

PROVISIONS ON WHICH COUNCIL GUIDANCE IS NEEDED

There are several aspects of the action alternatives on which Pacific Fishery Management Council (Council) guidance is needed in order to advance the analysis. These issues are identified in the alternatives document (Agenda F.5, Attachment 2) and discussed in the posted [video presentation](#). This document provides a list of those issues to be addressed followed by a summary explaining the issues in more detail.

List of Issues: Alternative 1: Gear Specific QS

1. *With respect to classifying QS owners as Gear Switching Participants, what degree of linkage between quota share (QS) account owners and vessel owners should be required? Where linkages exist, how much of the QS in the account should be converted based on that linkage?*
2. *On what date should the linkage between a QS account owner and vessel owner be evaluated?*
3. *If a collective approach is taken and linkages are valued based on some date in the past (e.g., the control date), what happens if a group splits up prior to implementation?*
4. *How might the individual/collective approach and linkage date requirements be applied with respect to the Individual Fishing Quota (IFQ) Participant option that requires a bottom trawl landing within two years prior to implementation?*
5. *If a collective approach is taken, how would the conversions caps be applied if an ownership group breaks up prior to implementation?*
6. *Under the collective approach, how is QS owned outside the ownership group treated?*

Other Alternative 1 Issues to Consider

7. *Application of criteria to trusts, non-governmental organizations (NGO)s, and governments.*
8. *Application of formulas relying on share of ownership when ownership shares on record do not add to 100 percent.*
9. *Modification of QS control and annual vessel quota pounds (QP) limits to take into account the division of the northern sablefish allocation into two pools.*

List of Issues: Alternative 2: Gear Switching Endorsements

10. *How might the qualification criteria be adjusted to prevent potential circumvention?*
11. *How will endorsement limits be determined in situations where there are one-to-many or many-to-many relationships between a qualifying permit or vessel and a QS account?*
12. *How should gear switching limits be determined where there is a single QS account and multiple linked qualifying permits or vessels??*

Other Alternative 2 Issues to Consider

13. *Should the gear switching limit formulas based on QS be adjusted to take into account Adaptive Management Program (AMP) QP distributions?*
14. *Should there be an adjustment to the gear switching limit formulas based on gear switching history to take into account a partial year?*
15. *Should the limits for vessels gear switching with non-endorsed trawl permits be specified as a fixed amount or a percentage?*

Summary of Issues for Alternative 1: Gear Specific QS

QS account owners would be classified as Gear Switching Participants, IFQ Participants, and possibly as Other Participants (depending on the options selected). Classification of Gear Switching Participants would require looking at QS account owners¹ and their histories as owners of vessels that gear switched prior to the control date. Those that qualify as Gear Switching Participants would have all of the QS they own converted to any-gear QS (i.e. remain unrestricted with respect to gear usage).²

1. *With respect to classifying QS owners as Gear Switching Participants, what degree of linkage between QS account owners and vessel owners be required? Where linkages exist, how much of the QS in the account should be converted based on that linkage?*

Individual approach. For each QS account, the history of each individual with some ownership in that account would be evaluated to determine whether they qualify as a Gear Switching Participant (had some share of ownership of a vessel while it met the gear switching requirements). If an individual QS participant qualifies, then their share in the ownership of a QS account would be determined and that percentage of QS would be converted based on their status as a Gear Switching Participant.

Collective approach. As described for the individual approach, for each QS account the vessel ownership history of each individual with some ownership in that account would be evaluated. If at least one of those individuals qualifies as a Gear Switching Participant, then the ownership group would be considered a Gear Switching Participant and all of the QS in that account will be converted based on the ownership group's status as a Gear Switching Participant.

2. *On what date should the linkage between a QS account owner and vessel owner be evaluated?*

If a collective approach is taken (as referenced under above) and the linkage is evaluated at the time of implementation, then between now and implementation, an individual that qualifies as a Gear Switching Participant could join a group that owns a QS account but does not include any members that qualify as Gear Switching Participants. This would then qualify the group as a Gear Switching Participant and all the QS owned by that group would be converted on that basis. Thus, sablefish north QS in accounts not previously associated with gear switching would be converted to any-gear QS (i.e., eligible to be used for gear switching). On this basis, it seems likely that evaluating membership in QS owning groups as of some date in the past (such as the control date) would more likely achieve the intent of the alternative.

