

## NATIONAL MARINE FISHERIES SERVICE REPORT ON GEAR SWITCHING

This report summarizes the National Marine Fisheries Service's (NMFS) estimate of tasks and administrative and cost burdens associated with the preliminary preferred alternative (PPA) for limiting gear switching in the shorebased individual fishing quota (IFQ) program for northern sablefish quota pounds (QP). NMFS makes no recommendations in this report; its purpose is to inform the Pacific Fishery Management Council (Council) and the public prior to final action in April 2024. All references to gear switching, quota share (QS), and QP in this report are for sablefish north of 36° North latitude only.

In order to keep gear switching from impeding attainment of other stocks caught together with sablefish in trawl gear, while considering impacts on current operations and investments, the PPA would limit gear switching when sablefish abundance is relatively low and (if included by the Council) recent gear switching activity has been relatively high - i.e., when there are fewer QP to go around and competition for them may be greater.

In years when gear switching is to be limited, QP would be issued with gear-specific designations, most of which would only be valid to cover landings and discards from trawl gear only. IFQ participants with a history of investment and dependence on gear switching demonstrated by meeting criteria related to ownership of QS and a trawl permit, as well as gear switching before the 2017 control date, would be designated legacy participants and would have easier access to any-gear QP that can be used for gear switching. Detailed descriptions of the PPA are found in Agenda Item F.4, Attachment 2.

To implement the PPA, staff in NMFS West Coast Region Groundfish Branch and Permits and Monitoring Branch, NMFS Northwest Science Center's Scientific Data Management Program and Fisheries Observation Science Program, and the Pacific States Marine Fisheries Commission would need to undertake one-time implementation and ongoing work. This would include the rulemaking and other administrative tasks associated with any FMP and regulatory amendment. In addition, it would include modifying or developing new data systems and workflows and conducting analytical, technical, and administrative tasks to establish, track and account for gear-specific QP and the individual QP ratios of each legacy participant and quota share account (QSA), as well as the overall trigger conditions. Much of this work would occur prior to the effective date, while some would occur on an ongoing basis.

NMFS has discussed the relative implementation and ongoing costs and other aspects of earlier versions of gear switching alternatives in three prior reports<sup>1</sup>; however, the PPA includes new elements added after those reports. The general steps NMFS expects to be necessary to implement the PPA are described here to provide an updated sense of the magnitude of the work.

Considerable effort by NMFS and Council staff went into discussing what would be needed, which we summarize below. It is likely that additions to, or differences from, the list below would be discovered as the management and technical partners work through implementing the complex PPA if it is adopted as the FPA; therefore, the actual steps, tasks, and costs may differ from the discussion in this report.

### **New tasks anticipated to be necessary to implement, maintain, monitor, and enforce the gear switching PPA**

If the Council were to adopt the PPA as final, NMFS (and/or others where noted) would:

1. Council staff finalize analysis required by the Magnuson-Stevens Act, the Regulatory Flexibility Act, Executive Order 12866.
2. Council staff and NMFS finalize draft FMP amendment
3. Draft regulatory language
4. Council executive director or full Council deem the draft regulations
5. Develop and publish a proposed rule with FMP and regulatory amendments describing the Council's recommended gear switching limitation measures and rationale
6. Review comments on the proposed rule, draft responses, and consider revisions for the final rule as appropriate
7. Develop and publish a final rule
8. Draft a Small Entity Compliance Guide
9. Seek Paperwork Reduction Act (PRA) approval from the Office of Management and Budget for legacy participant status applications
10. Identify legacy participants by inviting and reviewing applications and supporting documentation regarding eligibility criteria
11. Issue Initial Administrative Determinations of legacy participant status; review and respond to appeals
12. Calculate each legacy participant's initial gear-specific QP ratio based on their QS ownership history

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<sup>1</sup> Agenda Items G.5.a NMFS Report 1 April 2023, <https://www.pcouncil.org/documents/2023/03/g-5-a-nmfs-report-1-national-marine-fisheries-service-report-on-implementation-of-revised-gear-switching-alternatives.pdf/>; H.3.a NMFS Report 1 November 2022, <https://www.pcouncil.org/documents/2022/10/h-3-a-nmfsreport-1-nmfs-report-on-implementation-of-gear-switching-alternatives.pdf/>; and H.3.a Supplemental REVISED NMFS Report 2 November 2022, <https://www.pcouncil.org/documents/2022/11/h-3-a-supplemental-nmfs-report-2/>

