

IFQ Committee Minutes
February 5, 2018 | Seattle, WA

Members: Buck Laukitis (chair), Jeff Farvour, Natasha Hayden, Jeff Kauffman, Nicole Kimball, Linda Kozak, Bob Linville, Shawn McManus, Michael Offerman, Peggy Parker, Matt Robinson, Erik Velsko, Dave Fraser. (Not present: Jared Bright)

Other Attendees Sign-in: (see end of report.)

The Chairman called the meeting to order and the agenda was approved with no amendments. The Chairman advised that public testimony would be taken at the conclusion of each agenda item as time permitted. Public testimony was received after each agenda item.

Medical Lease Provision

Stephanie Warpinski (NMFS) provided a report on the discussion paper that will be presented to the Council under the C-4 agenda item. The report highlighted the fact that the original intent of the provision was to alleviate temporary hardship, and was not intended to facilitate indefinite leasing by persons with chronic conditions. Staff noted the record of how many QS holders have used the provision, used it repeatedly, the age of users, and the amount of QS that has been leased on a yearly basis. Staff also noted that use of the medical leasing provisions increased coincident with the implementation of new limitations on hired master use.

The Committee was informed that NMFS has provided draft alternatives for modification to the medical lease provision in Section 4.1 of the discussion paper that can be found under Item C-4 on the Council's agenda. *Clarifications:* Under Alternative 3, "any reason" still refers only to medical conditions that are covered under status quo regulations. Under Alternative 4, "years" refers to calendar years, not fishing seasons. No alternative/option would remove the requirement for an affidavit (medical declaration by a professional).

The Committee affirmed the purpose of this discussion paper, recognizing that some individuals appear to be using the provision to continue leasing quota rather than divesting when they can no longer participate in the fishery. Use of this provision could be contributing to the lack of quota shares available on the transfer market, and thus contributing to the high cost of quota in some areas. The Committee concurred that the root of the problem is the use of the term "*same* medical condition" in regulation. However, the Committee also recognized that the provision provides an essential safety net for bona fide fishery participants who might experience medical hardships over the course of a career. The Committee was in consensus that the Council should consider lifetime limits on use of the provision that accommodates occasional unforeseen circumstances, but acknowledged that putting a number to that limit would be subjective. On one hand, it is not possible to predetermine the timing or frequency of medical hardships that could befall a fisherman; on the other, it is likely that individuals who would use the provision in a way that conflicts with its intent will use it to the maximum extent allowed by regulation. The Committee also noted that medical hardships can include approved care for family, which increases the likelihood that a quota holder will utilize the provision over the course of a career. Aside from lifetime limits, the

Committee also discussed limiting the number of 5-year periods during which a quota holder can claim two years of leasing permission.

Some members opposed requiring multiple affidavits because that would increase costs and barriers to individuals who are already experiencing hardship. Members also noted the incongruity of allowing three years of leasing for the heirs of deceased quota holders while only allowing two years for those settling affairs in the face of long-term illness. Those also noted that some chronic issues may take a year or more to be diagnosed, and that additional time after diagnosis might be needed to make arrangements for quota disposition. To that end, the Committee discussed allowing transfer for more than two years if the period would result in divestiture.

Beneficiary Lease Provision

Stephanie Warpinski (NMFS) provided a report on the discussion paper that will be presented to the Council under the C-5 agenda item. Staff noted that the provision was implemented in 2000, and that to-date only 14% of quota share holders have completed the NMFS beneficiary designation form. NMFS is receiving an increasing number of survivorship-related inquiries as the population of QS holders ages. In the event that both a NMFS form and a will are on file, the will takes precedence. NMFS encounters administrative issue when (1) a will and a filed beneficiary form are not in accordance, (2) no form is on file, and (3) the person designated on a beneficiary form is not recognized by the current definition of “immediate family member.” NMFS does not have a definition of “immediate family member,” and recommends replacing reference to surviving spouse or immediate family member with the term “estate representative.” The latter term would encompass a designated executor of a will or, if there is no will, a court-appointed representative. If the term “immediate family member” is retained – which is not NMFS’s preference – it should be redefined as suggested in the options provided in Section 4.2 of the discussion paper.

