Halibut Charter Re-allocation Financing Mechanisms
Information Gathering Session Notes
March 20, 2007
ADFG Commissioners Conference Room

Stakeholders: Kathy Hansen, Dan Hull, Larry McQuarrie, Ricky Gease (Ricky was at the meeting only part of the time)
Staff: Jane DiCosimo, NPFMC; Sue Aspelund, ADFG; Doug Vincent-Lang, ADFG; Jim Anderson, State – Div. Investments; Jessie Gharrett, NFMS; Leo Erwin, NMFS Financial Services; Earl Bennett, Financial Services; and Sam Chi, NOAA General Counsel
Public: Ed Hansen

We started the meeting at 10:30 with a teleconference connection to Silver Springs Maryland with the NMFS financial services and NOAA GC. The intent of the meeting was for a few stakeholders to gather additional information from all agencies possible to bring back to the stakeholder committee as a whole as discussed at the stakeholder committee meeting.

Started out the discussion by talking about the NMFS Loan program after Doug gave a brief overview of where we are at. The NMFS loan program is for halibut and sablefish for the last 10 years, there has been no changes to the program since it was developed. The program was developed for entry level, small boat fishermen with entry level defined as less than 8,000 lbs and the small vessels can't hold A shares. There are owner onboard and citizenship requirements to the loan program.

NMFS can't say at this time if statutory or regulatory or both would be needed to apply the program to the charter sector until they see the final program but would likely adapt the current program to accommodate the charter sector.

Loans are for 20-25 years and interest rate is fixed at 2% over the cost of borrowing money from the treasury(long term 20 yr treasury bond rate) (7% right now) with quarterly payments.

The loan authority of 5 M is used up every year. Program has been popular with the fishermen. If money runs out before everyone is satisfied they stay on a waiting list for the next years funding.

Any entity/association applying for a loan on behalf of charter fishermen must be creditworthy like any other entity or individual. NMFS needs a security interest in the quota share, whether the share is changed for utilization purposes to angler days or whatever.

There is no cost to the industry for the loan program due to the lack of loan defaults. The cost recovery fee of up to 3% the commercial fishermen pay could be used as a subsidy in the future if needed.

Financial Services (FS) gave a brief background about the Federal Credit Reform Act. The act requires that they have to calculate the cost of the loan program and fairly allocate such costs back to the individual programs. The loan program is currently considered as a negative subsidy (doesn't need any new funds to sustain itself). Congress must provide yearly loan authority for the program. The program has been receiving loan authority of 5 million dollar a year. This is first shown in the Presidential budget, then the House/Senate budget and joint conference board. At any of these stages you could try for more loan authority but would be an act of Congress to change the loan authority amount. The Council designed the program for the commercial IFQ loan program and Congress gave it structure. The ability to hold quota share is the equivalent loan eligibility.

If the State or an association on behalf of the charter fishermen held the quota share would a regulatory or statutory change be required? Can't answer that now, would depend upon the program. The question wasn't forwarded to D.C. from the region when the charter IFQ program was transmitted. The Council could design a program that meets Statute and the loan program mirrors the Council's eligibility to hold Quota share and the federal budget would need to be authorized for a larger amount. You would only be asking Congress for increased loan authority and not actual funds.

The commercial fisherman interested in the loan program does not have to have quota share identified to purchase they can pre-qualify and have up to five years to purchase quota share with the funds approved for. This can be done in several loans. From application to approval letter is 4-5 weeks from a responsive borrower. With a budget approved in October the loan funds run out approximately in May or June. The loan authority of 5 Million has allowed for approximately 30 loans a year now but as the value of quota share goes up the number of loans decreases. The question was asked what it would take for the State to get a loan. It would possibly require statutory changes (MSA?). The council would need to start the process. **Need to get the statute language for who can hold quota share.**

The loan program could be designed how you wanted or you could try to adapt it to the current commercial IFQ program.