13. Calculate the standard QP ratio
14. Calculate initial gear-specific QP ratios for each quota share account (QSA) in which a legacy participant has ownership, based on the individual QP ratio of each owner of the QS permit associated with that QSA, and their proportional ownership share of that permit (if a legacy participant has ownership in more than one QS permit, their individual QP ratio will apply to their ownership share in each)
15. NMFS and PSMFC modify the IFQ vessel account system and electronic fish ticket data feed to accommodate gear-specific QP and transmit gear type with landings data
16. Develop and code business rules, working with PSMFC as needed, for:
  - a. Debiting the appropriate type of QP for a landing based on gear type
  - b. Within-year deficit coverage, in a year with gear-specific QP
  - c. Prior-year deficit/post-season trading
  - d. QP transfers into a vessel account (VA)
  - e. Fish ticket adjustments (corrections), within-year or prior-year
17. Include gear type when processing observer/Electronic Monitoring discard data
18. Continuously monitor gear-specific landings and QP debits and transfers to ensure they are working as intended
19. Continuously as needed, explain/interpret the gear switching rules to program participants
20. Annually (in December) review legacy participant status to determine whether they have divested all northern sablefish QS
21. Annually review individual legacy participant's QP ratio, and the QP ratio of each QSA associated with a QS permit with any legacy participant ratio; adjust the ratios as needed based on QS ownership changes
22. Annually evaluate the conditions that determine whether gear-specific QP or generic QP will be issued in the following year, and issue a public notice announcing the result and reminding IFQ participants of the gear switching limitation provision

This list only includes items anticipated at this time. If adopted and implemented, future changes to the gear switching limitation rules, or to any other aspect of the IFQ program rules or data systems with a connection to gear switching could result in additional new tasks not yet envisioned.

### **Administrative burden**

Initial implementation would require substantial staff time to complete the steps above. The complexity of the PPA would present challenges in developing regulatory language describing the provisions in detail, as well as developing and implementing necessary data system modifications in the NMFS and PSMFC systems.

Annually recurring and continuous tasks would also require staff time. While some calculations would be formulaic and some tasks can be automated, each would need to be initiated and reviewed by NMFS staff to ensure the timing, process, and results are correct. The time needed for that effort is non-trivial.

Future review and modification of the IFQ program would require greater time to ensure consistency and check for any unintended changes to or conflicts with the complex gear switching rules.

Outreach and education would be an ongoing need for fishery managers and industry. Explaining and understanding the complex PPA can be challenging, and the same would be expected with it in regulation. This could become more challenging with time after Council action and regulatory implementation (i.e., after memory of this phase of developing the action fades, and/or there is turnover in the industry, agencies, and the Council and its staff and advisory body membership).

There would be a burden on northern sablefish QS owners who choose to apply for legacy participant status, to complete and submit an application for such status and provide documentation supporting their claim that they meet the Council-specified criteria. The burden would differ for each participant based on their own records management.

### **Costs to NMFS and industry**

There would be monetary costs associated with this action if the PPA is selected as final. All NMFS and PSMFC staff time spent on developing, implementing, managing, maintaining, and enforcing the gear switching provisions, along with modifying them in the future if the Council wished to do so, would be incremental for cost recovery in the IFQ sector. While the total IFQ sector costs have often been greater than the 3% limit for cost recovery specified in the MSA, and therefore costs related to gear switching (or any other program changes) may not increase the fee charged to industry in years when that is the case, additional costs could reduce the likelihood and frequency of total incremental costs dropping below the 3% limit - i.e., this action may prevent the fee from being lower than it otherwise would be in some years.

NMFS absorbs additional costs when total incremental costs exceed the 3% cost recovery limit. This would reduce agency resources available for other work on the IFQ program. In some cases, this would mean that NMFS may not be able to do some IFQ-related work, if insufficient agency funding (or staff time) was available. This could be work on gear switching or other IFQ tasks. NMFS would prioritize IFQ tasks based on agency priorities (e.g., ESA and MMPA requirements, preventing overfishing and rebuilding overfished stocks) and Council priorities.

At this time, it is not possible to estimate hours and actual costs in dollars associated with the gear switching PPA, but they would be in addition to the already substantial agency and industry expenses related to the IFQ program.