

Gear-Switching Final Preferred Alternative (FPA) and Fishery Management Plan (FMP) Amendment Language

At its April 2024 meeting, the Pacific Fishery Management Council (Council) voted to recommend a limit on gear switching (GS)—a limit on the use of non-trawl gear to catch sablefish north of 36° N. lat (northern sablefish) in the trawl individual fishing quota (IFQ) fishery. The limitation would only be in effect for years in which the northern sablefish annual catch limit (ACL) is less than 6,000 mt.

This document describes in detail the FPA the Council is recommending to NMFS and provides the FMP amendment it is recommending as part of that action.

FPA: Gear-Specific QP When Criteria Are Met

Overview

Gear-specific QP would be issued unless certain criteria are met. For years where those criteria are met, generic QP would be issued (QP eligible for use with any gear, as under No Action). For years in which gear-specific QP would be issued, northern sablefish QP would be designated either for the use of trawl gear (“trawl-only QP”) or for the use of any gear (“any-gear QP”) and issued to owners of QS accounts. In each of those years, 29 percent of the total QP would be issued as any-gear QP. The proportions of each type of QP a QS owner receives would be affected by whether or not they qualify as a legacy participant. Qualification as a legacy participant will be based ownership of a trawl LE permit with gear-switching history and at least some QS on and continuously since the control date. Once it is determined that an individual qualifies as a legacy participant, after implementation, that status stays with them (is not transferable to others) and does not change until such time as the legacy participant has divested themselves of all of their northern sablefish QS, at which time their legacy status expires. Legacy participants will receive 100 percent any-gear QP for their eligible QS. Eligible QS at the time of implementation is the lesser of the amount of QS a legacy participant owned on the control date or at the time of implementation. After implementation, eligible QS is the minimum amount a legacy participant owned since implementation (i.e., the amount decreases with divestment). For all other QS (including legacy participant QS that is not eligible and QS not owned by legacy participants), a standard ratio of trawl-only and any-gear QP will be issued. Over time, as legacy participants divest themselves of their QS, the standard ratio of any-gear to trawl-only QP issued for non-eligible QS will increase so that the total amount of any-gear QP issued in the trawl IFQ sector remains constant at 29 percent.

Full Description of the FPA

Restrictions on gear switching of sablefish north of 36 N. lat. will be implemented , except in years when the N. of 36° sablefish ACL is equal to or greater than 6,000 metric tons. No gear-switching restrictions will be placed on vessels using non-trawl gear that are otherwise legally participating in the trawl sector. The following are the provisions of the gear-switching limitation.

Gear Switching Control: Trawl-Only and Any-Gear (Unrestricted) QP:

Northern sablefish QP will be issued as trawl-only QP and any-gear QP (unrestricted QP)

Procedure for Determining the Amount and Distribution of Any-Gear QP

Upon implementation, NMFS will identify legacy participants, their eligible QS, and the standard ratio which will apply to QP issued for all other QS, based on the qualification criteria listed in the following section. A constant proportion of any-gear QP (29%) will be issued for the IFQ sector, with the remainder issued as trawl-only QP.

Legacy participants will receive any-gear QP for their eligible QS. At the time of implementation, eligible QS is any QS owned¹ by a legacy participant that does not exceed what the participant owned on the control date or the implementation date of this action, whichever is less. At any time after implementation, a legacy participant's eligible QS is the minimum amount of QS the legacy participant owned since the time of implementation. Legacy participant QS in excess of the eligible amounts will be treated as non-eligible QS.²

For situations in which more than one individual owns a QS account, a legacy participant's QS ownership is determined based on their share of ownership, as reported to NMFS.

Non-legacy Participants: A standard ratio of any-gear to trawl-only QP will be issued for QS owned by non-legacy participants and QS owned by legacy participants that is not eligible. That ratio will be determined and adjusted as needed each year such that the total amount of any-gear QP issued will equal 29% (including that issued to legacy participants).

Legacy Participants (Definition and Qualification)

Legacy participants are individuals or legal entities for which individual ownership interests cannot be identified (e.g. trusts, nongovernmental entities) that meet the qualifying criteria

¹ In some cases where a group owns the QS account, the total of the individual ownership interests may add up to more than and in others less than 100 percent. For example, where the partnership is considered a joint entity with rights of survival partnership, each individual is reported to own 100 percent of the partnership. Or, because QS owners are not required to report ownership interests of less than 2 percent, there are some accounts for which the total reported ownership is less than 100 percent. In these situations, the reported ownership interest for each individual in the group will be adjusted proportionately so that their combined ownership totals to 100 percent.

² Note that the QS itself is not classified as eligible or ineligible but rather that eligibility status is based on who owns the QS (whether a legacy participant owns it) and the amount of QS the legacy participant owns relative to what they have owned in the past. Thus, when QS is transferred its eligibility status may change. In particular, any QS transferred from a legacy participant will necessarily be ineligible for the issuance of 100 percent any-gear QP because it will either become owned by a non-legacy participant or raise some other legacy participant's QS ownership to above the minimum owned by that individual since implementation. As just described, legacy participant QS that is above the minimum is ineligible.

provided below. The designation as a legacy participant stays with the individual or entity and is not transferable.