The Committee agreed that a serious problem exists when a beneficiary designated on a NMFS form and the heir identified in a will are not the same. Moreover, NMFS is unable to divide a quota share holding if multiple beneficiaries are designated in a will. A Committee member asked for feedback on whether an estate could be settled while IFQ was being leased out over the allowed three-year period defined in regulation.

The Committee recommended that NMFS include a reminder to file the beneficiary designation form as a part of the routine annual paperwork that quota holders receive. It was suggested that filling out the designation form be a requirement for receiving annual IFQ, but noted that doing so would not solve the issue that arises when the form is in conflict with a will. Committee members also noted that NMFS could request that form filers designate a back-up person in the case that the designee is also deceased or otherwise unavailable. The Committee agreed with NMFS’s suggestion that “estate representative” replace “immediate family member,” but that a surviving spouse should supersede “estate representative” by default. Members also requested that NMFS provide feedback or a notice of receipt to quota share holders who have filed their designation form to alleviate any uncertainty.

Presentation on *Turning the Tide: How can Alaska address the ‘graying of the fleet’ and loss of rural fisheries access?* (Jesse Coleman – UAF)

The Committee received a summary report that addressed barriers to fishery entry in the context of the IFQ Program. Salient issues included decreased exposure to fishing opportunities in remote communities, the high cost of purchasing quota shares, and the linkage between the number of active participants in a rural community and the number of new entrants. The presenter noted that adult participation in the fishery is a leading indicator of early and continued engagement, which is enhanced through informal mentorship, crew employment, and apprenticeship programs. The presenter also noted that demographic data on IFQ program participants are not collected systematically. The Committee was informed about recruitment quota programs for young fishermen outside of the U.S., which tend to have a low attrition rate, as well as community quota allocations around the globe (including western Alaska CDQ). The presenter also emphasized the benefit of investments in rural fishery infrastructure to participation recruitment.

The Committee’s interaction with the presenter yielded several positive examples of engagement and participation-building in other fisheries. It should be noted, however, that the Committee recognized that several of the document’s recommendations could not be easily applied to the IFQ Program. For instance, age-based opportunities are difficult to define in Federal regulation. Regulations are typically structured such that any person who meets a requirement may participate in a program. Provisions that might benefit new entrants (e.g., “first-time buyers”) have been implemented in North Pacific fisheries. While no consensus recommendation was made, at least one Committee member encouraged the development of a “state-wide task force” to address broader issues of fishery participation, which was a recommendation in the presented paper.

Committee Proposals

The Committee reviewed 20 proposals that were offered by Committee members to modify aspects of the IFQ Program. These proposals are collected in a document that is provided as an attachment under the Council’s C-6 agenda item. Topics include Federal loan programs, active participation (transfer eligibility requirements), adjustments to “blocked” quota provisions, QS ownership and use caps, hired master use, the definition of IFQ “owner-operators,” and the creation of quota pools for new entrants and rural community recruitment. *The Committee requests Council direction on whether and how to move forward with these topics. That direction could come in the form of one or more “problem statements,” or specific requests for further information that could help identify a particular aspect of the IFQ Program’s original objectives that is not being met, or might not be met in the future.*

Federal Loan Programs & Cost Recovery

The Committee received four proposals for modification to the Federal loan program that supports QS purchases and vessel investments. Members noted that the program requires a 20% down payment and additional collateral. The Committee was advised that the terms of the loan program might be altered via a regulatory amendment, but that this falls outside of the Council’s direct management authority. It is possible for the Council to express an interest in revising minimum terms to NMFS Financial Services Division.

The Committee asked staff to look into how cost recovery fees have been, or are being, used in the loan program. Staff advised that fees may have been used to subsidize funds needed to cover potential defaults at the outset of the program, but that could no longer be the case after a period of receiving interest on issued loans. Further investigation may be necessary and could be included in the existing cost recovery report process.

