

Enforcement Committee Agenda

April 7, 2015

1pm – 4pm

Lupine Room, Hilton Hotel

Anchorage, Alaska

I. C-6 Allow the Use of Pot Longline Gear in the Gulf of Alaska Sablefish Individual Fishing Quota Fishery – Final Review

Background

The Council is considering final action to amend the Fishery Management Plan for Groundfish of the Gulf of Alaska and regulations to allow the use of pot longline gear in the Gulf of Alaska (GOA) sablefish individual fishing quota (IFQ) fishery. The IFQ sablefish fishery is currently prosecuted with hook-and-line (HAL) gear. Depredation of hooked sablefish off of HAL gear has emerged as a significant and increasing challenge for fishermen and managers. Depredation reduces catch rates and increases operating costs for the IFQ fleet. Depredation behavior increases the risk of vessel strike, and can also increase the likelihood of whale and seabird entanglements with fishing gear, due to altered foraging strategies. Finally, unaccounted sablefish mortality from depredation may adversely impact the accuracy of fish stock abundance indices. The action is proposed to minimize whale and seabird interaction with fishing gear. Given that the action alternative would introduce pot longline gear to areas where HAL gear continues to be used, the Council is concerned with minimizing instances of gear conflict and mitigating any negative impact that excessive grounds preemption could have on the HAL fleet.

The analysis examines the Council's action alternative (Alternative 2), relative to the status quo (Alternative 1). Alternative 2 would redefine legal gear to harvest sablefish to include pot longline gear in the GOA groundfish regulatory areas to be specified by the Council, and includes measures that would: (1) impose a pot limit enforced by pot-identification tags, (2) require the location of sablefish pots set or lost on the fishing grounds to be submitted to an electronic database, (3) require that pot longline gear be moved or tended within four or seven days after being set, (4) require both ends of the sablefish pot longline set to be marked with buoys and/or flagpoles and transponders, and (5) allow retention of Pacific halibut caught incidentally in pot longline gear provided sufficient IFQ is held by fishermen onboard the vessel.

Alternatives

Alternative 1: No Action.

Alternative 2. Allow the use of pot longline gear in the GOA Sablefish IFQ fishery (the Council can select any or all GOA areas: WGOA, CGOA, WY, or SEO).

Element 1. Limit of 60 to 400 pots (different pot limits can be selected for each area).

Option 1. Require identification tags for each pot.

Element 2. Gear retrieval

Option 1. Require the location of pots set, left, or lost on the grounds to be submitted to an electronic database when in the water.

Option 2. Gear cannot be left more than (Options) four or seven days without being moved.

Element 3. Gear specifications.

Require both ends of the sablefish pot longline set to be marked with buoys and/or flagpoles and transponders that work with AIS or an equivalent system.

Element 4. Retention of incidentally caught halibut.

Allow the retention of halibut caught incidentally in sablefish pots, provided the sablefish IFQ holder also holds sufficient halibut IFQ.

Alternative 1

Status Quo

Currently, NMFS management and enforcement interfaces with the sablefish IFQ fishery in the Gulf through four programs: (1) NMFS Inseason Management receives daily fishing reports from the fleet and monitors sablefish harvests; (2) the NMFS North Pacific Groundfish and Halibut Fisheries Observer Program (Observer Program) monitors and samples the harvest of GOA sablefish fishery participants with observer coverage; (3) the NOAA Office of Law Enforcement (OLE) monitors the fleet and enforces NMFS regulations; and (4) the International Pacific Halibut Commission (IPHC) accounts for incidental halibut catches in the sablefish fishery. Section 4.9.4 of the analysis summarizes the monitoring activities of each of these programs to support management and enforcement of the sablefish IFQ fishery in the GOA.

Alternative 2

The following sections discuss considerations for management and enforcement of Alternative 2 and the four elements of Alternative 2 as proposed in the Council's December 2014 motion. The corresponding discussion in the analysis includes draft revisions and additions to regulations if Alternative 2 and any of the elements are implemented. NMFS notes that the draft regulations were included in the analysis at the Council's request to assist the Council in developing a preferred alternative for this action. If the Council selects a preferred alternative, NMFS would reevaluate the draft regulatory text presented in the analysis during the rulemaking process to incorporate the Council's final action. Some of the regulatory text could change in response to further review.

