

Fisheries Access Programs under the Reauthorized Magnuson Stevens Act

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OUTLINE

History

IFQs vs LAPs

Eligibility to Own

Duration

Transferability

Excessive Share

Cost Recovery

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I am working on
“Guidelines” for
use of LAPs

History

Prior to 1996

IFQs

1996 Reauthorization

Five Year Moratorium

2006 Reauthorization

Limited Access Privileges (LAPs)

Sidelight

As a separate process Crab
Rationalization Lead to Market
based system with IFQs and IPQs

What is difference between IFQ and LAP?

The term "individual fishing quota" means a Federal permit under a limited access system to harvest a quantity of fish, expressed by a unit or units representing a percentage of the total allowable catch of a fishery that may be received or held for exclusive use by a person. Such term does not include community development quotas

The term `limited access privilege (A) means a Federal permit, issued as part of a limited access system under section 303A to harvest a quantity of fish expressed by a unit or units representing a portion of the total allowable catch of the fishery that may be received or held for exclusive use by a person; and (B) includes an individual fishing quota; but (C) does not include community development quotas

What is the difference?

Does portion allow or
preclude the ability to use a
percentage?

Sidelight

Note that privilege is permission to harvest. In early drafts of the bill there were both privileges to harvest and privileges to process.

Eligibility

Who can receive, hold, and or use LAPS?

The reauthorized MS Act defines and allows Councils to grant harvesting privileges to Fishing Communities (FCs) and Regional Fishery Associations (RFAs).

The term "fishing community" means a community which is substantially dependent on or substantially engaged in the harvest or processing of fishery resources to meet social and economic needs, and includes fishing vessel owners, operators, and crew and United States fish processors that are based in such community.

The term 'regional fishery association' means an association formed for the mutual benefit of members (A) to meet social and economic needs in a region or subregion; and (B) comprised of persons engaging in the harvest or processing of fishery resources in that specific region or subregion or who otherwise own or operate businesses substantially dependent upon a fishery.”;

Given the differences, it appears that FCs must be natural communities and they can be selected out as a qualifying entity because they are in need of, or merit, regional economic development.

On the other hand, RFAs are voluntary organizations that are not necessarily geographically specified. There is no reference to the need for regional economic development.

There are eligibility and participation criteria for establishing either one of which includes a detailed operations plan. One important one is that RFAs can not receive LAPs in the initial allocation.

I can give more details if desired.

In summary, it appears that the intent of Congress is that an FC can be designated as an entity that is entitled to receive harvesting privileges if those privileges would assist in regional economic development. In addition, that designation could be made if the way in which the privileges are used by the FC can ameliorate serious economic or social impacts that would likely occur if the privileges were only given to individuals. The latter reason is the only reason, specified in the Act, for which RFAs can be established. Presumably RFAs can also be used in cases where this does not hold if the Council can demonstrate that their use will help achieve management objectives.

However, LAPs can be given to other entities.

As defined in the law.

The term “person” means any individual (whether or not a citizen or national of the United States), any corporation, partnership, association or other entity (whether or not organized or existing under the laws of any State) and any Federal, State, local or foreign government or any entity of any such government.

Further Councils must

prohibit any person other than a United States citizen, a corporation, partnership, or other entity established under the laws of the United States or any State, or a permanent resident alien, that meets the eligibility and participation requirements established in the program from acquiring a privilege to harvest fish, including any person that acquires a limited access privilege solely for the purpose of perfecting or realizing on a security interest in such privilege;

In other words LAPS can be given to

- A U.S. citizen;
- Corporation, partnership, *other entities established under U.S., State law*; or
- Permanent resident alien.

The broader range of potential may mean that RFAs or FCs will not be used very often.

Referenda, operational rules,
eligibility to receive initial allocations

They may give them to city governments or to existing fisherman's organizations, as long as they are sanctioned by state or Federal law.

• ----- Limited Access Privilege Programs -----

Customary

LAPs in the form of IFQs are granted to traditional recipients such as individuals, firms, etc

Combined

- LAPs are granted to both traditional recipients and to non-traditional entities including RFAs and FCs.

New

- LAPS are granted to a broader range of non-traditional community-based entities including RFAs and/or FCs.

• Figure 1

What will happen?