In response to Committee question, staff advised that NMFS does not have the authority to deduct loan payments “at the dock.” NMFS may only collect direct fees on the harvest of fish when authorized by statute. That ability is currently limited to cost recovery and the observer program.

The Committee discussed a proposal that included a waiver of capital gains taxes on the sale of QS by initial issues to “second generation” fishermen. The purpose of this proposal is to make more QS available on the market and, in so doing, potentially relieve pressure on the price. Committee members noted that capital gains liabilities might make it cost-prohibitive for initial QS recipients to divest when exiting the fishery. Staff advised that tax legislation falls outside the authority of the Council and NMFS; a change would require Congressional action.

Eligibility Requirements

The Committee discussed three proposals that would tighten eligibility requirements for individuals to purchase quota share and to retain ownership of quota share. All three proposals suggested adding an element of recency to the existing 150 sea-day requirement to obtain a transfer eligibility certificate (TEC). The proposers stated that the purpose for this type of action is to create a new eligibility requirement that would replace the TEC by requiring all QS holders to have sea-time recency.

Individuals would need to maintain their eligibility by attaining sea-days on a continuing basis. The action would not apply to A shares and non-individual entities that own quota (e.g. LLCs). The Committee discussed whether sea-days could be in any U.S. fishery or needed to occur within the IFQ Program. Members were in agreement that any threshold should be reasonably attainable by a variety of bona fide halibut/sablefish fishermen, including those who have very small quota holdings, are fishing in remote communities that don’t have access to a wide array of commercial fishing opportunities, and/or are fishing in a year when TAC levels are low and the fishery does not take long to harvest. The Committee also discussed defining a waiver for individuals with de minimis QS holdings. The Committee did not recommend that qualifying sea-day requirements be restricted to IFQ fishing, noting the difficulty that some currently face in getting into the fishery. Some members noted that if the number of days required was too high, such a regulation could have the unintended consequence of pushing fishermen to participate in other fisheries, which could increase competition or permit prices in those fisheries.

NMFS noted that the agency would be tasked with verifying participation and providing an appeals process to any QS holder who would dispute the revocation of their ability to own QS and/or use a hired master. NMFS staff also noted that such an action would impose an additional paperwork burden on TEC holders. If implemented, a recency requirement would likely become effective at a date in the future, meaning that QS holders would have an opportunity to respond to action by participating in fisheries.

Hired Master Provisions

The Committee received three proposals that suggest sunseting the ability of some individual QS holders to use hired masters. The elimination of hired master use would not apply to A shares, non-individual entities who are required to use a hired master (including CDQ groups and CQEs), and individuals who are utilizing temporary lease provisions for medical hardship, survivorship, or military service. The Committee did not make a consensus recommendation on whether such an action should be analyzed.

The Committee noted that use of hired masters was provided for in the original IFQ Program, and is an important part of the business plan for a portion of the IFQ fleet. The Committee recognized that arrangements where a QS holder owns and maintains a vessel could be considered differently than situations where an initial QS issuee utilizes the hired master provision but has little or no involvement in the fishery. The Committee offered that, if such an action were to be analyzed, staff should consider the number of hired master users who can document ownership of a vessel. Members noted that hired master use can provide opportunities for crewmen to fish larger amounts of quota than they could afford to purchase, and to develop skills in the fishery without taking on the risk or financial burden of vessel ownership. It was also noted that removing the hired master provision might cause some vessel and QS owners in small communities to sell their quota outside of the community when they retire from active fishing because relatively few potential local buyers exist.

However, the Committee also discussed the fact that many “second generation” vessel operators and crew report experiencing high “lease rates” from QS owners. Individuals who are fishing hired master quota for a fraction of the gross revenue while also covering the costs and risks of owning and operating a vessel are at a relative disadvantage in being able to purchase or finance their own QS. The Committee also heard conjecture that the ability for some QS owners to use hired masters keeps the price of QS units high by reducing the amount of quota that might otherwise be available on the market; individuals who are able to use a hired master have little incentive to sell their quota. The Committee noted that high quota costs as well as extensive hired master use (identified in the IFQ Program 20-year review) impede the program objective of maintaining an owner-operated fleet.

