


MEMORANDUM

TO: Council, AP, and SSC Members

FROM: Clarence G. Pautzke
Executive Director 

DATE: April 7, 1989

SUBJECT: Sablefish Management

ACTION REQUIRED

Refine sablefish longline IFQ and license limitation options for further analysis.

BACKGROUND

In January the Council reviewed the list of possible controlled access options for both IFQs and licenses and then proceeded with the selection of specific alternatives by deleting a number of the options from further consideration. This process of continued reduction and definition of the options is required in order to have specific alternatives ready for analysis following the June Council meeting. The Committee has made a number of recommendations which are summarized below. The Council should review these recommendations, adopting any they wish and any others they deem appropriate.

Several written public comments and testimony at the scoping meetings relating specifically to sablefish management have been received by the Council and are summarized in item C-5(c)(1).

IFQs

The Committee made recommendations both narrowing the number of options under some categories and defining several others. Their recommended list of options is item C-5(c)(2) and a summary of their decisions follows.

Initial Assignment of IFQs. The options for who might be eligible for IFQs were reduced by eliminating vessels and crewmen. The Committee felt that the initial allocations should go to "persons" as defined by the Magnuson Act with the exclusion of non-U.S. citizens. The definition would then be: any individual who is a U.S. citizen, any corporation, partnership, association, or other entity (whether or not organized or existing under the laws of any State but being controlled by U.S. citizens), and any Federal, State, or local government or any entity of any such government. The Committee is open to a more restrictive definition should one be agreed upon. The category of crewmen was removed from consideration with acknowledgement that records are kept only for vessel owners and permit holders. Qualified vessel owners and State of Alaska permit holders were defined to be those who have documented sablefish landings during the qualification period. The Committee requests industry input concerning the appropriate measures to define qualified leasing arrangements.

Eligibility Years. The years for eligibility are recommended to be 1984 through 1988. Future analysis will include a variety of weighting schemes based on participation during the last two years.

Limitations on Ownership. The Committee made several recommendations concerning regulation of IFQ ownership. Two options, restricting the amount of landings by vessel and requiring that the IFQ holder be onboard or present when landing, were recommended for deletion. The Committee felt that restricting the amount of landings by vessel would greatly reduce the effective use of IFQs since they are designed to allow operators flexibility in such matters as landings per trip. Requiring that the IFQ holder be onboard or present when landing was recommended for deletion because such a requirement makes the operation of corporate or managed mini-fleets extremely difficult. Limits on the amount of IFQs one entity could own or control were decided to be unnecessary. Instead, the Committee reiterated National Standard 4: limited access allocation will be carried out in such a manner that no particular individual, corporation, or other entity acquires an excessive share of such privileges. Requirements for proof of ownership or participation in order to "control" (own or lease) IFQs were defined as the same criteria which will be used for initial allocation. That is, if the initial allocation goes to vessel owners then only vessel owners would be permitted to control IFQs. Citizenship requirements were defined according to the Anti-Reflagging Act of 1987 although the Committee was open to the most restrictive definition possibly short of drafting new legislation. The Anti-Reflagging Act definition, as applied to this plan, would require all non-individual entities (corporations, partnerships, associations, and so forth) to have a controlling interest (as measured by a majority of voting shares in that entity) owned by citizens of the U.S. If the entity is owned in whole or part by other entities, the controlling interest in those entities, in the aggregate, must be owned by individuals who are citizens of the U.S.

Licenses

As with IFQs, the Committee reviewed the decisions made by the Council in January, narrowing some options and defining others. Their recommended list of options is item C-5(c)(3) and a summary of their decisions follows. Many of the same decisions and clarifications were made for sablefish licenses as for IFQs. These include deleting three options: vessels as eligible for initial allocations, restricting ownership by vessel size or effort, and requiring the licence owner to be onboard or present; specifying years to be analyzed; and, defining vessel, permit holder, person leasing a vessel, limits on control and citizenship.

The coverage of a license was decided to be on a yearly rather than seasonal basis for ease of administration. The years of consideration are the same as for IFQs, 1984-1988, and analysis will examine non-transferable licenses for entrants in the last one and two years. Size or effort level transferability was deleted as a possibility since it was redundant with size specific licenses. If licenses are allowed to be combined, a recommended restriction on such combinations is two of a size class traded in for one of the next larger class. The Committee is still requesting industry input on appropriate vessel size categories.