**Financial Services explained that if a borrower defaults on a loan, first they take the quota shares that were used as collateral and sell those on the market, if that does not pay off the amount owed then they take any other collateral that was pledged and sell it, if more money is still owed after this**

**the borrower still owes the money until it is paid and interest continues to accrue.**

Federal Buyout [link to federal buyout program outline http://www.nmfs.noaa.gov/sfa/buyout.pdf ]
A federal buyout requires either application of the MSA buyout framework or specific Congressional language to authorize and appropriate loan authority. You still usually end up with congressional legislation/language needed to make the program work.

There are two styles that can be drawn from:

1. Agency developed with an open bid process
2. Industry developed and driven program

#1 - Generally a buyout program starts with a limited entry fishery and the intent is to shrink the number of people participating in the fishery so that those remaining receive more access to the resource. This situation is different in that you are actually shrinking the size of the pie for the commercial sector. The agency would put out a bid / reverse auction up to the amount of the authorized loan. The buyback would go out to the participants for a referendum vote with a 2/3rds or majority of the permit holders ratifying the buyback. The referendum could authorize up to a 5% landing tax (or what is necessary to pay off the loan) to pay for the buyback and once ratified would be binding on all permit holders.

#2 – Industry would develop an industry business plan (in MSA) – take it to the council, NMFS, and then special legislation. All the remaining participants repay the loan. In current programs, the loan is re-paid by buyer at first sale of product. To make this work would have to develop a different model for the charter sector such as a per client fee or percentage of value of charter trip. In the event that a fishery is closed (for example the crab fishery) the loan continues to accrue interest and upon the fishery re-opening the highest fee possible is assessed. You could use the model of one loan for both 2C/3A but apportion the costs between the regions; this was done in the crab fisheries where different species/different regions are responsible for their portion of the loan/buyout.

Successful examples to look at are the crab program and the Pacific Coast groundfish.

Dan asked who the Council could designate to hold quota share. Jessie said that she had emailed Kathy the language and briefly went over it. The email response follows in italics. *As to who can hold QS in the current commercial program: first, you must be a U.S. citizen or U.S. corporation, partnership or other entity. Next:*
*1. Anyone can hold or purchase A ("freezer") shares.*
*2. for catcher vessel shares (halibut categories B, C, and D), you must be:*
*a. an initial issuee of quota (an individual or non-individual entity);*

*b. a solely-owned corporation formed by an individual initial issuee for liability purposes;*
*c. an individual who becomes transfer eligible (i.e., receives a Transfer Eligibility Certificate, TEC). An individual can receive a TEC if (s)he demonstrates in an application to NMFS' satisfaction that (s)he has at least 150 days of harvesting experience in any U.S. commercial fishery;*
*d. the individual person who is the heir of a deceased individual QS holder;*
*e. a non-profit formed on behalf of a specific named GOA community, under the community purchase program. Under this program, the non-profit can purchase/sell QS but it can only be leased to residents of the community on whose behalf it is held; or*
*f. any other person, (say, the State of AK) if transferred by "operation of law"; that is by order of a court of competent jurisdiction (Court Order) However, if a person (say a bank, or a divorced ex-spouse) comes in with a Court-ordered transfer, if the recipient is not eligible to receive the annual IFQ permit and fish (i.e., is a "restricted" person), NMFS will issue the QS but not the IFQ. That person would only gain benefit by selling the QS to one of the above persons who can receive it. We do not allow voluntary transfers to restricted persons.*

*Also, we do not allow voluntary transfers to persons if the transfer would put a person over the ownership caps. But, operation of law transfers do occur, even to persons who can receive and fish the annual IFQ. In that case, the person is not a restricted person, but the additional QS over the cap would be restricted and would not result in annual IFQ until that person's total holding are under the cap.*

*One final note: it isn't totally clear if the IRS can take QS. That Agency has never taken the QS in its <u>own</u> name; rather, it has forced transfer to a third party under our program rules and taken proceeds).*

A federal stamp (duck stamps) needs a constituency to support it. With a state charter stamp or surcharge the money would go to Fish and Game fund and would have to be used to benefit the angler.