¹ Applies only for those QS accounts with sablefish north QS.

² Subject to the limitation that only the amount of QS that was owned as of the control date is eligible for conversion based on participant classification status. At the time of implementation, any QS in the account that is in excess of the amount held on the control date is converted to trawl-only QS.

3. *If a collective approach is taken and linkages are valuated based on some date in the past (e.g., the control date), what happens if a group splits up prior to implementation?*

As an example, consider a partnership that owned QS as of the control date but only one member of the partnership qualifies as a Gear Switching Participant—thereby qualifying the group as a Gear Switching Participant. Since the control date, the partnership has been gear switching, but prior to implementation the partnership splits up with each member taking a portion of their QS with them. Would each member of the partnership retain the group's status and therefore all their QS would be converted to any-gear QS, or would only the partner that actually had a history of owning a gear switching vessel retain that status?

4. *How might the individual/collective approach and linkage date requirements be applied with respect to the IFQ Participant option that requires a bottom trawl landing within two years prior to implementation?*

IFQ Participants would have most of their QS converted to trawl-only while some remains any-gear QS. Under one of the IFQ Participant criteria options (Option 2), an ownership linkage is required between a QS account and a vessel that bottom trawled in the two years prior to implementation. For this IFQ Participant option, a question similar to that for the gear switching participant arises with respect to whether to use the individual or collective approach in the determination of the QS to which the IFQ Participant QS conversion formula will be applied. Similarly, there is a question of the time at which the link between the IFQ Participant and ownership of a QS account would have to be established. This linkage could also be required as of the control date, but the required landings could not be made until some point in the future (assuming that implementation occurs more than two years from now).

5. *If a collective approach is taken, how would the conversions caps be applied if an ownership group breaks up prior to implementation?*

As described in the alternative and summarized here in footnote 2, the maximum amount of QS that can be converted based on participant status is the amount held as of the control date (a cap on the conversion). If a collective approach is taken and a QS ownership group is classified as a Gear Switching Participant, but the group breaks up prior to implementation, would each member of the partnership have a cap that is proportional to their share of ownership of the QS account prior to the split, or might the caps for each of the separated owners be determined on some other basis (e.g., an option for the owners to designate how the cap amount is split among them³)? Does it make a difference if only one of the members qualified as a Gear Switching Participant on their own? A similar question might apply for an account QS owned by an IFQ Participant.

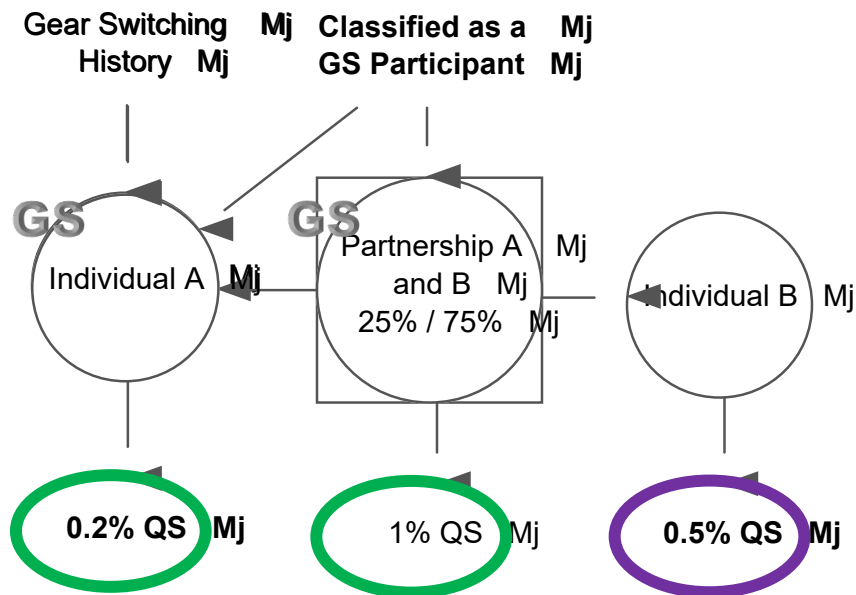
³ In thinking about the approach to be taken, consider possibilities where one member of the ownership group is an active partner (running the fishing operation and owning the vessel), while the other member(s) main role is sharing in ownership of the permit and QS.