Only time will tell. The Councils have shown tremendous creativity in the past.

Duration

“Permanent”

Duration

A limited access privilege established after the date of enactment of the Magnuson-Stevens Fishery Conservation and Management Reauthorization Act of 2006 is a permit issued for a period of not more than 10 years that

(1) will be renewed before the end of that period, unless it has been revoked, limited, or modified as provided in this subsection;



(2) will be revoked, limited, or modified if the holder is found by the Secretary, after notice and an opportunity for a hearing under section 554 of title 5, United States Code, to have failed to comply with any term of the plan identified in the plan as cause for revocation, limitation, or modification of a permit, which may include conservation requirements established under the plan;

(3) may be revoked, limited, or modified if the holder is found by the Secretary, after notice and an opportunity for a hearing under section 554 of title 5, United States Code, to have committed an act prohibited by section 307 of this Act; and

(4) may be acquired, or reacquired, by participants in the program under a mechanism established by the Council if it has been revoked, limited, or modified under paragraph (2) or (3).

Transferability

Councils can set their own rules about what types of transfers and between whom

Excessive Shares

Must set a maximum percentage that any entity can control.

Monopoly

Community Structure

Cost Recovery

For LAP programs only.

Up to 3% of gross revenue.

Summary

New Law is quite flexible with no mandated limits although Councils can impose limits if they want.

Thank you very much.

Questions

`The eligibility requirements for FCs are that they must:

1. be located within the management area of the relevant Council;
2. meet criteria developed by the relevant Council, approved by the Secretary, and published in the Federal Register;
3. consist of residents who conduct commercial or recreational fishing, processing, or fishery-dependent support businesses within the Council's management area;
4. develop and submit a community sustainability plan to the Council and the Secretary that demonstrates how the plan will address the social and economic development needs of fishing communities, including those that have not historically had the resources to participate in the fishery, for approval based on criteria developed by the Council that have been approved by the Secretary and published in the Federal Register.

The first two eligibility requirements for
RFAs are the same, but the 3rd and 4th
are different.

FCs

3. consist of residents who conduct commercial or recreational fishing, processing, or fishery-dependent support businesses within the Council's management area;

RFAs

3'. be a voluntary association with established by-laws and operating procedures consisting of participants in the fishery, including commercial or recreational fishing, processing, fishery-dependent support businesses, and fishing communities;

FCs :

4. develop and submit a community sustainability plan to the Council and the Secretary that demonstrates how the plan will address the social and economic development needs of fishing communities, including those that have not historically had the resources to participate in the fishery, for approval based on criteria developed by the Council that have been approved by the Secretary and published in the Federal Register.

RFAs

4'. develop and submit a regional fishery association plan to the Council and the Secretary for approval based on criteria developed by the Council that have been approved by the Secretary and published in the Federal Register.

In developing the participation criteria for FCs, the Council is directed to consider:

1. traditional fishing or processing practices in, and dependence on, the fishery;
2. the cultural and social framework relevant to the fishery;
3. economic barriers to access to fishery;
4. the existence and severity of projected economic and social impacts associated with implementation of limited access privilege programs on harvesters, captains, crew, processors, and other businesses substantially dependent upon the fishery in the region or subregion;
5. the expected effectiveness, operational transparency, and equitability of the community sustainability plan; and
6. the potential for improving economic conditions in remote coastal communities lacking resources to participate in harvesting or processing activities in the fishery.

In developing the participation criteria for RFAs, the Council is directed to consider:

1. traditional fishing or processing practices in, and dependence on, the fishery;
2. the cultural and social framework relevant to the fishery;
3. economic barriers to access to fishery;
4. the existence and severity of projected economic and social impacts associated with implementation of limited access privilege programs on harvesters, captains, crew, processors, and other businesses substantially dependent upon the fishery in the region or subregion;
5. the expected effectiveness, operational transparency, and equitability of the community sustainability plan; and
6. the potential for improving economic conditions in remote coastal communities lacking resources to participate in harvesting or processing activities in the fishery.