Owner-Operator Definition

The Committee received two proposals that seek to define the term “owner-operator” – as distinguished from a quota share owner who is merely onboard a vessel – and establish a portion of the total QS pool that can only be held by individuals who meet that definition. One proposal would establish a quota-holding entity (in the model of an RQE) that would accumulate QS units over time and make that QS available to eligible owner-operators. This proposal was previously presented to the Committee in October 2017. The Committee did not recommend further development of that proposal at this time, citing – in part – the regulatory complexity of implementing such an entity.

The Committee discussed a second proposal that would define owner-operator and set aside a percentage of the total QS pool held by individual entities (excepting A shares) that can only be held by individuals who meet the definition. The remainder of the total QS pool (same exceptions) could only be held by crew members who meet an eligibility requirement that reflects bona fide participation in the IFQ fishery.

The definition of owner-operator hinges on an ongoing ownership stake in the vessel used to fish the “owner-operator IFQ.” The proposer was responsive to Committee comments about the need to recognize the number of crewmen on a vessel who might own quota, and has revised the owner-operator definition in a revised proposal that has been made available during this Council meeting. The original definition set the minimum bar to be considered an owner-operator at no less than 50% ownership of the owner-operator quota fished on a vessel and 50% stake in the vessel. The definition was revised to 25% ownership of each. Crewmen would be limited in the amount of quota they could own (in relation to a vessel use cap) unless they become (part) vessel owners.

The Committee recognized the problem that motivated the proposer – namely, that in some cases the majority of the quota being harvested on a vessel is owned by a so-called “ride-along” who has no investment in the fishery beyond quota ownership and who may receive the majority of the vessel’s gross revenues. The proposal would cap such an individual’s quota ownership at a maximum non-owner-operator (“crewman”) share. The Committee noted that paying a ride-along a revenue share off the top reduces crew pay and the vessel-owner’s return on his or her investment and risk. Moreover, the operator and crew are contributing to the payment for financing any quota purchased by the ride-along, while themselves becoming less able to make their own quota investment.

Through discussion, the Committee noted that this program might only apply to non-initial issues (those who cannot hire a master), recognizing that some existing business arrangements rely on hired master use and provide mutual benefits in doing so. The Committee also noted that over time natural attrition will reduce the number of individuals who can hire a master, and the vessel operators/crew currently in those arrangements could find themselves in ride-along situations.

The Committee noted that this proposal needs to incorporate flexibility for situations when a vessel is unexpectedly disabled and the quota share needs to be fished on a different platform for some period. The Committee generally cautioned that the proposal should not be formulated in a way that impedes the movement of entry-level participants “up the ladder” to owner-operator status. The Committee requested that any future analysis of this proposal investigate, to the extent practicable, the number and proportion of ride-alongs who own more than 25% of a vessel use cap (and thus could be forced to divest).

The Committee did not make a recommendation on whether this proposal should be developed further.

Quota Blocks; QS Ownership/Use Caps

The Committee noted that consolidation of quota share ownership and use is a driving factor behind challenges associated with the cost of access to the fishery. Proposals were offered to lower ownership/use caps in order to bring more quota share units onto the market. The Committee did not reach a consensus to recommend action on ownership/use caps.

The Committee received several proposals related to blocked quota share. The more general proposal suggested allowing blocked quota to be broken into multiple smaller blocks upon transfer. The purpose of that proposal is to increase the number of small blocks on the market, which can be advantageous to entry-level participants who are seeking to buy their way into the fishery at the lowest cost option. The

proposer noted that the number of small QS blocks has decreased due to “sweep up” provisions; this proposal could reverse that trend to some extent. Whether or not a block is divided at the point of sale would be at the seller’s discretion. The proposer did not limit the size of QS blocks that could be divided to the “sweep up” size definition that exists in regulation.

