

ISSUES RELATED TO THE RECONSIDERATION OF ALLOCATION OF WHITING: DIVESTITURE AND TRANSFER OF QUOTA

The purpose of this document is to describe issues related to the reconsideration of allocation of whiting rulemakings, and to seek public comment regarding how best to address these issues.

Transfer of Quota Shares (QS) and Individual Bycatch (IBQ) in the Shorebased IFQ Program *Background*

Transfer of QS and IBQ was scheduled to begin January 1, 2013. However, response to the court order may require reissuance of QS for some species after January 1, 2013. Reissuance of QS is difficult once trading begins. Due to the complexity of online transactions occurring within the fishery, NMFS is proposing to suspend QS transfers for all species, not just those directly impacted by the reconsideration. If QS permit owners were allowed to transfer QS percentages of whiting and incidentally caught species prior to the completion of the reconsideration, then it would be difficult, if not impossible, to track QS in order to resolve discrepancies or changes to QS allocations. Specifically, QS is highly divisible and may be traded (and retraded) multiple times in units as little as .001%. NMFS does not have the tools to allow tracking at any level (e.g. by creating serialized units of QS). Once QS percentages are transferred they will be comingled with other QS amounts in a QS account. If QS permit owners make multiple transfers both in and out of an account for various units of QS for a particular species, it is extremely difficult for NMFS to track a particular unit of QS back to its original owner. In short, once transfer of QS begins, individual units lose their identity. Additionally, if QS transfers were allowed before the completion of the reconsideration of whiting allocations, QS permit owners would be transferring QS amounts that potentially could increase or decrease after the reconsideration, possibly undermining existing contracts and business relationships and confusing buyers and sellers.

Therefore, the Reconsideration of Allocation of Whiting, Delay of Relevant Regulations Rule (RAW 1) proposes to delay transfer of QS and IBQ until the reconsideration and appeals processes have taken place. Because the RAW 1 rule, if implemented, would be a temporary rule (lasting not more than 365 days), the Council and NMFS need to consider including the delay of QS and IBQ transfers in the permanent rulemaking that is scheduled to follow the September Council meeting (RAW 2). NMFS anticipates any appeals process being completed by the fall of 2013.

NMFS seeks Council guidance regarding:

As part of RAW 2, the Council will need to consider when transfer of QS and IBQ should be reinstated. In deciding when to reinstate QS and IBQ transfers, the Council and NMFS will need to further define the process to allow for transfers of QS and IBQ, including how to apply for a QS permit. The PIE 2 rulemaking would have dealt with this issue. However, because PIE 2 has been delayed and because this issue will need to be in place when QS transfers are allowed, NMFS may need to include it with the RAW 2 rulemaking.

Divestiture Periods for the Shorebased IFQ Program and Mothership Coop Program

Background- Shorebased IFQ Program Divestiture

The current regulations for the Shorebased IFQ Program give QS permit owners with excess QS two years after QS transfer begins to divest their excess QS amounts. In other words, during

2013 and 2014, NMFS anticipates that QS permit owners with QS over the accumulation limits specified at §660.140(d)(4)(i) will sell their excess QS. At the start of 2015, any excess QS owned by QS permit owners would be permanently revoked by NMFS and redistributed to other QS permit owners in proportion to their current QS and IBQ holdings.

For the Shorebased IFQ sector, NMFS seeks Council guidance regarding:

Since NMFS is proposing in RAW 1 to delay transfer of QS and IBQ, the Council may want to consider whether the divestiture period should also be delayed. The Council could consider recommending language for RAW 2 that is similar to what is being proposed in the RAW 1 temporary rulemaking. RAW 1 proposes to temporarily revise the current regulations to state that any person that has an initial allocation of QS or IBQ in excess of the accumulation limits would be allowed to receive that allocation, but must divest themselves of the excess QS or IBQ during the first two years once QS transfers are allowed.

Background –MotherShip (MS) sector Divestiture

The current regulations for MS/Catcher Vessel(CV)-endorsed permit owners in the Mothership Coop Program outline a divestiture period which ends December 31, 2012 (§660.150(g)(3)(i)(D)). Currently no member of this sector owns MS/CV-endorsed permits in excess of the accumulation limits.

However, it's possible that as a result of the reconsideration, some member of this sector may receive a new allocation in excess of the accumulation limits.

For the MS sector, NMFS seeks Council guidance regarding:

The Council may want to consider establishing a new or prolonged divestiture period in response to the reconsideration.

Recipients for the reconsidered quota allocations

NMFS has identified an issue that may arise depending on the outcome of the reconsideration effort before the Council. Because some of the permits have changed ownership, it creates a problem if quota were to be reissued. In other words, if the ownership of affected permits has changed and if initial whiting quota allocations change, who would get the revised quota amounts?

The RAW 1 proposed rule stated the following on p.29958 of the Federal Register, “Accordingly there should not be a need to freeze LEP transfers. If NMFS reissues QS permits and/or MS/CV endorsed LEPs, NMFS **proposes** that those permits be **issued to the permit owner of record with NMFS at the time of reissuance**” [emphasis added].

The Agenda Item D.7 Situation Summary notes the following at 1d, “Change the entity to which the QS allocations will be distributed from the permit owner to the owner of the QS account (allocations to QS accounts would be based on the history of the permit which generated each QS account).”

NMFS seeks Council guidance regarding:

The Council may want to consider how to best allocate whiting following the reconsideration if permits have changed ownership.