

GROUND FISH ADVISORY SUBPANEL REPORT ON
IMPLEMENTATION OF AMENDMENT 20 (TRAWL RATIONALIZATION) AND
AMENDMENT 21 (INTERSECTOR ALLOCATION) AS WELL AS SCOPING OF PRIORITIZED
TRAILING AMENDMENTS

The Groundfish Advisory Subpanel (GAP) considered four major trailing amendments and offers detailed comments below. We also discussed several corollary issues that we wish to highlight for the Council.

MAJOR TRAILING AMENDMENT ISSUES

1. Amendment 21 to replace Amendment 6:

The GAP feels Amendment 21 was meant to supersede Amendment 6. National Marine Fisheries Service's (NMFS) rejection of that portion of the rationalization package will unintentionally cause hardship for limited entry fixed-gear fishermen while benefitting open access fishermen. The GAP asks the Council to remedy this problem. In addition, NMFS' interpretation effectively traps Exempted Fishing Permit (EFP) fish within the set-asides, preventing other fisheries from accessing that fish in the event an EFP is not enacted. The GAP requests the Council to remedy this issue.

2. Severability of the mothership catcher-vessel catch history/endorsements from the permits:

Approximately 22 more permits were allotted mothership (MS)/catcher vessel (CV) history than currently participate. In general, the allocations to those permits are very small. Without the ability to sever that quota from the permit, a current participant will have to buy the permit in order to have permanent access to the catch history. The cost of buying the permit will be disproportionate to the value of the catch history. Severability will also allow those who wish to participate the ability to retain their permit to harvest non-MS individual quota to sell their catch history rather than choosing to join a co-op, fish in the non-co-op fishery or just strand their fish. Severability is supported by the MS sector and is consistent with the goals of Amendment 20.

3. Cost recovery:

The GAP recognizes the complexity surrounding development of the cost recovery program. In part due to that complexity, and in part in order to maintain as open a process as possible, we firmly believe that the Council should play a strong and active role in the development of the cost recovery program.

The GAP notes that cost recovery should be limited to the incremental costs of administering the trawl rationalization program. The appropriate formula to determine incremental costs should be new costs that wouldn't occur *but for the transition to individual quota (IQ)/coop management* reduced by any cost savings due to the transition to IQ/coop management. This should include savings, if any, in reduced modeling for the trawl fleet, reduced enforcement needs over time etc. One existing cost which the GAP feels needs to be taken into account when calculating incremental costs of the program is the amount required to provide for the current observer coverage rate in the fleet. The GAP is adamant that that cost be reduced from each sector's incremental cost accordingly.

Furthermore, we request that NMFS provide the public a sector-by-sector breakdown of the costs of current management as well as the costs of the trawl rationalization program. This will make cost recovery calculations and program development more transparent.

Finally, the GAP believes each sector should only pay for that portion of the increased costs attributable to that sector.

4. Safe harbors: The GAP spent hours in discussion about an exception to control caps (safe harbors) for community fishing associations, risk pools, and quota used as collateral for financing. We referred to Agenda Item H.5.a. Attachment 1, “Fall 2010 Scoping Information on Trailing Actions,” as well as the *Burden et al* document to help inform our discussion.

Risk Pools

The GAP’s principal concern with the transition to IQ management is the availability, or lack thereof, of overfished species. The lack of quota for constraining stocks may force many fishermen or entire sections of coast off the water early and may prevent some fishermen from starting to fish at all. Based on that concern, the GAP stated in its September comments on this issue that risk pools should be given the highest priority for trailing amendment development. However, based on discussions with NMFS staff and NOAA General Counsel (GC), the GAP no longer believes a trailing amendment is necessary to facilitate viable risk pools.

The GAP’s interest in pursuing a trailing amendment for risk pools emerged from a concern that many of the contractual risk pool designs under consideration by the fleet could implicate the strict “control” language adopted by the Council if the amount of fish in the risk pool exceeded the caps. More specifically, it seems that a functioning risk pool may require both incentives and penalties to ensure limited numbers of constraining stocks are avoided, and those incentives and penalties may need to run beyond a single year to ensure the best compliance. While there is no “control” limit on quota pounds (a separate vessel limit applies to QP), there was an assumption that multi-year contracts on quota pounds would impute control over quota share thereby implicating the limit.