The Council should be aware of the flaws of licenses issued by vessel size in terms of controlling effort. The Committee was clear on the point that, although vessel size restrictions would more or less fix composition of the fleet, the total effort levels would continue to increase as other types of effort were increased (i.e., number of skates used, engine size, and so forth). The technical workgroup had suggested licensing units of gear, either a number of skates or hooks. The allocation of these units could be based on vessel size, the number of fishermen per vessel or some other combination of factors. The workgroup felt that this method would be a more direct means of controlling effort and would allow the management agency flexibility in adjusting overall effort whereas vessel size limits inherently do not. However, the Committee felt that effort controlled by gear units would be very difficult to enforce and too burdensome to the system.

Written Comments and Testimony
Related Specifically to Sablefish Management

AGENDA C-5(c)(1)
APRIL 1989

The comments received by the Council since the January Council meeting directly concerning sablefish are summarized below. Written comments can be found in numerical order in the appropriate section of the supplemental comment package provided.

17. Ron Hegge, ALFA - ALFA requests that the southeast area be considered a separate area in sablefish management considerations. Many of the problems are unique to that area and by managing the area separately could be addressed without imposing those solutions on the remaining areas.
18. Dennis Hicks, Sitka (2 letters) - During the past few years many sablefish fishermen leased vessels large enough to fish offshore. This was done for reasons of safety and economics. In order to determine a bona fide lease, for allocation purposes, it is best to look at who handled the money. That is, who made all the decisions, paid all the bills, decided how to pay the crew, and paid the owner of the vessel his share. Basically, a bareboat charter of a vessel is what should be considered. To be conservative a notarized lease agreement could be required as proof although this would penalize many who would otherwise be fully covered by the above criteria.
19. Frank Murray, Sitka - Experience and actual participation in the fishery should be recognized rather than just vessel ownership. It is those type of people who keep things from becoming total chaos out on the fishing grounds. His leasing arrangements include paying the insurance, fuel, supplies, crew, owning most of the gear (or most of the time owning it), converting the vessels to the specifics of the fishery, choosing when and where to fish, and paying the owner a percentage of the gross.
20. Unidentified Washington vessel owner - The present system of management of the sablefish fishery leaves the fishery wide open for the disastrous results that occurred in the halibut fishery. License limitation based on the 1987 FVOA proposal is the best option for sablefish while halibut, too far gone for licenses should have IFQs. All the safety gear in the world would not save as much personal injury as would sensible management of the fisheries themselves.

The following summarizes the testimony received during the scoping process directed specifically to sablefish management.

Robert Chevalier, fisherman - Sitka meeting - Sablefish were fully U.S. utilized in SE by 1982 and a cut-off date announced in 1985. That date should be used. The fishing area is small and crowding is bad. IFQs would be unenforceable and would not reduce the number of gear units. Chatham criteria should be used for licenses. Pressure on rockfish will be extreme no matter what is done with sablefish. He was unsure of what to do with halibut.

Bud Dodson, fisherman - Sitka meeting - IFQs are the best way for sablefish. It is a capitalistic system here and money is involved in everything. There should be a limit on ownership and the IFQs should go to permit holders.

David Whalen, fisherman - Sitka meeting - Likes IFQs and use to like Pro-choice although now sees no way to protect open access. SE sablefish grounds are under great stress unlike those out west. All species should be done at once.

Mike Mayo, owner - Sitka meeting - Licenses are better for small boat fishermen than IFQs, based on experiences in New Zealand and Nova Scotia where the small boat fishermen were bought out. A cut-off date of 1985 should be used for SE/East Yakutat with a later date elsewhere. Processors intend to buy up harvest rights and this is bothersome to fishermen. In SE there are many owner -operators, which is not the case elsewhere. The grounds out west are decimated by the trawlers but this has not happened yet in SE. A great deal of cheating is going on out west in the catching of sablefish and other species. Halibut should be fished in the summer when the weather is good and fishermen can choose their fishery. Limited access in halibut would divide towns and families over allocations to natives and communities. October halibut openings are much too dangerous.

