

WASHINGTON DEPARTMENT OF FISH AND WILDLIFE REPORT ON SABLEFISH GEAR SWITCHING

We offer this report to provide perspectives on Alternative 1, paying particular attention to the questions raised in Attachment 3. We thank Council staff for their thoughtful and thorough interpretation of the motion from September 2021. These perspectives are meant to help prompt feedback and discussion. We understand that Council staff would like more specific guidance under Council discussion are optimistic that the Council will be able to provide that after hearing from its advisors and the public.

In this report, we also briefly address why we proposed Alternative 1 differently from what the SaMTAAC had been considering. Relatedly, we offer our view of how the Magnuson-Stevens Act and National Standard Guidelines frame the main policy choices involved in this action.

This report does not offer comment on Alternative 2. The choice of using a quota-based versus an endorsement, whether permit or vessel, approach is one of higher-level policy choices posed to the Council and we look forward to further deliberations on the question at the next stage of Council consideration.

The Key Policy Decisions

Again, we recognize the importance of the questions raised in Attachment 3, in terms of focusing analysis and for clarifying how fishery participants could be affected by implementation. At the same time, we do not see them as substantially affecting the main policy choices posed by the alternative. They could, however, have some bearing on which options the Council would prefer in the end.

Before moving to the specific questions, we highlight that Alternative 1 only involves two main policy choices and a closer look at the 29% gear switching number:

- (1) Whether to require at least 30,000 pounds of fixed gear landings of Sablefish North in three or more years or just any landings as a showing of investing in QS with the intent to fish it with fixed gear (i.e. Gear-switching Participation Option 1 versus Option 2).
- (2) Given that only 10%-12% of the QS or even less will meet the Gear-switching Participation criteria—how is the remainder distributed? To all QS owners or just those that meeting the bottom trawl activity criteria (i.e. IFQ Participation Criteria Options 1 versus Option 2)?
- (3) The alternative is also designed to compare and contrast the 29% number for any-gear quota with an option that would cap the any-gear quota at 1.8 million pounds. We continue to believe that the effects on fishery participants should be evaluated in more detail before recommending the precise amount of any-gear quota.

General Principles behind Alternative 1

These general thoughts and principles went into the thinking behind the September 2021 motion and may help with the interpretation of our responses below:

- Alternative 1 would make minimal changes, if not the minimum change, to the individual fishing quota (IFQ) program needed to place a definite cap on how much quota could be fished with fixed gear. There would be no other modification to the program or how quota share (QS) and quota pounds (QP) function.

- The intent of the conversion step is to directly recognize the investment made by those who acquired Sablefish North quota share with the expectation of fishing it with fixed gear by allowing them to keep their QS as status quo. QS is the highest value fishing privilege. Sablefish North QS has traded hands at an average cost of ~\$1 million per percentage point. A trawl permit, on the other hand, can be purchased for much less than that or can be leased for a few thousand dollars per year.
- There are no established conventions for how the Council would link QS ownership and fishing activity for allocation purposes. This means that there are no clear rules for fishery participants to use in making business arrangements to ensure that their investments and participation are recognized.
- The Council will have continued interest in linking quota share ownership and fishing activity and may prefer policies that reward those QS owners that actively fish. In evaluating investment, dependence, and participation in the fishery, business entities should receive as much if not more focus than a permit or vessel or even the QS.

Replies to Attachment 3

We reply to each question separately using the numbering from Attachment 3. The response to Question 1 is split into two because it contains two questions. The essence of our response is that the “collective” approach matches the intent of the September 2021 motion. We would support asking staff to further analyze scenarios, involving changes in business entities, where the “individual” approach would be better meet the goal of recognizing investments made in gear switching.

1(a) 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?

Again, the intent of the motion was in line with the “collective” approach described in Attachment 2. The focus was on the business entities owning the QS accounts (QSA) and vessel accounts (VA). And the intent was to link QSA and VA owning entities using ownership-in-common.

With the data collected by NMFS, it is possible to focus attention on businesses. The business entity is a legal entity established by individuals and for the purposes of holding QS, QP, running a fishing operation, fishing vessel, etc. The simplest entity is a sole proprietorship, and the complexities may not apply to them. However, starting with general partnerships business entities can be governed by a diverse set of negotiated arrangements. And although the NMFS data identifies the percentage owned by individuals within each QSA and VA owning entity, the data may not capture the full nature of the negotiated arrangements.