The GAP now understands, after discussions with NOAA GC and NMFS staff, that voluntary, multi-year contracts, solely for the purpose of avoiding overfished and other constraining stocks will not *automatically* implicate the control rule. We further understand that whether the control rule is triggered will depend on the specific nature of the contract, but that many of the avoidance concepts (i.e. contractual arrangement of information sharing, incentives, and penalties) under consideration by the fleet may *NOT* trigger the control rule, even if those contracts run for more than one year. We also understand that NMFS and GC staff are available to discuss specific risk pool contracts for determination of control cap compliance. The GAP appreciates NMFS’ and NOAA GC’s willingness to engage in these discussions.

If the GAP’s understanding is correct, we believe no trailing amendment is needed for risk pools at this time, which would free up time in the schedule to consider other important potential trailing and regulatory amendments (artifacts from previous management) such as trawl gear restrictions, shoreside whiting season dates and so on.

CFAs

Regarding CFAs, the following paragraph captures the essence of our lengthy discussion:

CFAs can form now, under existing laws and regulations for any number of purposes that could help stabilize communities. There is no need for Council intervention to allow an exception to the carefully developed quota share control caps.

The GAP recognizes a lot of time and effort went into putting the IQ program together and the control rules were part and parcel to that process. Any exception would be a detriment and create a loophole that could get “stretched” later on. Regarding an exception for overfished species (OFS), the GAP believes those levels are liberal enough and any multiplication of those levels is unnecessary. Caps for target species are also liberal and, in almost every instance, those levels are greater than the historic landings of any individual participant.

Given these arguments, we believe there was little reason to comment on the CFA straw man/options on Page 10 in the scoping document. Regardless, the following are highlights from the pertinent points related to CFAs that came up during the GAP’s discussion:

- CFAs, risk pools and financing institutions should be considered three separate and unique entities. Each have their own goals and missions to accomplish. However, the GAP recognizes there could be some overlap in, say, a CFA also acting as a risk pool. In other words, a CFA could participate in a risk pool, but in order to have a risk pool, you don’t need to have a CFA. Risk pools primarily would be formed to deal with issues related to overfished species.
- Adaptive management program pounds should NOT be inextricably linked to CFAs. Establishment of a CFA should not be a vehicle to obtaining more quota shares/quota pounds through adaptive management as some in the non-trawl sector may desire.
- Council action on CFAs is not necessary at this time. As we’ve stated before, if you take away the quota share rule exception, there is no need for the council to consider CFAs so they should be taken off the council’s calendar. The fleet – with one exception – has not come forward with any interest in CFAs. The lone individual who expressed interest in CFAs is planning to develop a CFA within the existing caps. Moreover, only a small number of communities have expressed interest in being a part of or forming CFAs. The GAP does acknowledge that these communities are seeking larger control caps for CFAs. However, during the first couple of years of the TIQ program, the GAP as a whole feels that the Council should concentrate on trailing amendments that will make the program work as efficiently as possible – this does not include CFAs at this time.
- Maintaining community infrastructure: The GAP recognizes one of the assumed goals of CFAs would be to maintain a community’s fishing infrastructure, such as the fleet, processor(s), ice plant(s), buyer(s) and related businesses, and that community’s viability in the greater community (state, region, etc). Those goals could be achieved using other mechanisms, such as removing or modifying artifacts from the traditional management regime: the shoreside whiting season dates (i.e., there are higher value/small volume markets available earlier in the season and a change could allow fishermen and processors to access these), rockfish conservation area (RCA) boundaries, allowing gear modification, etc. Those goals could also be realized through the formation of a CFA

within the existing caps. That is not an insignificant amount of quota and could be used to incentivize additional landings accommodating many vessels.

- CFA design: A definition of a CFA should not be so restrictive as to exclude people who want to form them around one or more ports, a community, a processor, a business, etc. Furthermore, support for CFAs and formation of its organizational structure should come from regional trawl fishery participants, and not be mandated by the Council.
- Providing opportunity: One member of the GAP suggested CFAs with a safe harbor exception to the control caps under carefully articulated circumstances are merely a tool to provide flexibility and opportunity to traditional trawl communities that may have concerns about maintaining landings and infrastructure after the transition to the IQ program. The safe harbor would not grant communities quota, but would rather allow them to acquire it in a willing buyer willing seller transaction. As stated above, the GAP strongly rejects this argument and believes the control caps are adequate should communities wish to purchase quota to help maintain landings.

Financial institutions using QS as collateral: The GAP believes that banks and other financial institutions should be authorized to hold QS as collateral in excess of control caps as specified in the regulations. Without that ability, many lenders will be unwilling to make loans to fishermen based solely on the QS asset. However, the GAP believes that those lenders should not be able to direct the use or disposition of the QS or QP other than by way of sale in the case of a foreclosure action. This situation needs attention, because the regulations as presently drafted allow for control of the QS/QP by the lending institution.

