

WASHINGTON DEPARTMENT OF FISH AND WILDLIFE REPORT ON SABLEFISH GEAR
SWITCHING – CHECK-IN AND REFINE THE RANGE OF ALTERNATIVES

The purpose of this report is to highlight feedback received from stakeholders and Council staff on pieces added to Alternative 1 in November 2022.¹ To help put the issues in context, we begin with some brief thoughts on the design of Alternative 1. We also provide some brief comments on Council Member Report 1 in Section 3 and close with some overarching thoughts in Section 4.

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1. Overview of Alternative 1

Alternative 1 poses these questions to the Council:

- A. Who should qualify to keep their Sablefish North QS as 100 percent any gear?
- B. How should the remaining any gear Sablefish North QS be distributed?

The details that have received most attention so far for Alternative 1 are important to consider, yet we emphasize that the highest-level policy questions are simply these.²

A. Who should qualify to keep their QS as 100 percent any gear?

The idea is that fishing businesses that invested in Sablefish North QS because of the rule that allows it to be fished with fixed gear should be able to preserve their QS as any gear QS.

The alternative compares two levels of minimum fishing activity—the two Gear Switching Participant Criteria options—needed to show that the QS owning business was linked to a fishing business by ownership in common. These were taken from the SaMTAAC alternatives. In November 2023, the

¹ We are responding to feedback received prior to the publication of the advance Briefing Book and so may not be responsive to comments received since.

² Alternative 1 also compares and contrasts the limit of 29% to a limit of 1.8 million lbs. WDFW continues to see attention to the 29% as important but it is not the main focus of this report.

Council added a third option that would allow businesses that met the less restrictive option but not the more restrictive option to keep 50 percent of their Sablefish QS as any gear QS.³

In November 2023, the Council also added considerations for buyers, i.e. first receivers, and for cooperatives based on the same rationale that they are businesses that invested in QS to earn revenues from fixed gear fishing of sablefish. These two groups are the focus of Section 2.

B. How should the remaining any gear Sablefish North QS be distributed?

Some amount of any gear QS would be left to distribute after the Gear Switching Participation step is accounted for. At that stage, there is just one main choice for the Council: should the remainder of the any gear QS be distributed pro rata to all QS owners or just to a subset that actively fish or process in the bottom trawl portion of the IFQ fishery?

If the latter, the subset of QS owners would be identified using the Non-Gear-Switching Participant Criteria Option 2 the First Receiver Suboption (which was added in November). We advocated for their inclusion to evaluate if there would be benefits to concentrating the remaining any gear QS in the hands of businesses that are actively earning revenues from bottom trawl caught fish. In theory, those businesses may be less likely to lease out their QP than QS businesses that do not actively fish in the IFQ fishery or those that fish only in the whiting portion of the IFQ fishery.

2. Areas for potential refinement

The cooperative and first receiver suboptions were newly introduced in November and the main focus of feedback we received. We address three issues here.

A. Strike the Fishermen's Collective Marketing Act (FCMA) part from the consideration of cooperatives in the Gear-Switching Participant Criteria

After conducting further research, the proponents of adding considerations for cooperatives informed us that the FMCA part of their recommendation was not necessary and could be unduly restrictive. In brief, the FCMA is focused on insulating activities that a cooperative may undertake that would otherwise run afoul of anti-trust laws. These activities are not relevant for purposes of Alternative 1.

What is of possible relevance is that cooperative businesses arrangements that were in place may not be reflected in the data that NMFS collects on ownership of QS and Vessel Accounts. As noted in Attachment 2 under this agenda item, cooperatives are a type of business structure and may over lay the ownership arrangements recorded by NMFS.⁴ For example, a QS owning LLC may have been in a cooperative business arrangement with an LLC that owned a Vessel Account to fish its Sablefish North QP and share the revenues. However, if that QS-owning LLC and VA-owning LLC had no members in common, then they would not show as linked for purposes of qualifying under Alternative 1 unless the cooperative suboption added. Cooperative fishing arrangement can have benefits for conservation and management and WDFW believes they should be encouraged.

WDFW's recommendation, pending additional feedback, is to strike the FMCA requirement and only require a registered cooperative. Further attention to the implementation details could be left to if Alternative 1 is identified as a PPA.

³ While also not the focus of this report, we do wish to highlight the landings criteria as warranting more Council discussion.

⁴ p. 19: <https://www.pcouncil.org/documents/2023/03/g-5-attachment-2-range-of-gear-switching-alternatives-adopted-for-analysis-by-the-council-at-its-september-2021-june-2022-and-november-2022-meetings.pdf>.

B. First Receivers Purchase Criteria

Again, WDFW agrees that buyers who purchased QS with the intent of attracting IFQ fixed gear landings to their business should have their investment recognized as well. Based on our motion, the Council adopted the suggestion from the GAP to use 30,000 lbs in three years as the criteria to identify these first receivers.⁵ Feedback received after the November meeting brought to our attention that businesses that bought fixed gear IFQ sablefish as a small portion of their overall portfolio would qualify under these criteria.