We recognized that in many cases the same set of owners use a different business entity for the QSA than the VA because of vessel liability and other business purposes. Without clear rules for connecting QS ownership to fishing, the intent was to be liberal towards the level of ownership-in-common required to link one business to another. For example, it would not be appropriate to require that the QSA entity and the VA entity share 100 percent ownership. Identifying a minimum percentage in common would be difficult and unnecessary for meeting the purpose and need of the action.

Moreover, as the alternative is structured the linkage is in the past. Business relationships therefore cannot be manipulated so as to qualify for the gear switching participation criteria. The IFQ Participation option is different in that it would be based on future behavior, as discussed below.

1(b) Where linkages exist, how much of the QS in the account should be converted based on that linkage?

For QS entities meeting the gear-switching participation criteria, the intent was for the entity’s full QS holdings to remain as any-gear QS. The motion presumed the control date policy would apply, however. If so, any QS above what the entity held on the control date would be converted to trawl-only QS.

We address questions about changes in business entities and individual owners below. There may be reasons to focus on individuals in some scenarios, but our expectation would be that the focus on entities would work for most all cases.

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

For the gear-switching participation criteria, the intent was to consider the full IFQ period, again presumed subject to the control date, and to recognize linkages established any time within it. The key factor is that the QSA entity acquired QS with the expectation that it would be fished with fixed gear by a fishing operation linked by common ownership. Again, without established conventions the idea was to be liberal in terms of the evidence required to establish this expectation. In most cases, we would expect the linkage to be stable over time or at least exist in the same fishing year (i.e. the owner in common between the QSA and VA should exist in the same year that the VA had QP deducted for fishing). Further analysis could highlight unusual situations for the Council to consider further. We would again point to the key factor of the investment-backed expectation evidenced by acquiring QS while also owning, in full or in part, a fixed gear fishing operation in the IFQ fishery.

Again, the motion presumed that the trade-off between considering recent participation versus the importance of maintaining the integrity of the control date will lean toward the latter. Recency will be a necessary part of the analysis. Yet we expected the analysis would also focus on limiting ownership and fishing activities to the control date.

The IFQ Participation option would involve a different window period that would be set by the date of implementation. We anticipated that the focus would be similar in looking for QS owners that also actively fish with the gear type that this action is aimed at benefiting.

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?

This question is one that would particularly benefit from feedback from those in the fishery. We also presume that it is not one that would affect the next stages of analysis in a major way. If we are correct in this, then the issue could be one the Council requests to be analyzed further. In other words, the approach we might suggest would be to recommend the collective approach as the default and ask staff to consider and present possible exceptions to that rule for the next stage of analysis.

We recognize that entities may dissolve completely or experience changes in ownership. If on notice that the Council is considering recommending Alternative 1, we would anticipate that such situations could be resolved through private contract. Clear expectations for businesses to arrange their own affairs would be the most economical way to address future situations.

That said, we do recognize there could be fairness issues for those not on notice or for entities that cease to exist. If fairness requires, WDFW would support exceptions based on the individual approach. The NMFS data on QSA and VA ownership would allow for it. And we would not expect there to be a big difference in the workload. We discuss the method we would assume could be used below. Again, our assumption is that the entity/collective approach would cover most every case.

Lastly, we would emphasize that the choice of focus on entities or individuals or a mixed approach would not be intended to change the principles underlying the gear-switching participation criteria. It could qualify more QS under the gear switching participation criteria but only because it would potentially capture situations, like dissolved partnerships, that the collective approach would not. The amount of QS would continue to be limited to what the qualifying QSA entity owned on the control date. Again, we are unsure how prevalent such situations will be and expect the collective approach to cover most every situation.

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?

It was envisioned that the linkage would work the same as for the gear-switching participation criteria. The one major difference, as noted above, is that there would be opportunity to manipulate business relationships to qualify (e.g. buying interest in a fishing operation for \$1). At this stage, we are more focused on the policy choice of whether to consider directing the any-gear quota to bottom trawlers or not. We are unsure how much QS it would really affect. And we do not have a viewpoint on whether it would be worth discussion on how to ensure that ownership in a bottom trawl operation is meaningful. That could be an additional focus of analysis for the next stage of analysis. It could, as one idea, be based on an analysis of the percentages of ownership-in-common that exist now or existed before the control date.