COROLLARY ISSUES

- Halibut individual bycatch quota (IBQ): In addition to some of the overfished species, halibut is likely to be one of the biggest constraints on the trawl fleet. The GAP believes that an emergency rule is needed to fix the allocation to the trawl sector for 2011, and a trailing amendment to implement a longer term fix for 2012 and beyond should also be developed. We agree with the WDFW report that for 2011, the 130,000 pounds of halibut allocated to the trawl fleet should be expanded from the dressed “legal” fish it represents, to round weight total mortality. The amount of halibut available to the trawl fleet based on the WDFW report (but using the .62 figure for legal/sublegal expansion based on poundage rather than number of animals), roughly 279,000 pounds of total mortality, is a significant reduction over where we would have been had Amendment 21 not been implemented, and so in that sense does not harm the other sectors. More importantly, it is very close to a 50% reduction in trawl halibut mortality, which is what the GAP feels was the original intent of the motion limiting the trawl sector to the lesser of 130,000 pounds or 15% of the CEY. To summarize, the GAP believes that the intent of the motion was to limit the trawl sector to 130,000 pounds of dressed, legal halibut so expanding that number to incorporate round weight and sublegals is appropriate. This calculation is shown in figure 1 below.
- Usage limits (vessel caps): During a discussion of risk pools with Mariam McCall and Frank Lockhart, a hypothetical situation arose independent of the CFAs and risk pools discussion that: If a fisherman is in deficit and curing that deficit would put the fishermen over the usage limit/vessel cap, the fishermen will be in a penalty situation with no potential remedy. It was suggested an exception be made to cover the deficit but then the vessel would be required to stop fishing for the year – and it would not incur a violation. Obviously, this is more acute with regard to OFS rather than target species and raised the

question of whether an exception to this rule would create an incentive to fish above the vessel cap. The GAP agreed it merits more discussion as trailing amendments move forward.

- Alternatives to risk pools and CFAs: The GAP considered another option, quota banks, to remedy the problem of overfished species. This option would require that for low-abundant species, all of the fish would be put into one large pool held by NMFS. Quota holders could withdraw from the bank as OFS were encountered. However, there would be the option of three disincentives for doing so: a cost per pound, time off the water or a frozen vessel account. While the GAP arrived at no conclusion on this, it was put forth as an alternative to a risk pool that would not require a quota share exception. Several members of the public strongly objected to this proposal desiring to keep NMFS out of managing quota and several members of the GAP echoed that objection. If the Council decides to move forward with this concept, the GAP believes this is something that should be further developed by the TIQ committee.
- Third-year pass-through of AMP pounds: The GAP agreed that a third-year pass-through of AMP pounds makes sense, since it will take the first couple of years to get all the kinks ironed out of the TIQ program and this would ease the transition.
- Other items the Council should consider: The GAP believes dropping CFAs and risk pools from the list of trailing amendments will free up time in the Council schedule to work on other critical regulatory and trailing amendments that are needed in the short term to help the trawl rationalization program meet its objectives. Referencing two items from the September 2010 meeting, Agenda Item 1.6.a, Supplemental Attachment 3, “Table – initial list of potential trailing actions and possible calendar,” and Agenda Item 1.6.b, Supplemental GAP report, we have commented on other potential trailing actions that could be moved ahead in the timeline:
 - Reducing observer costs – Next to risk pools, observer costs are one of the primary concerns of the fleet when considering the transition to catch shares management. Electronic monitoring has the potential to reduce costs and also provides significant benefits in terms of flexibility. Observer pools, which may be used to keep observer costs down within a port, require a strict rotation and may prevent some fishermen from fishing when they wish to do so. That problem goes away with electronic monitoring. For those reasons, EM needs to be considered and we ask that NMFS develop guidance on what an EM system would need to do from a management, enforcement, and science standpoint to be authorized for use.
 - Removing trip limit management artifacts – Some regulations that made sense under traditional management are now a detriment to the fishery from both a conservation and economic standpoint. For example, gear restrictions on things like mesh size and net shape are less important now that we have individual accountability, but those restrictions will hamper the ability of the fleet to develop innovative gear modifications that could help keep constraining species out of the net. Likewise, the limitation on processing at sea, including things like freezing product on board the vessel is an artifact that could prevent the realization of better market prices and better quality overall. Another example of a modification to existing rules that could yield benefits is the start date to the shoreside whiting season. We recommend a change from June 15 to May 15 to provide more flexibility to time landings to market, avoid constraining stocks etc. A final