A related “block” proposal suggested reducing the limit of QS block holdings from three to two as a measure to cut against QS ownership consolidation. The Committee noted some concern that forcing QS holders to divest of blocks would be in conflict with the goal of helping entry-level participants accumulate lower-cost quota shares. The Committee was generally wary of actions that would force owner-operators to divest of quota share, especially in the context of a fishery that sometimes operates with vessel operators paying a significant revenue share to quota lessors or “ride-alongs.” If such an action were pursued, some members suggested a grandfather provision for current holders of three QS blocks.

One proposal was specific to CQE holdings of Area 4B halibut QS blocks (Adak). The proposer noted the limit on the number of QS blocks that a CQE may hold (10) can require the entity to divest of smaller blocks in order to purchase larger blocks, thus impeding its effort to make more IFQ available to fishermen linked to its community. The proposal calls for exempting Area 4B CQEs from the block limit, or exempting smaller blocks from counting against the 10 block limit. The proposer noted that unblocked QS is rarely available on the transfer market. Some Committee members expressed caution that allowing a CQE with access to self-funding (via allocations of other fisheries) could increase consolidation of the QS market for that area. The Committee agreed that this proposal was well enough defined at this point that it could proceed to a discussion paper stage, at the Council’s discretion.

Creation of Quota Pools

The Committee received a proposal to establish a community-based recruitment quota pool that would be managed by a regional nonprofit entity. The entity could hold, manage, and distribute quota on an annual basis to CQEs or other “hub” fishing communities. The purpose of the pool is to anchor QS in communities. The Committee also received a proposal to create a limited quota pool for new entrant owner-operators or crew; a percentage of revenues generated from that quota would be retained in a fund that helps new entrants purchase quota. In both cases, distribution of quota from the pool (to CQEs/communities or new entrants) would be based on established criteria. Criteria for the community pool would ensure that IFQ was not allocated to communities that did not have capacity to harvest it.

The proposer of the community quota pool suggested that QS could be purchased through funding provided by a fee levied on the catch of hired master IFQ, by reallocation of halibut bycatch reduction in the trawl fleet, or by reallocation of halibut and sablefish TACs. During discussion, the proposer also offered that the pool could be funded by QS donation in lieu of capital gains by individuals at their own discretion. The Committee was advised that NMFS does not have the authority to levy fees on IFQ landings other than what is specifically provided for in statute (i.e., cost recovery and observer fees). The proposer of the new entrant pool did not specify a funding source but noted that there was no interest in taking away quota from non-initial issuees who are still making payments on their own quota purchase. Other Committee members cautioned that funding of a new entrant QS pool should not exacerbate the

lack of affordable quota share on the market that might be driving access challenges that affect all IFQ Program participants.

The Committee did not make a recommendation in favor or against the development of mission-based quota pools.

Attendance

Staff: Sam Cunningham (NPFMC), Stephanie Warpinski (NMFS), Tom Meyer (NOAA GC), Marysia Szymkowiak (AFSC), Tim Gould (NOAA OLE), Anne Marie Eich (NMFS), Elizabeth Figus (NPFMC), Glenn Merrill (NMFS)

Signed-in: Jesse Coleman, Mike Mickelson, Walter McQuillien, Dwight Riederer, Wade Bassi, Arne Lee, Theresa Peterson, Alexis Kwachka, Simon Kineen, David Major, Jan Standaert, Pete Lopuszynski, Marshall Ross, Koll Bruce, John Scoblic, Jim Johnson, Bob Alverson, Jack Knutsen, Seamus Hayden, Michael Haverfield, Trent Hartill, Andy Ness, Garet Gunderson, Kristian Olsen, Jocelyn Runnebaum, William Hankins, Peter Olsen, Andrew Olsen, Rob Wurm, Julianne Curry, John McHenry, John Crowley, Eric Thorkielsen, Jack McHenry, Andy Mezirow, Ricardo Mercurief, Steven Martell, Craig Cross, Mateo Paz-Soldon, Clay Koplín, Gus Linville