Decision Points for Sablefish Longline IFQ Management System

This document was agreed upon by the Council at their January 16, 1989 meeting in Anchorage. Items which are underlined are comments by the Council. Bolded items are those added by the Fishery Planning Committee at its March 28 meeting. Those options over a grey background were deleted by the Committee.

I. Scope of Program

- A. Species: Sablefish
- B. Gear: Longline only, including historic pot boats
- C. Areas:
 - 1. Gulf of Alaska
 - 2. Bering Sea
 - 3. Aleutian Islands

II. Means of Access Control

- A. Type of IFQ
 - 1. A percentage of the TAC, possibly defined as a "unit"- the individual allocation varies from year to year with the size of the TAC and it could be expressed as a large number of "units" rather than a small percentage.
- B. Coverage of IFQ
 - 1. Area
 - i. Gulf of Alaska 4 areas - Southeast/outside and East Yakutat, West Yakutat, Central, Western
 - ii. Bering Sea
 - iii. Aleutian Islands
 - 2. Yearly - would allow the market to dictate the season of landing.
 - 3. Leave a portion of the fishery open access (Prochoice)
Set a maximum landing per entity in the open portion.
- C. Who initially
 - 1. ~~Vessel - ties allocation to the vessel~~
 - ~~i. With the current vessel~~
 - ~~ii. Reverts to the last qualified vessel owner~~
 - 2. "Person" (must include an extensive definition of "person" or "entity") - As defined by the Magnuson Act with the exclusion of non U.S. citizens. Any individual who is a U.S. citizen, any corporation, partnership, association, or other entity (whether or not organized or existing under the laws of any State but being controlled by U.S. citizens), and any Federal, State, or local government or any entity of any such government.
 - i. Vessel owner(s)
 - ii. Person leasing a vessel - qualified or all
 - iii. Permit holder(s) - based on State of Alaska permit
 - ~~iv. Crewmen, with restrictions~~

III. Initial Allocation

- A. How is the allocation made
 - 1. Allocation by qualification and eligibility.
- B. Eligibility

1. What years - more recent years allows for more participation while earlier years rewards those who have participated longer or developed the fishery.
 - i. 1984, 1985, or 1986 through 1988.
 - ii. 1984 or 1985 through 1987.
 2. Landings threshold - a higher amount restricts more people but allows a greater share for those eligible.
 - i. Average - would smooth out exceptional highs or lows.
 - ii. Best year(s) - a proxy for everyone's potential.
 3. Duration of participation
 - i. Must be a current participant.
 - ii. Not necessarily a current participant but number of years participation.
 4. Investment threshold - recognizes future participation, boats, gear, keel laid, etc.
 - i. Qualifying with a history of participation.
- C. Basis for how much per entity
1. Landings - a matter of record in NMFS files.
 - i. Best year - as above.
 - ii. Average - as above.
 - iii. Stair step - used to reduce appeals, all qualified in a certain range receive the same amount.
 - iv. Different amount of allocation based on initial participation in 1987 and/or 1988.

IV. Transferability

- A. Degree of transferability All choices considered under transferable rights need to take into account the protection of consumer and small business interests.
 1. Totally transferable - eligible for sale and lease.
- B. Transferable mechanisms
 1. Management
 - i. Must pass through government - allows government to monitor control but slows down process a bit. Government approval required but transactions may be conducted privately.
 2. Types - many other probably possible.
 - i. Reverse checking accounts (coupons) - allows for use of any size amount.
 - ii. New Zealand style - fixed minimum size of IFQs.
 - iii. Other.
 3. Grace period - depends on transferability.
 - i. None - restricts fishermen during a good trip or between trips until they can locate IFQs.
 - ii. Set date before the season for transfers to be accomplished, after that transfers allowed during the season by emergency only on a case by case basis.
 4. Transfers between areas - depending on transferability.
 - i. None - maintains strict biological controls.

- V. Controls on Ownership, must discuss level of "control" or ownership and must define "control". The Council feels some form of control on ownership should be instituted but industry input and data analysis are needed before further decisions.

- A. Restrict by vessel - sets top landings per vessel (and possibly effort level) but does not control ownership of vessels.
- B. Limit on "control" by any entity - Not required except as stated in National Standard 4 of the Magnuson Act
- C. Require proof of ownership or participation to "control" - Same qualifications as used for initial allocation.
- D. On board or present when landing - keeps IFQs with active participants but would have to be modified for corporations.
- E. Citizenship requirements (reflagging legislation) - either use existing legislation or change it.