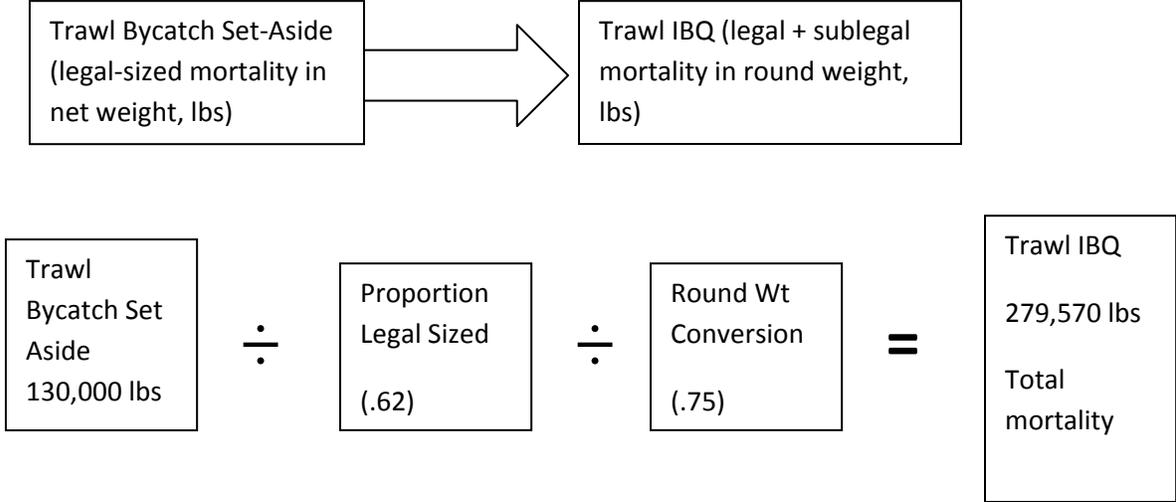
example of an artifact from the previous management system that should be revisited is the permit stacking rules. Those rules prevent holding an LE fixed permit and a trawl permit on board at the same time and meanwhile limit the number of transfers authorized per year. This will result in unnecessary and inefficient constraints on fishermen and at the same time create headaches for the NMFS permit office. This prohibition is one of the chief obstacles to an automated declaration system. The GAP believes fixing these artifacts would be relatively straightforward taking only a two meeting process and requiring relatively little in the way of staff and Council time. The GAP also wishes to direct the Council's attention to a speech given by NMFS Regional Administrator Will Stelle at the Santa Rosa quota holder workshop (video of the speech is available at www.westcoasttrawlers.net/node/69). Mr. Stelle highlighted the need to move away from command and control management to new gear types, seasons, product forms and so on to maximize revenue from the fishery while meeting our conservation objectives. That laudable goal will be hindered if we don't modify outdated regulations preventing those advances. The TIQ committee could be tasked with further development of changes to these rules.

- QP deficits lasting more than 30 days – The GAP continues to believe that if you can cover this at any point during the year you should not be penalized. The penalty is in having to quit fishing until you could find the quota. The practical reality is that some fishermen may be penalized for being unable to find 1 or 2 pounds of an overfished species in exceedingly tight market conditions.

Implementation Update Regarding Observer Cost Reimbursement

The GAP and members of the trawl fleet were under the impression that NMFS intended to reimburse 90% of observer costs during the first year of the program. We have recently learned that the intent is now to reimburse only for "sea days". This formulation of the reimbursement concept could have significant unintended consequences for trawl fishermen, particularly during periods of poor weather when it may blow for weeks at a time. The fishermen will likely need to contract with observer companies to keep observers in port and pay for that time, but if they don't fish due to no fault of their own will not be reimbursed. We urge the Council and NMFS to reconsider this issue. There were several other reimbursement protocols under consideration by the PSMFC which, if adopted instead of the current formulation, could create additional incentives to keep observer costs down while avoiding this problem. One idea would be to have the PSMFC establish observer reimbursement accounts for each fishermen based on a days at sea or percent allocation of the quota formula.

Figure 1: Conversion of trawl set aside to halibut IBQ



PFMC
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Table. Initial list of potential trailing actions and possible calendar for each assuming that not all issues are addressed at the same time (if a substantial number of issues are addressed at the same time, the calendars would need to be adjusted to avoid bottlenecks). Shaded months indicate periods of Council activity.