The CDQ groups could be a possible example to look at where any profits are rolled back into the ex-vessel price to fishermen.

There was a little additional discussion about the IRS receiving a priority security interest and Jim said that the IRS can’t take a priority interest position over a value security interest. IRS forced the sales at the beginning of the loan program.

Doug agreed to look into the issue of whether the State could be a federal borrower.

The teleconference with the East Coast folks ended at this point approx. 11:45. Ricky Gease stated that he wouldn't be able to come back this afternoon so he made a few statements and other members asked him some questions before he left. Ricky said there are some 200K anglers and most are willing to pay 10-15 % more before they increase to unguided fishing. The charter industry needs to maintain a 2 fish limit but you can put limitations on the size of the second fish. You could raise some of the funds by a charter stamp etc and then hide the cost by increasing the charter operator's license. Larry liked the idea of raising the operator's license to help keep minor players from participating in the industry. Larry stated that variable is the number of clients and the cost fluctuation of the quota share. The charter industry is restricted to an area around the town/lodge and you can't grow and grow without killing the fishery. Near shore depletion is something that needs to be addressed. Ricky said that one thing that needs to be looked at is the capacity of the charter fleet at maturity or the carrying capacity of the region or port. Larry pointed out that without limited entry/moratorium you can never catch up. Dan asked about allowing charter operators to purchase quota share for use with limited season or bag limit restrictions. Ricky answered that it would be short-sighted of the council to look at the proposal. Ricky stated that any long term solution needs to be crafted with the thought of how it will work in years of low abundance. An assessment needs to be only assessed to charter sector, not all recreational angler; Legislature only likely to assess affected users so mandatory for those using charter but voluntary for those buying sport licenses. Doug Vincent Lang said that the most reliable funding source is public ownership with the angler paying. Ricky said that angler days are fine but the charter operator needs to buy the angler day history from a centralized location not direct from commercial quota share. Growth is now coming from the charter operations in the mid-range going from 30 days to 50 days etc.
Dan asked what kind of entity can be authorized by the by the council to hold quota share. Response: What kind do you want developed? Entity should probably be kept as a non-profit. The CQE model could be something to look at and adapt.

Break for Lunch

State Side

Charter stamp could be done with legislation, would likely be set up to use the dedicated fish and game fund for the purposes of buying the quota share for the charter sector. Could be done as a stamp or as a surcharge, the difference is that a surcharge is for a specific purpose. The funds raised for the hatchery bonding was developed as a surcharge on the license but it can be used for the retirement of the bonds only even though the more revenue is being raised it can't be used for higher than anticipated operating costs. [Link to the legislation for the hatchery bonding and surcharge http://www.legis.state.ak.us/basis/get_bill.asp?session=24&bill=SB147 ]

The state could only implement a halibut stamp only if the state receives State delegation unless the federal regulations required it since the State is required to comply with federal law. **Need to ask federal officials if the requirement for a state stamp be required on the federal side as a regulation or would it need to be statute.**
If a charter stamp was implemented it could take pressure off of other species as the stamp funds would only have to be used to benefit sport fishermen. Dan Hull asked what would work best. Doug answered if the state held the quota share. The legislature holds the Dept responsible for spending money to benefit where the funds came from. I.E. money raised by a charter stamp would need to benefit charter anglers but all the funds would not need to be spent on halibut QS. There are 140K chartered anglers who only fished for halibut in 2006. **To put this in perspective ADFG needs to provide the total number of chartered anglers in saltwater marine fisheries.** A state charter stamp couldn't be used to pay back a federal loan.

If a higher license fee is put on the operator it would tend to cut the hobbyist out.