In developing the participation criteria for RFAs, the Council is directed to consider:

1. traditional fishing or processing practices in, and dependence on, the fishery;
2. the cultural and social framework relevant to the fishery;
3. economic barriers to access to fishery;
4. the existence and severity of projected economic and social impacts associated with implementation of limited access privilege programs on harvesters, captains, crew, processors, and other businesses substantially dependent upon the fishery in the region or subregion; upon the administrative and fiduciary soundness of the association and its by-laws.”
5. the expected effectiveness, operational transparency, and equitability of the community sustainability plan; and
- 6.

These criteria demonstrate again that FCs are to be used to assist in regional economic development. In addition they clarify an underlying purpose for establishing the entities. They may be used to mitigate any severe untoward effects of establishing a harvest privilege program. This likely refers to direct and indirect effects on fishery dependent business, community disruptions, and the notion that in a fishery with redundant vessels and processing plants, there can be serious distributional effect on processors if harvesting privileges are given only to vessel owners.

Dedicated Access Privilege Programs

- IFQ

Harvest privileges (the sum of which equals the TAC) are granted to individuals.

Combined IFQ/LAP

Harvest privileges (which for consistency are linked in some way to the TAC) are granted to individuals and to RFAs and/or FCs

- LAP

Harvest privileges are granted to RFAs and/or FCs.

Figure 1

- . The new DAP system reverts to the old IFQ system if the council determines that it will only allocate to individuals. As I read S2012, there is no mandate that says councils have to use FCs or RFAs, they are merely given the option to do so. Am I wrong here?

If the Council decides to use FCs or RFAs , can it determine that it will use only a predetermined number (say 1) or must the competition be open to all comers who meet the criteria?

What kind of guidance can be given to the Councils about the criteria for determining eligibility to be classified a FC or a RFA? Are there hints from the Alaska and/or Hawaiian experience?

Maybe leave out

What kind of guidance can be given to the Councils about the criteria for judging the operating plans of the entities? Again the experience in Alaska and maybe Hawaii may be useful. See attachment 1. Given the number of federal and state laws that apply to the community development quota systems, setting these thing up can/will be a very complicated process. How much detailed guidance should be provided

- . What kind of guidance can be given to councils about dividing the TAC among the different types of entities, and then among the new types of entities (FCs and RFAs)

How will the introduction of FCs and RFAs affect other parts of the DAP FMP development process? This is an interesting question by itself, but it is also relevant to the overall outline of the DAP guidelines. See attachment 2. It seems to me that the introduction will have to include a discussion of the points raised at the beginning of this discussion. Most of the guidance on the two types of criteria will fit into the sections entitled “eligibility to own”, and “initial allocation” . In addition it will be necessary to add subsections to the sections on transferability and duration and perhaps others..

Is the difference in LAP and IFQ
with respect to ties to the TAC an
oversight or was it intentional?

Are RFAs are viable
consideration?

If one accepts the contention that RFAs are to be used to mitigate the untoward effects of a straight IFQ program and that FCs are primarily for economic development, then the process of determining when to use FCs should be different than the above. While the concept of an FC may be related to the CDQ program, the conditions where they can be used in existing fisheries throughout the country are likely to be very different. To put it in the starkest terms, CDQ were given to isolated communities with weak economies composed of very poor ethnic minority individuals. The quota shares that they were given were part of a very large TAC of a healthy stock. Moreover, while there was heavy utilization of the stock, giving a small percentage of the TAC as CDQ did not have dramatic effects on the current users. In addition, some of the current users favored the program because they foresaw the opportunity to gain access to these share through the market place rather than racing across the high seas.

Most fisheries in the US today are fully utilized and many of them are overfished and will be, or are, undergoing rebuilding plans which means there will be short term reductions in harvest. At the same time, while there is a need for economic development in many small and remote places in the US, including fishing ports, the conditions are seldom as harsh as in the remote parts of Alaska.

It follows that if Councils choose to use FCs, they will be taking part of a decreasing pie away from current users, who because of restrictive regulations, may not be in the best of financial shape themselves. If constituents have weak support of DAPs in the first place, such as addition to a program will not be cheered.

Basically, if Councils wish to create FCs, they will need to identify a community that meet the specifications in the MS Act. Then they will need to provide a rationale for giving a portion of the TAC to that sector as opposed to letting it be allocated to the current users. ■

What about transferability between
Individuals, FCs, and RFAs
especially if they are not
denominated in the same way.