6. Under the collective approach, how is QS owned outside the ownership group treated?

Under the collective approach, staff assumes and would like to confirm that it would be the Council intent that QS an individual owns outside of the group ownership would not qualify for the group classification status.

For example (applying the collective approach), assume *Individual A* owned a gear switching vessel (is classified as a Gear-Switching Participant) but not *Individual B*:

- QS owned only by *Individual A* (0.2%) converts to any-gear QS
- QS owned by a partnership of *A & B* (1%) converts to any-gear QS
- QS owned only by *Individual B* (0.5%) **does not** all convert to any-gear QS because *Individual B* holds the QS outside the partnership and is not a Gear Switching participant on their own.



Other Alternative 1 Issues to Consider

7. Application of criteria to trusts, NGOs, and governments.

Staff interpretation is that these groups should be treated the same as any other QS owner.

8. Application of formulas relying on share of ownership when ownership shares on record do not add to 100 percent.

Individuals that own less than 2 percent of a QS or vessel account are not required to be reported on ownership interest forms. Also, there are joint tenancy situations where the reported ownership shares add to greater than 100 percent.

9. *How will the existing accumulation limits be applied with the division of sablefish QS into two pools?*

Should the northern sablefish QS control limit (3 percent) and annual vessel QP use limit (4.5 percent) be adjusted to take into account the division of the northern sablefish allocation into two pools. If so, how should that adjustment be carried out.

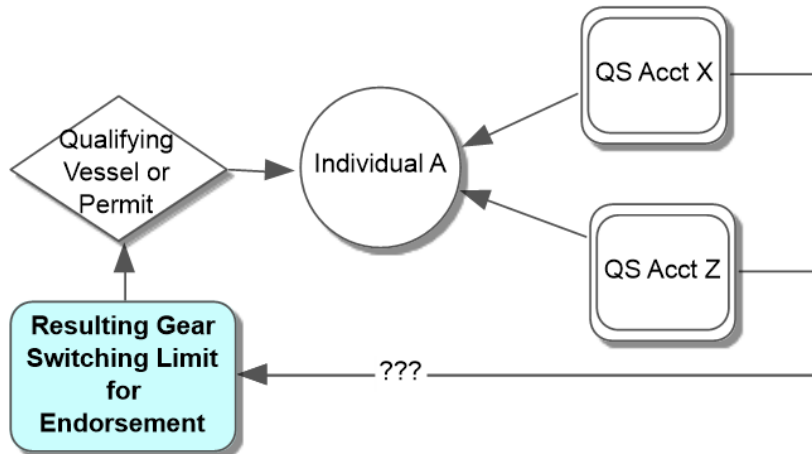
Summary of Issues for Alternative 2: Gear Switching Endorsements¹⁰.

10. *How might the qualification criteria be adjusted to prevent potential circumvention?*