**The fundamental question is who holds the quota share? State/Industry/Federal and is it a Federal or State loan program?**

Division of Investments – Their loan program is similar in that there would be required a down payment and credit worthiness of the borrower. A lending limit of 2 million was developed for the CQE loan program. To do anything through the Div. of Investments current loan program would take legislation and regulation changes.

Regional Association: (commercial hatchery/marketing assoc model) [Links to the regional marketing association legislation and regulations http://www.legis.state.ak.us/basis/get_bill.asp?session=23&bill=HB419 and http://www.dced.state.ak.us/oed/seafood/pub/RSDA_regulations.pdf ] Doug stated that ADFG law is nervous about the PNP's because it is built on the assumption that the assessments will go back thru the legislature in the same amount as assessed. License surcharges and stamps are a better mechanism that taxation. Kathy pointed out that she thought this wasn't a valid point because the Regional Seafood Development Associations (RSDA or marketing assoc.) was just passed by the last legislature and if they thought there was problems with the model it would have come out during that legislative hearings. Criteria can be written in the enabling legislation. Larry stated that the charter industry is more comfortable with a federal or non-profit route rather than a state managed program except the hatchery/RSDA model. Both with a state charter stamp, surcharge or self assessment would increase the overall allocation to the sector at large but the high producers subsidize all the charter operators. State wants directions from the council on whether it would be a federal or state program for compensated reallocation. Regional association take a referendum as part of the process. For the RSDA's the requirement was that 30% of those eligible to vote must vote and of those voting you need a majority.  (15% of the permit holders plus 1 could pass a referendum for an RSDA)  Jim pointed out that sometimes it's hard to get even the 30% to take the time or effort to vote.  Once the referendum is voted on all permit holders have to pay the assessment.

A question on whether there can be some stipulation with the sale of quota share as the areas fished and that nearshore depletion will need to be dealt with eventually.

Division of Investments has servicing contracts with other agencies and can do the due diligence, accounting etc. Other models that could be looked at is the credit union model, the AFA co-op model where they buy additional quota share for extra Pollock, airport landing fees.

Division of Investments further clarified on the hatchery assessment that revenue collects the funds, the legislature allocates the funds back every year, Revenue write the checks to the regionals but give the check to DOI where they check for current contract, check audits etc.

**Question that was raised that we need an answer from federal NMFS/NOAA GC, Is an angler day a LAPP under the new MSA requirements and therefore subject to cost recovery mechanisms?**

Crossover Plan:  Briefly introduced and Larry stated it has possibilities but those charter operators opposed to IFQ's think it's an end-run to an IFQ program. Question was asked what the timeline would be to implement the crossover plan. Jessie pointed out that it can't be implemented for 2008.  Will need 2 council meetings and then at least 6 months for rule-making at a minimum and couldn't be in place until 2009.    Jane agreed.

Rasmuson Plan March 6, 2007 version
Several thought that the plan was not finished, it only addresses the immediate problem but not the long term.  It eliminates all traces of IFQ like elements of long-term solution.  It does not address the possible need for management measures in years of low abundance.  Could the plan be combined with a regional association model and/or the crossover plan.  Several thought that all the elements in this plan are currently tucked in the stakeholders long term solutions as elements contained within.  Dan brought up that there needs to be care that there remains quota share available at a reasonable price for purchase into the commercial fishery.

Discussion about the need to retain some commercial industry within a region. This could be done with the Council capping the charter sector purchases with a periodic review in order to address absentee holding, excessive leasing etc. Could any leasing that needs to be done from the charter into the commercial sector go through the CQE groups with first right of refusal to help develop them.

Take home messages that were agreed to:

- You will have to be careful if trying to mix and match state and federal programs.
- With a moratorium the need to split inside and outside areas in 2C are decreased.  A simple program can be designed by IPHC management areas.
- Industry needs to buy into the program and are more comfortable with a program that they control.