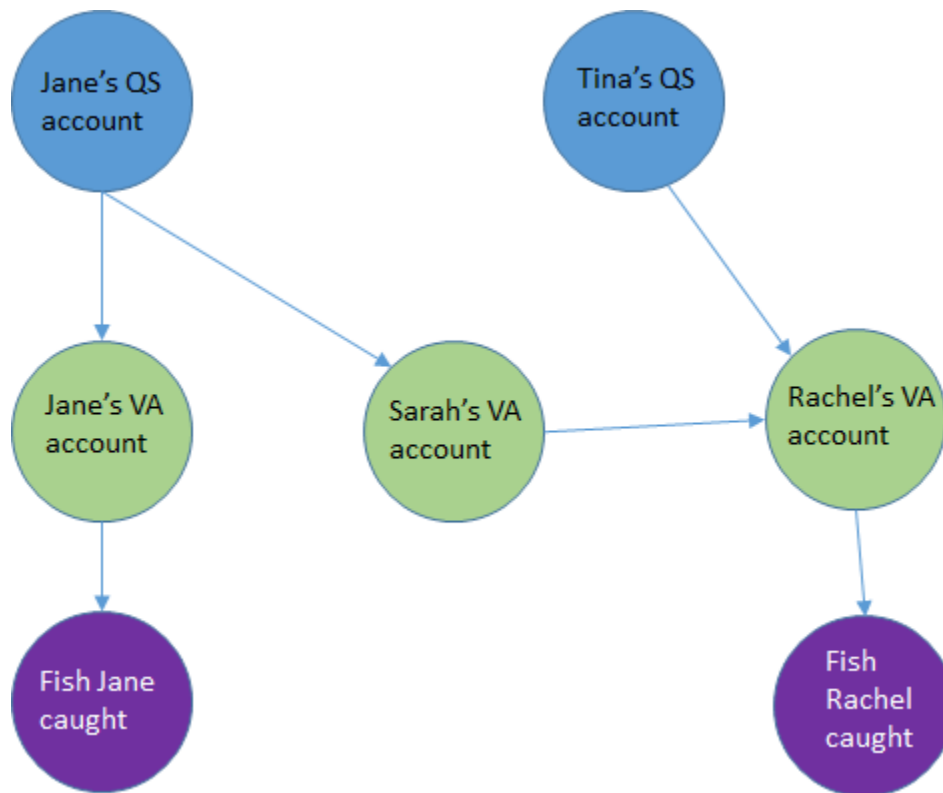
In contrast, the QS Proportional Method would be based on ownership of QS accounts linked both directly and indirectly to fishing activity, the ultimate eligibility decisions being the result of both that QS account holder’s business decisions and other QS account or vessel account holder’s business decisions. Thus, some QS account holders could be granted gear switching privileges for investments and activity of other unrelated participants. This effect of the

---

<sup>3</sup> Actual name is still under discussion.

methodology could also complicate fairness and equity considerations under National Standard 4. The Council would need to explain why it is fair and equitable (and not arbitrary) to award fishing privileges to account holders based on business or personal decisions made by unrelated QS account or vessel account holders to whom they have transferred QP without advanced notice. Additionally, this methodology creates a data confidentiality issue under the Administrative Procedures Act and the Magnuson-Stevens Act (MSA) because the “eligibility scores” rely in part on difficult to access business data of other participants in the fishery.

*Example:*



In the example above, Jane’s QS account “gear switching score” is based upon QP transfers between 3 vessel accounts (VA) and two different vessels. Under the MSA’s confidentiality restrictions, NMFS can usually only provide Jane the data on her QP transfer from her QS account to her VA account, the fish she ultimately caught, and her QP transfer to Sarah’s VA account. Once Jane has transferred her QP to Sarah, Jane would not get access to any further transfer data of the QP or the ultimate disposition of the QP (e.g., whether it was fished and with what gear type). Thus, unless one of the MSA’s exceptions applies, Jane would only have access to part of the data used to calculate her score for establishing her gear switching privileges.