To qualify as a legacy participant, as of and since the control date, an individual must have some ownership interest in a trawl limited entry permit (or permits) that landed northern sablefish QPs with non-trawl gear totaling at least 30,000 pounds per year in at least 3 years between January 1, 2011 and September 15, 2017 (the control date) and had some ownership interest in northern sablefish quota shares (any amount).

Legacy Participant Status Holder Terms and Conditions

- Prior to implementation, in certain circumstances qualification status may be transferred from the individual that owned a qualifying permit and QS, as of the control date:
 - If an estate or trust is established for an individual who dies between the control date and implementation, then that estate or trust would be treated as a continuation of the individual for the purpose of determining the trust’s qualification as a legacy or non-legacy participant.
 - An individual who inherits northern sablefish QS and/or a qualified trawl LEP from an individual that passed away between the control date and implementation will be treated as if they owned that LEP and QS as of and since the control date.
 - For purposes of keeping family-owned corporations whole, any ownership interest in QS or a trawl LEP as of the control date that is transferred to another family member by April 10, 2024 will be considered to have been owned by the family member as of the control date.
- After implementation, legacy status cannot be transferred to another individual or entity, e.g. trust, estate, corporation.
- The legacy status for an individual or an entity will not extend beyond the earliest of
 - complete divestiture of the legacy status holder’s northern sablefish QS;
 - the life-time of the individual with legacy status;
 - 15 years³ after the implementation date.

Quota Transferability and Accumulation Limits

As under status quo, all QS and QP would remain fully transferable and the existing QS control limit (3.0 percent) and annual vessel QP use limit (4.5 percent) will continue to be applied for northern sablefish quota as a whole (without distinction by gear type).

³ Note that the 15-year time period is based on the amortization schedule in [Fishing Audit Technique Guide](#) (IRS, 2011, p. 52): Amortization of licenses and other fishing rights granted by governments. “The Revenue Reconciliation Act of 1993, Pub. L. 103-66, 107 Stat. 312 (RRA ‘93) added IRC § 197, which allows a taxpayer to elect an amortization deduction with respect to the capitalized costs of certain intangible property that is acquired by a taxpayer and that is held by the taxpayer in connection with the conduct of a trade or business or an activity engaged in for the production of income. The amount of the deduction is determined by amortizing the adjusted basis of the intangible property ratably over a 15-year period that begins with the month that the intangible is acquired. The term ‘section 197 intangible’ is defined to include ‘**any license, permit, or other right granted by a governmental** unit or any agency or instrumentality thereof.’”

Groundfish Amendment Language

The following provides the Council recommended FMP amendment. The last paragraph pertains specifically to the recommended FPA. The changes in the first three paragraphs are housekeeping changes. These changes primarily update terminology and improve the precision of the text. They include the removal of the sentence on establishing IFQ programs for other commercial fisheries, which duplicates provisions of Section 6.9.3.2 and does not relate to the trawl program.

6.9.3 Fishery Rationalization

6.9.3.1 The Trawl Catch Share ~~Rationalization~~ Programs

The ~~trawl rationalization~~ catch share program (also referenced as the trawl rationalization program) applies to vessels holding trawl-endorsed groundfish LE permits (and mothership processors registered to mothership permits). The program is intended to reduce fishery capacity, minimize bycatch, and meet other goals of the FMP.

There are separate catch share systems for each trawl sector covered under the trawl rationalization program: the shoreside sector, the at-sea mothership sector and the at-sea catcher processor sector.

The shoreside sector is managed with an individual fishing quota (IFQ) ~~The program system that replaced~~s most cumulative landing limits (in for both whiting and non-whiting shoreside LE trawl sectors-trips) and the shorebased ~~side whiting season~~ with individual fishing quotas. Under the Magnuson-Stevens Act, “an ‘individual fishing quota’ means a Federal permit under a limited access system to harvest a quantity of fish, expressed by a unit or units representing a percentage of the total allowable catch of a fishery that may be received or held for exclusive use by a person.” ~~The Council may establish IFQ programs for any commercial fishery sector.~~

An IFQ grants an entity the privilege to catch a specified portion of the shoreside trawl sector’s allocation. Within the shoreside IFQ program, vessels are allowed to use a variety of directed groundfish commercial gear (including nontrawl gear) to take the shoreside trawl sector allocation. The use of nontrawl gear while participating in the shoreside IFQ program is termed “gear switching.” Gear switching may be restricted for individual species or species groups on an ongoing basis or when specific fishery circumstances arise warranting such a restriction. In particular, there will be a limitation on the amount of gear switching allowed for northern sablefish, except in years when the northern sablefish ACL is greater than or equal to 6,000 mt. When the limitation is in effect, it will be accomplished by the issuance of northern sablefish quota pounds (QP) as trawl-only QP and any-gear QP. . . .