

COUNCIL STAFF REVIEW OF DRAFT NMFS REGULATIONS

The following showed up as potential issues to address in the draft regulations provided in Agenda Item E.6.b, NMFS Report 4.

Initial Allocation Formula: Substantial Concerns

There are a number of substantive issues in Section 660.140(d)8(ii) on the (QS) allocation criteria:

1. There is no specification for the allocation of QS for whiting taken as bycatch in the nonwhiting fishery.
2. There is no specification for the allocation of QS for nonwhiting taken as bycatch in the whiting fishery.
3. The allocation of canary QS is misspecified (the approach of allocating a minimum of 50 pounds from AMP is used instead of providing an equal allocation from the QS pool created based on the buyback permits).
4. The allocation formula for overfished species does not indicate that the formula only applies to those taken as incidental catch (e.g. not to Petrale sole).
5. Rules are not provided for the combination of the QS allocated for nonwhiting trips with the QS allocated for whiting trips to achieve a single shoreside sector.
6. Amounts of QS to be allocated for different groups or on the basis of different parts of the allocation formula are not indicated
 - a. The AMP set aside is not accounted for. There is a section for AMP that is reserved. The allocation of QS for AMP needs to be specified to apply the initial allocation formula for QS.
 - b. There is no indication of the amount of the total QS that is to be allocated to permit holders on the basis of permit history. For nonwhiting QS, the amount allocated based on permit history would be that QS left over after first removing the 10% for AMP and then the amount that is used for the equal allocation pool (for non-overfished species and canary rockfish).
 - c. The amount of whiting QS to be allocated to processors and permit holders is not indicated.

Initial Allocation Formula: Easily Addressed Corrections to the Initial Allocation Regulations

Some additional specifics which may need to be addressed.

1. 660.140(d)(8)(ii)(A)(3) should explicitly state that each permit's lowest landings by "weight" should be determined after that weight has been divided by the fleet's landings history for each year, i.e. relative history as explained in paragraph (A)(2).
2. 660.140(d)(8)(ii)(A)(4) and 660.150(g)(6)(ii)(A) replace the word "both" with "all" and add to the end of the sentence: "for the period of time for which the permits were registered for the same vessel."
3. 660.140(d)(8)(ii)(A)(6) consider eliminating this paragraph. The landing history is not shared equally among all permits. An amount of QS is set aside into a pool and that QS is divided equally among all of the limited entry permits. It is not the QS permits among which the QS is allocated but rather among the limited entry permit holders (unless entities holding multiple permits will receive one QS permit for each limited entry permit they own). This issue is addressed in 660.140(d)(8)(ii)(D).
4. 660.140(d)(8)(ii)(B)(1) Drop 2 worst years instead of 3 worst years. Include the date for fixing the data set, as provided in Section 660.140(d)(8)(ii)(A)(1). Make changes similar to those listed for items 1, 2, and 3 above.
5. 660.140(d)(8)(ii)(B)(2) Change "2003" to "2004." Make changes similar to those listed for item 1 above.

6. 660.140(d)(8)(ii) (D). Indicate that the equal division is to be used for non-overfished species and canary rockfish. Indicate that the equal division will be among all qualifying limited entry permits. If the term “QS permits” is to be used, indicate that the QS permits to which an equal allocation is provided does not include the QS permits given to those processors receiving QS permits for their whiting allocations and that an applicant will receive one QS permit for each limited entry permit that it owns.

Other Substantial Concerns

1. Co-op Permits for Catcher-Processors. The co-op permit sections are not yet provided, however, there is a reserved section for a catcher-processor co-op permit. The Council voted against requiring a co-op permit when it was told that if such a permit were required it would make the catcher-processor sector a LAPP and possibly subject to a fee of up to 3%. Also, in section 660.160(a) the catcher-processor co-op program is classified as a limited access program.