We recommend that the Council consider adjusting the criteria to target businesses that purchased a larger percentage (e.g. majority) of their fish from the IFQ fishery from fixed gear vessels. The intent of Alternative 1 is to ration any gear quota giving priority to those who were more engaged with fixed gear sablefish. Larger processors, moreover, are some of the main advocates for reducing the any gear QS in the fishery and use sablefish QP more for bottom trawl and whiting landings. As noted above, the Non-Gear-Switching Participant Criteria Option 2 and the First Receiver Suboption would be a way to increase the amount of any gear QS that goes to processors of bottom trawl fish.

C. Council staff question on Qualification for First Receivers

Attachment 2, p. 23, raises another issue related to first receivers. From the perspective of makers of the motion, our intent matches Council staff's interpretation. Recognizing that NMFS does not have the same level of ownership data for first receivers, the intent was the same as for linkages between Vessel and QS Accounts. Our response to the specific question, "What percentage of a first receiver must a QS owner own in order to be considered a first receiver?", is that partial ownership would be sufficient.⁶ With no standing expectations on how the Council would approach an action like this, Alternative 1 is based on the presumption that any level of ownership in common is meaningful. In other words, the circumstances justify giving businesses the benefit of the doubt.

We believe the main policy choice for the Council is whether First Receivers should be recognized or not. Further details on ownership arrangements could be explored if Alternative 1 is identified as the Council's PPA.

3. Comments on Council Member Report 1

In terms of the proposal in Council Member Report 1, we have not had occasion to discuss it with Mr. Anderson in detail but look forward to doing so. In our initial review, the stated objective and mechanism in Council Member Report 1 are essentially the same as Alternative 1's. The main difference, policy wise, appears to be Alternative 2's focus on permit ownership and ownership at the time of the control date.

Alternative 1 focuses on the business that did the fishing as tracked by the Vessel Account. Those who owned a permit and met the minimum fishing requirements would qualify under Alternative 1. At the same time, a permit does not have to be owned to fish in the program. A business could have met the minimum fishing requirements by leasing one or more permits. Given the surplus of permits, it may have been financially preferable to lease one instead. Permit ownership on the control date, in theory, could mean that someone without fishing history could qualify by purchasing someone else's history.

We believe that the proposed addition to Alternative 2 and Alternative 1 could be compared and contrasted based on implementation and fair and equitable criteria relatively easily.

⁵ p. 3: <https://www.pccouncil.org/documents/2022/11/h-3-a-supplemental-gap-report-1-5.pdf/>.

⁶ At the same time, as we understand it, NMFS does not have the same resolution of ownership information for first receivers as it collects for QS and VA accounts.

4. Conclusion

We continue to support Alternative 1's inclusion in the ROA and are supportive of ideas for shifting the Council's focus to higher level questions for June while saving details that do not bear heavily on the major policy choices until a PPA is chosen.

We understand that Alternative 1 is perceived as complex. At the same time, we would suggest that it may seem less so by starting with the higher-level questions highlighted in Section 2 and then moving down to details like the individual versus collective approach.

Also, the IFQ program itself is complex, as is business. Businesses have organized themselves, invested in quota and fishing businesses, entered contractual and other arrangements, etc. under the rules of the program. We start from the principle that the reasons for those arrangements are not obvious from the data available, and it is possible that Council could interfere with them unintentionally. It should also be recognized that the requirements being considered as part of the action alternatives could effectively impose rules that did not exist in the fishery, rules that make the difference between qualifying or not. Alternative 1 aims to recognize investment, dependence, and participation in recognition of this. We believe the Council should avoid interfering with business arrangements unless there is a clear conservation or management reasons for doing so.

Separately, we note for the record that we would have voted to include Council Member Svennson's option that would leave all QP as any gear QP until 29% was used in a year into the ROA had the November 2022 motion to reconsider been judged to have passed the vote. The potential advantage is that the approach could freeze the footprint while disrupting existing contractual arrangements less than Alternative 1. We recognize concerns about race for fish dynamics developing, yet those can be analyzed.

By major policy choices we refer to the question of whether action is justified and if so, whether to use the IFQ mechanism or a permit approach to limit gear switching. As in June 2022, we continue to urge that they be considered using the framework for weighing costs and benefits under the National Standard 4 and related guidelines.⁷ We also note our view that, under this framework, the benefit-cost tally would appear to be considerably different between freeze-the-footprint approaches and those alternatives and options that seek to reduce gear switching to lower levels. We also note the view that the allocative issue here trace back to the decisions made in the 1990s by the Council on how sablefish should be split between gear types and markets. Lastly, we also see the growth in the Sablefish North ACL and the potential even larger increases expected as relevant to this matter.

⁷ See p. 4: <https://www.pcouncil.org/documents/2022/06/f-5-a-supplemental-wdfw-report-1.pdf/>