VI. Duration of harvest rights - depending on transferability.

- A. No specified ending date - grants large windfall gains.
- B. Specified limited duration with reallocation following - reduces size of windfall gains.
- C. Allow for review in a specified time (perhaps 5 years) - does not sunset the system but allows for major structural changes if required.

VII. Adjusting amount of IFQs available

- A. Not necessary unless IFQs in absolute weight or for government needs (surveys, etc.)

VIII. Coastal Communities

The Council should consider and discuss this issue.

- A. Initially how community gains access, may require Magnuson Act change.
 - 1. Allocated - includes communities but reduces other participants shares.
 - 2. Allowed for - no initial allocation but allows communities to buy in and be "separate but equal".
- B. Specific regulations
 - 1. Individuals or communities or coastal development organization - who gets them, person, town, corporation, etc.
 - 2. Qualification of ownership right - coastal, proximate, port, etc.
 - 3. Definition of community
 - 4. Use by owner or not - to be used by the entity, leased by it, or both.
 - 5. Special transferability rights - transferable when all others are not, etc.
 - 6. Administrating body - a special body set up to remove local conflicts and provide cohesion.
 - 7. Special duration rights - as with transferability.
 - 8. Amount to be allowed - limits amount totally allocated or allowed to communities.

IX. Administration

- A. Agency
 - 1. NMFS region - could be contracted to State of Alaska.
- B. Dispute settlements
 - 1. Basis of judgement
 - i. Fact - reduces number of appeals.
 - 2. Hearing officer
 - i. Administrative law judge with appeals to the Secretary of Commerce and then the court system - impartial and a federal employee.

- ii. Appeals board with decision by the NMFS Regional Director and appeals to the Secretary and then the court system - open to question but more knowledgeable of germane issues.
- iii. Binding arbitration.

The Council recognizes a need to be aware of the following items and may wish to comment on them but the Council and NMFS staffs will deal with the specifics.

C. Enforcement

1. Nature of right - must be defined (property, lease, harvest, etc) including its use as collateral and the ability of NMFS to censor the right.
2. Ability to accurately account for catch - reporting, observer, and monitoring systems.
3. Adequate enforcement procedures - a new system requires new methods of enforcement (accountants).
4. New regulations - see above.
5. New penalties - see above.

D. Document trail

1. Time of landing - fish tickets.
2. Processor - secondary form to collaborate fish tickets.
3. Wholesale - allows enforcement to target fish at several levels.
4. Retail - difficult but allows total tracking of fish.

Decision Points for Longline Sablefish License Management System

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- I. Scope of Program
 - A. Species: Sablefish
 - B. Gear: Longline only, including historic pot boats
 - C. Areas:
 - 1. Gulf of Alaska
 - 2. Bering Sea
 - 3. Aleutian Islands

- II. Means of Access Control
 - A. Type of license
 - 1. Effort level specific
 - i. Vessel length (size) - might require a survey, is a proxy for available effort.
 - B. Coverage of license
 - 1. Area
 - i. Gulf of Alaska - 1 area, Gulf-wide.
 - ii. Combine Bering Sea and Aleutian Islands
 - iii. Combine Gulf, Bering Sea, and Aleutian Islands areas
 - 2. Yearly ~~or by season~~ - seasonal licenses would spread fishing pressure out but might be valued differently.
 - 3. Leave a portion of the fishery open access (Prochoice)
 - i. Set a maximum landing per entity in the open portion.
 - C. Who initially
 - 1. ~~Vessel - ties allocation to the vessel.~~
 - i. ~~With the current vessel.~~
 - ii. ~~Reverts to the last qualified vessel owner.~~
 - 2. "Person" (must include an extensive definition of "person" or "entity") - **As defined by the Magnuson Act with the exclusion of non U.S. citizens. Any individual who is a U.S. citizen, any corporation, partnership, association, or other entity (whether or not organized or existing under the laws of any State but being controlled by U.S. citizens), and any Federal, State, or local government or any entity of any such government.**
 - i. Vessel owner(s)
 - ii. Person leasing a vessel - qualified or all
 - iii. Permit holder(s) - based on State of Alaska permit

- III. Initial Allocation
 - A. How is the allocation made
 - 1. Allocation by qualification and eligibility.
 - B. Eligibility
 - 1. What years - more recent years allows for more participation while earlier years rewards those who have participated longer or developed the fishery.