Other Minor Concerns and Comments

1. Additional attention needs to be given to the specification of set asides, when they come off the top and when they come off sector allocations.
2. 660.11. Catch Monitor. The definition for those monitoring shoreside deliveries reference the monitoring and verification of catch sorting. Should this language reference “landings” instead of “catch”?
3. 660.11. Nontrawl Fishery and Groundfish Trawl. The term “exempted gear” and “exempted trawl gear” are used but not defined in the regulations. Define or replace with “nongroundfish trawl gear.”
4. 660.11. “Trawl fishery” does not seem to be defined (or at least the definition is difficult to locate). It might make the regulations easier to follow if there were also a definition of trawl fishery. “What is particularly difficult to parse is the status of catch by trawl vessels using nontrawl gear, exempted gear in particular.
5. 660.25(b)(2). The meaning of the following sentence needs to be clarified possibly by removing the last clause. “A MS permit is a type of limited entry permit and may not be transferred separately from the limited entry permit.”
6. 660.111. IFQ is defined similarly to the term QS but it is used only as a descriptor: IFQ programs, IFQ species, IFQ fisheries, IFQ first receivers, IFQ landing, IFQ endorsed, IFQ sector, IFQ vessels etc., with the exception of the definition of the midwater whiting fishery and quota shares (see below). In Council documents we also use the term IFQ when we mean both QS and QP. Consider whether the term “IFQ” might be given a more general definition so that it would cover both QS and QP or might otherwise be used in a fashion that does not duplicate QS.
7. 660.111. Midwater whiting fishery. The term “shore-based IFQ endorsed limited entry permit” is used. This type of permit does seem to be defined elsewhere and is not anticipated as part of Amendment 20.
8. 660.111. Processor Obligation is phrased to indicate that it is a particular permit that must make the obligated deliveries. Rephrase the wording from “an annual requirement for a MS/CV endorsed limited entry permit to deliver its catch to a particular mothership processor permit.” to deliver something like “an annual requirement for a MS/CV endorsed limited entry permit for the delivery of catch associated with that permit to a particular mothership processor permit.”
9. 660.111. Quota Shares is defined as something used to determine a person’s IFQ. This should probably read “QP” instead of “IFQs.”
10. 660.111. Vessel Limits is defined in such a way that the limit might apply to pounds that were transferred onto and off of a vessel without being used. The term should also indicate that the limit is an annual limit.

11. 660.140 (a) and 660.150(a)(5), 660.160(a)(5). Should those sections indicate that the fishery could be restricted because of major overages in non-trawl sectors?
12. Consider modifying the language in paragraph 660.140(d)(4)(iii), 660.150(f)(3)(iii) and 660.150(g)(3)(i)(B) to more directly indicate that QS held by entities in the fashions listed in this paragraph would be considered to be controlled by them and count against the accumulation limits.
13. In the first sentence of paragraph 660.140(d)(4)(iv), add some qualifying language to indicate that it applies to those who exceed the accumulation limits as a result of the initial allocation.
14. 660.140(d)(8)(i)(A), (i)(B), (iii)(A) and (iii)(B). Consider eliminating “For harvesters” and “For shoreside first receivers/processors” from the starts of the paragraphs and making appropriate related adjustments. Businesses that own processing plants may also own harvester permits but not own any harvesting vessels. Consider changing references from “shoreside processors” to “shoreside first/receivers.” Information on whether a shoreside first receiver is also a processor will only become available as a result of information submitted by applicants later in the application process.
15. 660.150(f)(1). The MS permit would not be a co-op participant.
16. 660.150(g)(6)(ii) Adjust this section so that the qualifying history evaluated is the permit’s history rather than the history of the vessel registered to the permit.
17. 660.150(g)(6)(iii)(A) Modify to indicate that the vessel history counted toward the permit history is only that which occurred during the time the vessel was registered to the permit.
18. 660.150(g)(6)(iii)(C) Add “unless otherwise requested by the applicant during the initial issuance and appeals process.”
19. 660.160(d)(1). Consider dropping the last sentence. It appears to require that in order for an owner of a catcher-processor endorsed permit to participate in the fishery, they must join a co-op. A catcher-processor endorsed permit owner would have the option of not participating in the co-op, causing the dissolution of the co-op fishery and the transition to an IFQ fishery, in which it could participate.

PFMC
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