### **Control Dates**

NMFS would also like to address the issue of control dates and provide some guidance for your consideration. While control dates can be helpful in providing notice to participants that may engage in speculative activity, the Council is not under legal obligation to use the control date as

a component of eligibility criteria. It is a policy decision whether a control date is used in an alternative and how it is used. As noted in the advanced notice of proposed rulemaking that we published about the control date ([83 FR 18259](#); April 26, 2018):

*The Council also voted to set a control date of September 15, 2017, to account for participants' financial investment to engage in gear switching in the shorebased IFQ trawl fishery. By establishing this control date, the Council is notifying industry that it may not provide credit for gear switching related activity after this date, in the event that it adopts restrictions on gear switching.*

*This announcement does not commit the Council or NMFS to any particular action or outcome. The Council may or may not use the control date as part of any deliberations and decisions on gear switching. The Council may also choose to take no further action.*

### **Implementation and Timing Considerations**

NMFS cannot yet forecast the time needed through the Council process for the full development of an analysis to support this action due to the differences in complexity of each alternative. We have provided input on implementation details specific to each alternative within the documents you received from Council staff. We would also like to provide a summary of major implementation tasks and relative burdens (see Table 1 below).

From a high level view of timing, once the analysis is completed and the Council takes final action, NMFS would project approximately 18 months for completing the necessary workload; including rulemaking, database modifications (necessary for any modifications to permits and the QS/QP system), Paperwork Reduction Act approval (necessary for any modifications to permits or requests for information from participants), and potential reinitiation of Biological Opinions.<sup>4</sup> Specifically, the need to obtain funding for database modifications can further extend implementation timelines due to the timing of funding cycles.

Also, due to the nature of the existing alternatives, especially those that deal with QS and QP, a January 1 implementation date may be preferable as that is when quota pounds are issued for the year and QP cannot be withdrawn once issued. As a timeline example, if the Council selected a purpose and need in November 2019, a range of alternatives in March 2020, a preliminary preferred alternative in September 2020, and a final preferred alternative in April 2021 - pending availability of grants to support any necessary database modifications based on the alternative selected - the earliest that implementation could occur would be January 2023. Post-season QP trading, to be implemented in 2020 under follow-on actions, will add a degree of complexity to annual QP reconciliation that may affect implementation timing of alternatives that deal with QS and QP.

---

<sup>4</sup> Reinitiation is required if the proposed action is anticipated to affect the listed species or critical habitat in a manner or extent not previously considered. To date, the alternatives that reapportion southern sablefish north, to provide greater access to trawl gears, may result in reinitiation since the level and intensity of trawl activity is anticipated to be greater than that disclosed in the Salmon Biological Opinion. These alternatives, however, are not currently recommended by the SaMTAAC.

**Table 1. Comparison of implementation and on-going administration tasks/burden across alternatives.**

	<b>Alt 1 (QP designation)<sup>5</sup></b>	<b>Alt 2 (QS designation)<sup>4</sup></b>	<b>Alt 3 (Permit endorsement v1)<sup>4</sup></b>	<b>Alt 4 (Permit endorsement v2)<sup>4</sup></b>
Relative implementation burden & cost	<i>MEDIUM to HIGH</i> -creation of gear specific QP in IFQ/permit databases -creation of gear-specific QP tracking on fish tickets; observer data; EM data -PRA approval for opt out provision -New database rules for deficit carryover allowance or surplus carry-over allowance -possible substantial initial eligibility determination for opt out provision	<i>HIGH</i> -creation of gear specific QS in IFQ/permit databases -creation of gear specific QP in IFQ/permit databases -creation of gear-specific QP tracking on fish tickets; observer data -substantial initial eligibility determination burden due to novel approach and potential appeals	<i>LOW</i> -initial eligibility determination -issuance of endorsements; possible appeals	<i>LOW</i> -initial eligibility determination -issuance of endorsements; possible appeals
Ongoing administration tasks	-annual conversion of QP in the fall, NMFS to provide public notice		-tracking permit ownership changes relative to expiration of endorsement	

**Cost Recovery**

As a general note, NMFS would like to remind the Committee that NMFS has determined that staff time on the development of this action, rulemaking for, and potential implementation of an action as well as costs associated with any database modifications required for implementation, are cost recoverable for the Shoreside Individual Fishing Quota (IFQ) Program. Due to the complexity of some of the alternatives and novel issues this action raises, NMFS currently has 6 West Coast Region (WCR) staff (Ames, Duryea, Hooper, Kent, Sayre) and 2 Northwest Fishery Science Center staff (Steiner, Krigbaum) with varying degrees of involvement in the project.

<sup>5</sup> Paperwork Reduction Act approval is required if an application process is used for determining initial eligibility for gear switching privileges.