- i. 1984, 1985, or 1986 through 1988.
 - ii. 1984 or 1985 through 1987.
 - 2. Landings threshold - a higher amount restricts more people.
 - i. Average - would smooth out exceptional highs or lows.
 - ii. Best year(s) - a proxy for everyone's potential.
 - a. 1,000 lbs.
 - b. 5,000 lbs.
 - c. 10,000 lbs.
 - d. 25,000 lbs for vessels over 50'.
 - e. 50,000 lbs for vessels over 50'.
 - iii. Based on vessel size (or effort factor) - recognizes that different size vessels have different potentials.
 - 3. Duration of participation
 - i. Must be a current participant.
 - ii. Not necessarily a current participant but number of years participation.
 - 4. Investment threshold - recognizes future participation, boats, gear, keel laid, etc.
 - i. Qualifying with a history of participation.
- C. Type of license - by vessel size, etc., useful depending on transferability and upgrading.

The Council feels that the following size classes were sufficient for a beginning but should be more appropriately defined with industry input.

 - 1. Class A - less than 40 ft.
 - 2. Class B - 41 to 50 ft.
 - 3. Class C - 51 to 60 ft.
 - 4. Class D - 61 to 70 ft.
 - 5. Class E - over 70 ft.

IV. Transferability All choices considered under transferable rights need to take into account the protection of consumer and small business interests.

- A. Leasable but non-saleable - removes chance of absentee owners but allows all licenses to be used.
- B. Size or effort level specific - useful if split seasons, etc. or with combinative.
- C. Totally transferable - effort levels would increase with addition of large vessels but allows full freedom to industry.
- D. Combinative - Allow upgrades in vessel size class by tendering two licenses of a small class for one license of the next larger class.
- E. A system incorporating transferable and non-transferable licenses based on initial participation in 1987 and/or 1988.

V. Controls on Ownership

The Council feels some form of control on ownership should be instituted but industry input and data analysis are needed before further decisions.

- A. Restrict by vessel size or effort - stops buildup of mini-fleets of similar sized vessels.
- B. Limit on "control" by any entity - Not required except as stated in National Standard 4 of the Magnuson Act
- C. Require proof of ownership or participation to "control" - Same qualifications as used for initial allocation.

D. On board or present when landing - keeps licenses with active participants but would have to be modified for corporations.

E. Citizenship requirements (reflagging legislation) - either use existing legislation or change it.

VI. Duration of harvest rights - depending on transferability.

A. No specified ending date - grants large windfall gains.

B. Specified limited duration with reallocation following - reduces size of windfall gains.

C. Allow for review in a specified time (perhaps 5 years) - does not sunset the system but allows for major structural changes if required.

VII. Adjusting Amount of licenses available

A. Buyback - if needed.

1. Industry - program may or may not be dependable.

VIII. Coastal Communities

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B. Specific regulations

1. Individuals or communities or coastal development organization - who gets them, person, town, corporation, etc.

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3. Definition of community

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5. Special transferability rights - transferable when all others are not, etc.

6. Administrating body - a special body set up to remove local conflicts and provide cohesion.

7. Special duration rights - as with transferability.

8. Amount to be allowed - limits amount totally allocated or allowed to communities.

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A. Agency

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B. Dispute settlements

1. Basis of judgement

i. Fact - reduces number of appeals.

2. Hearing officer

i. Administrative law judge with appeals to the Secretary of Commerce and then the court system - impartial and a federal employee.

ii. Appeals board with decision by the NMFS Regional Director and appeals to the Secretary and then the court system - open to question but more knowledgeable of germane issues.

iii. Binding arbitration.

The Council recognizes the need to be aware of the following items and may wish to comment on them but the Council and NMFS staffs will deal with the specifics.

C. Enforcement

1. Nature of right - must be defined (property, lease, harvest, etc) including its use as collateral and the ability of NMFS to censor the right. May wish to use license with effort size endorsements if needed.
2. Ability to accurately account for catch - reporting, observer, and monitoring systems.
3. Adequate enforcement procedures - a new system requires new methods of enforcement.
4. New regulations - see above.
5. New penalties - see above.