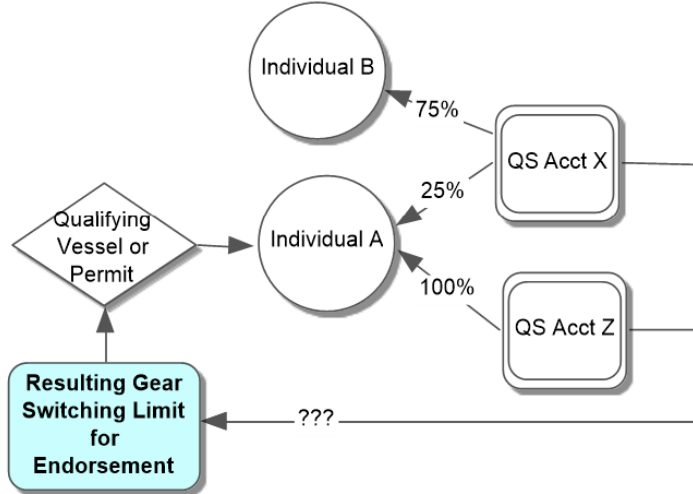
The endorsement qualification criteria Option 2 (Options Q-P2 and Q-V2) requires that an individual owning a qualifying permit or vessel at the time of implementation also must have owned sablefish north QS as of the control date. However, to meet this requirement, prior to implementation the owner of a qualifying permit or vessel could give a small fraction of interest in the permit or vessel to an entity that owned QS as of the control date. Further, a single QS owner could help a number of permits or vessels qualify by assuming partial ownership of the qualifying permit or vessel. Similarly, under qualifying criteria Option 3 for qualifying vessels (Option Q-V3), the owner of the qualifying vessel must have owned both sablefish north QS and a trawl permit as of the control date, but this provision can be circumvented in a fashion similar to that described for Option 2. A similar situation applies with respect to Option 3 for qualifying permits (Option Q-P3), which requires that the owner of a qualifying permit also have owned both QS and a gear switching vessel as of the control date.

11. *How will endorsement limits be determined in situations where there are one-to-many or many-to-many relationships between a qualifying permit or vessel and a QS account?*

Endorsement limit Options 2 and 3 (L-P2/L-P3 or L-V2/L-V3) would base at least part of the gear switching limit for an endorsement on the amount of QS owned as of and since the control date by the owner of the qualifying permit or vessel. Where the owner of a qualifying permit or vessel owns several QS accounts (as in the following diagram), the QS in the accounts can be summed to determine the limit.

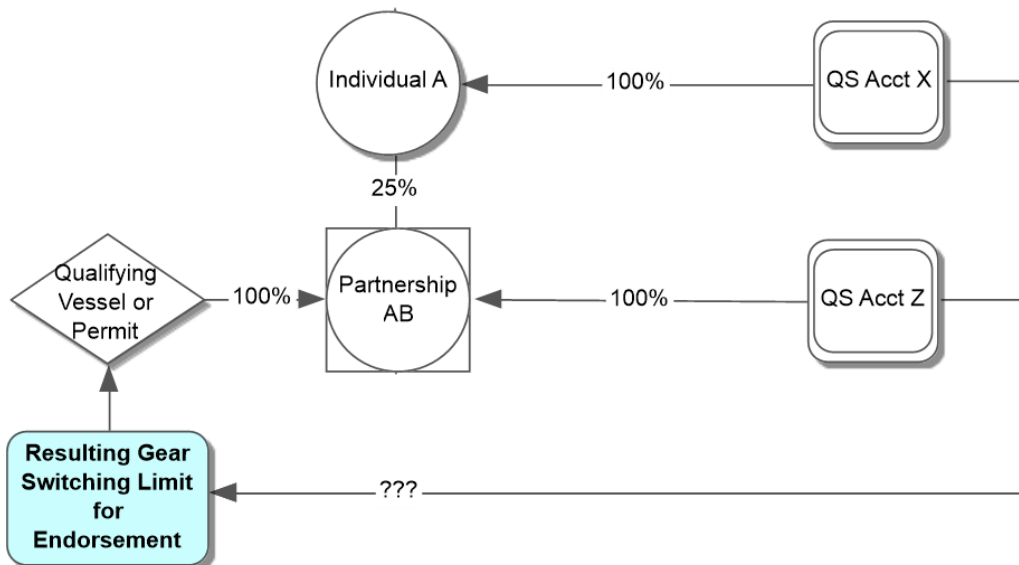


However, if a qualifying individual is the partial owner of a QS account, would the limit be based only on their share of ownership in the account? What about situations where partners share ownership of a QS account but the qualifying vessel or permit is owned by only one of the partners, as illustrated in the following diagram (i.e. determine how credit for QS Account X would be split among the resulting gear-switching endorsements) ?