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

If necessary to consider ownership at the individual level, the motion again presumed that the Council would continue to consider maintaining the integrity of the control date. Individuals (or other divisions/sub-entities in place as of the control date) could be capped the same as entities based on their proportion of the QS held on the control date. It might be necessary to ensure that the QS was not over and above what the previous entity held (e.g., if a partnership dissolves and one partner sells the QS to the other as part of the dissolution agreement and then later acquires more QS after the control date). Again, our assumption is that these scenarios would not be common and do not believe they should detract from the main policy choices posed to the Council.

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

The intent was for each QSA owning entity, in the collective sense, to stand alone. That is, every QSA would require a linkage to a VA meeting the gear-switching participation criteria to qualify. If the individual approach were taken, individuals would be limited to the percentage of QS that they owned in the qualifying QSAs.

To elaborate, the individual method would still evaluate QSAs for linkages to a qualifying VA. The individual owners of the qualifying QSA would be “credited” with the percentage of QS they own in that account and that account only. Again, QS owned in a different QSA and one without any linkage to a qualifying VA would not qualify under the Gear switching participation criteria.

Evaluating the Council’s Choice

Many factors will be relevant to the Council’s ultimate decision on whether to limit gear switching and how. National Standard 4 (NS4) perhaps the most important. It requires allocations to be fair and equitable. We expect Council staff and NMFS to advise the Council on the meaning of that term in more detail at the next stage of analysis. We outline our interpretation of what NS4 and the NS4 Guidelines advise because it is relevant to how we are evaluating the range of the alternatives.

Briefly stated, the NS4 Guidelines advise that allocations should not disadvantage individuals or groups without cause. To do so would be arbitrary and capricious. Instead, the NS4 Guidelines focus the Council on the question of whether the total benefits of an allocation decision would outweigh the hardships and disadvantages. In other words, it could be still be fair and equitable to disadvantage certain groups, like those that have invested and participated in fixed gear fishing in the IFQ program, if the total benefits of decision are related to a legitimate conservation and management objective and the benefits outweigh the harm.

In this light, viewpoints on the original intent of including gear switching in the IFQ program—and they are many around the Council—are much less important than the weighing of benefits and costs. The level

of gear switching that has occurred in the fishery is viewed as an unintended consequence, or at least surprising, to many. Nonetheless, we read the NS4 Guidelines to say that deciding to change the program now requires a determination that the change would lead to more benefits than disadvantages and hardships.

On the potential benefits of limiting gear switching, we outline our understanding here. We do so to be transparent in our understanding and in hopes new information can improve it. In brief, the benefits would arise from providing a more attractive business climate for processors of bottom trawl caught groundfish. Through public testimony, the Council has heard that the current program is not highly attractive for investment. The competition for sablefish quota from fixed gear fishing operations is one source of uncertainty and risk causing that unattractiveness. The Council acting to limit gear switching could reduce that risk and improve the investment climate. The rest would be up to markets.

We recognize that the benefits of limiting gear switching remain a matter of dispute among stakeholders. We agree that the benefits are uncertain. And that uncertainty is an important factor in weighing costs and benefits. If disadvantages and hardships of an allocation decision are certain, and the benefits are open to chance—that is how the decision should be framed. We, again, emphasize that this is just an articulation of our current thinking and expecting more information on the benefits and costs to be considered in the next stages of analysis.

Why we proposed changes to the SaMTAAC Alternatives

In brief, we proposed changes from what the SaMTAAC considered to reduce the number of changes to the IFQ program and to more directly focus on the investments made in QS. For example, we do not see the purpose of having two different types of QP deriving from one type of QS when that does not happen for any other species. Any policy reason for doing so can still be accomplished with the way that Alternative 1 is structured now.

Lastly, we purposely omitted the components of the SaMTAAC Alternative 1 proposed to include in the range of alternatives in public comment by Oceanbeat Consulting, LLC. Based on the SaMTAAC analyses, the approach fails the benefit-cost test advised by the NS4 Guidelines. The benefits of limiting gear switching would be compromised by converting all QP to any-gear QP in the fall. Data shows that half or more of the gear switching activity has occurred after September (i.e. October-December). On the cost side, converting fixed gear businesses quota to 71% trawl disadvantages those who fish earlier in the year. We see this as an unnecessary hardship and inconsistent with the Council's Purpose and Need Statement.