Topic	2010	2011					2012						2013	Possible Lead Entity(ies)	Possible Analytical Support
	Nov	Mar	Apr	Jun	Sep	Nov	Jan 1	Mar	Apr	Jun	Sep	Nov	Jan 1		
1 Cost Recovery			PPA	FPA			Impl							NMFS	NMFS & Cncl Staff w/Contractor
2 Adaptive Management Program (AMP) Quota Shares (QS)				PPA	FPA					Impl *				Agency Workgroup (NMFS & States)	Council Staff
3 QS/Quota Pound (QP) Control Rules, Including Community Fishing Associations, Risk Pools, & Financing				PPA	FPA					Impl				GAC or Policy Workgroup w/Legal Assistance	Council Staff w/Contractor
4 Reducing Observer Costs (Education, Alternative Technologies, & % Coverage)				PPA	FPA								Impl	Workgroup (NWR,NWSC, Enf,Cncl)	Council Staff w/NWR/NWSC
5 Yelloweye QS Allocation			PPA	FPA						Impl				GAC or Council/GAP	GMT &/or Council Staff w/Contractor
6 Widow QS Reallocation			PPA	FPA						Impl				GAC or Council/GAP	GMT &/or Council Staff w/Contractor
7 Halibut Trawl Allocation Adjustment		PPA		FPA			Impl **							Council/GAP	GMT &/or Council Staff w/Contractor
8 QP Deficits Lasting More Than 30-days		PPA		FPA					Impl					Council/GAP	Council Staff
9 Mothership Processing Ownership Limits		PPA		FPA					Impl					Council/GAP	Council Staff
10 Permit stacking		PPA		FPA					Impl					Council/GAP	Council Staff
11 Double Filing of Co-op Reports		PPA		FPA					Impl					Council/GAP	Council Staff
12 Severability of Catch History From Mothership/Catcher Vessel Endorsement		PPA		FPA					Impl					Council/GAP	Council Staff w/Contractor

PPA = Council selects preliminary preferred alternative. **FPA** = Council selects final preferred alternative. **Impl** = Target implementation date.

* Implementation assuming proposals for use of AMP quota must be evaluated for 2013-14 specs. If a formulaic approach is used, implementation may come later in the year.

** If implementation is to be later than the start of 2012, any reallocation can be handled through the biannual specifications process.

Control and vessel limits (from H.5.a attachment 1)

Species Category	Vessel Limit (Applies to all QP in a Vessel Account, Used and Unused)	Vessel Unused QP Limit**	QS Control Lim
Nonwhiting Groundfish Species	3.2%		2.7%
Lingcod - coastwide	3.8%		2.5%
Pacific Cod	20.0%		12.0%
Pacific whiting (shoreside)	15.0%		10.0%
Pacific whiting (mothership)	30.0%		20.0%
Sablefish			
N. of 36° (Monterey north)	4.5%		3.0%
S. of 36° (Conception area)	15.0%		10.0%
PACIFIC OCEAN PERCH	6.0%	4.0%	4.0%
WIDOW ROCKFISH *	8.5%	5.1%	5.1%
CANARY ROCKFISH	10.0%	4.4%	4.4%
Chilipepper Rockfish	15.0%		10.0%
BOCACCIO	15.4%	13.2%	13.2%
Splitnose Rockfish	15.0%		10.0%
Yellowtail Rockfish	7.5%		5.0%
Shortspine Thornyhead			
N. of 34°27'	9.0%		6.0%
S. of 34°27'	9.0%		6.0%
Longspine Thornyhead			
N. of 34°27'	9.0%		6.0%
COWCOD	17.7%	17.7%	17.7%
DARKBLOTCHED	6.8%	4.5%	4.5%
YELLOWEYE	11.4%	5.7%	5.7%
Minor Rockfish North			
Shelf Species	7.5%		5.0%
Slope Species	7.5%		5.0%
Minor Rockfish South			
Shelf Species	13.5%		9.0%
Slope Species	9.0%		6.0%
Dover sole	3.9%		2.6%
English Sole	7.5%		5.0%
Petrale Sole	4.5%		3.0%
Arrowtooth Flounder	20.0%		10.0%
Starry Flounder	20.0%		10.0%
Other Flatfish	15.0%		10.0%
Pacific Halibut	14.4%	5.4%	5.4%

* If widow rockfish is rebuilt before initial allocation of QS, the vessel limit will be set at 1.5 times the control limit.

** A limit on the amount of unused QP that may be in a vessel account at any one time.