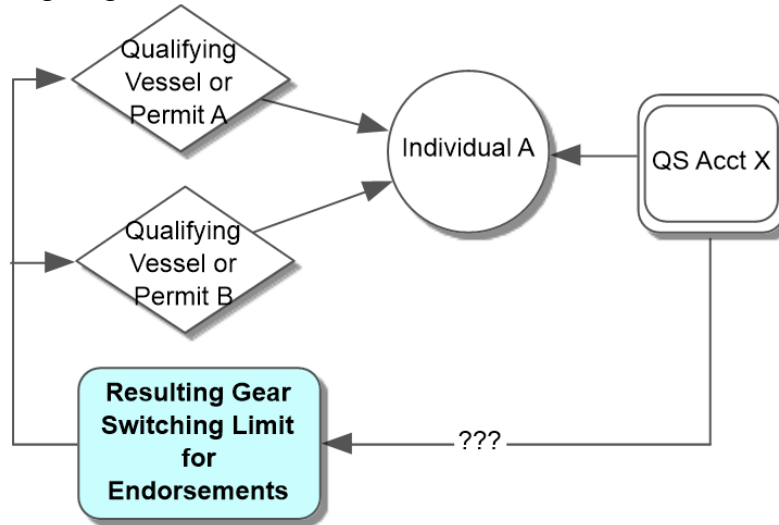
In the previous diagram, if Individual B also owned a qualifying permit or vessel, might the QS account owners be allowed to designate the amount of QS that will be attributed to the endorsement limit for each owner?

As described for Alternative 1, there are also situations where an individual might hold QS outside the ownership structure of a group. Again, staff assumes and would like to confirm that it would be the Council intent that QS an individual owns outside of the group ownership would not count toward the determination of the limit for a gear switching endorsement issued based on the group's ownership of a qualifying permit or vessel. In the following diagram, QS in Account X is owned by Individual A and would be considered to be held outside the partnership that owned the qualifying vessel or permit and therefore not count toward a gear switching limit for the endorsement.



12. How should gear switching limits be determined where there is a single QS account and multiple linked qualifying permits or vessels?

The following diagram illustrates this situation.



The current language of the alternative could be read as allowing all of the QS in Account X to count toward both qualifying permits or vessels (i.e. the QS might be double counted in determining the size of the endorsement limit). With respect to splitting QS among permits (assuming double counting possibilities are eliminated), where multiple vessels or permits and QS accounts might be involved, should the parties involved be allowed to make the designations or a rule be developed for such designations?

Other Alternative 2 Issues to Consider

13. Should the gear switching limit formulas based on QS be adjusted to take into account Adaptive Management Program (AMP) QP distributions?

While gear switching limits might be based on percentage of QS owned, because of the AMP QP distributions, someone with one percent of the QS receives somewhat more than that in QPs (~1.11 percent). Thus, a gear switching limit based on the *percent of QS* owned would not allow the owner to gear-switch all the QP they receive. An adjustment could be specified to ensure that the gear switching limit would accommodate gear switching all the QP issued to a qualifier based on the QS they own.

14. Should there be an adjustment to the gear switching limit formulas based on gear switching history to take into account a partial year?

Some of the gear switching limit options would determine the limits based on an average for years fished, up through the control date of September 15, 2017. Therefore, the averages for some qualifiers might be lowered simply because the control date cut-off means that a partial year will be included in the average. In 2017, around half the gear switching occurred after the control date (see [Figure 4, SaMTAAC Agenda Item E.2, Attachment 1.](#))

15. Should the limits for vessels gear switching with non-endorsed trawl permits be specified as a fixed amount or a percentage?

Alternative 2 would fix the non-endorsed permit gear-switching limit at 10,000 lbs. However, in the event sablefish annual catch limits decline substantially (e.g. sablefish becomes overfished), the non-endorsed permit limits could end up greater than the limits for endorsed permits.