Alternative 2 specifies that Council could recommend allowing longline pot gear in any or all GOA areas: WGOA, CGOA, WY, or SEO. To implement Alternative 2, NMFS would revise Federal regulations to authorize the use of longline pot gear to retain sablefish in the IFQ fishery and specify a new gear code for pot longline gear. If longline pot gear use is only allowed in specific regulatory areas, a requirement would be needed for vessels to stow longline pot gear to transit areas closed to directed fishing with longline pots.

Element 1. Element 1 would limit the number of pots that a vessel fishing with pot longline gear for GOA sablefish IFQ could longline during a fishing trip to a specific number between 60 and 400 pots. The element includes an option to require an identification tag on each pot. Pot limits, as defined in this action, would control the level of fishing effort that a vessel could exert during the period of time between deploying and retrieving the gear. The principal purpose of a pot limit would be to minimize gear conflict that can occur when the fishing grounds are preempted by dispersal of one gear type to the exclusion of the same or another gear type. A pot limit may also discourage vessels from loading more pots than would be appropriate for the specific configuration of that vessel. Theoretically, this could reduce the risk of vessels capsizing or other conditions (e.g., icing, or sudden shifting of pots) that might affect vessel safety. In practice, however, it is unlikely that a vessel pot limit would have a significant safety impact because participants in the sablefish IFQ fishery are not engaged in a "race for fish" and do not have an incentive to maximize the number of pots that each vessel can deploy in as short of a time as possible. In any case, pot limits do not substitute for USCG stability tests and load limits, the requirements for which are described in Section 4.9.3 of the analysis

Two broad methods exist for monitoring pot limits: pre-departure gear inspections, and self-reporting. A pre-departure gear inspection to determine the number of pots that a vessel transports for deployment is limited to existing program resources.

An alternative method to determine the number of pots that a vessel has deployed on a fishing trip is to require all vessels fishing sablefish IFQ to self-report this information in a logbook. Currently, only vessels greater than 60 ft in the GOA sablefish IFQ fishery fleet are required to submit logbook information. However, many vessels less than 60 ft that fish sablefish are now participating in the program, voluntarily completing and submitting logbooks. In 2012 and 2013, the number of sets submitted by vessels less than 60 ft was approximately equal to the number from vessels greater than 60 ft. A data field could be added to a vessel's NMFS logbook to allow the captain to record the total number of pots onboard a vessel before fishing commenced. This information could be checked by NMFS OLE or the USCG, during vessel inspections. Requiring a logbook and verifying a captain's logbook record of the total number of pots onboard a vessel would be necessary for enforcement of regulatory violations.

Option 1 of Element 1 would require pot tags. OLE has indicated that a pot limit could be enforced most economically and efficiently using a pot tag system. If the number of pots deployed by a vessel is self-reported through logbooks, the use of pot tags provides an additional enforcement tool to ensure that the pot limits are not exceeded. The use of pot tags would require a uniquely identified tag to be securely affixed to each pot, and a logbook on every vessel to enter the tag numbers. This would allow verification of the number of pots fished. Verification of pot tags could be accomplished periodically during dockside inspections by OLE personnel and during at-sea inspections by OLE in coordination with personnel from enforcement agencies other than NMFS OLE, such as the Alaska Wildlife Troopers or the USCG. At-sea inspections would rely on visual verification of pot tags and a vessel's pot count because no agencies in the State of Alaska have the ability to pull pot longline gear on the fishing grounds.

The transition to a pot tag program will come with new administrative costs and challenges. NMFS has not implemented a pot tag program in the Alaska Region for other pot fisheries. Under the most straightforward and least costly pot tag program under Alternative 2, sablefish IFQ permit holders would need to register with NMFS to request and to be issued pot tags. This registration would need to occur before the vessel begins fishing with longline pot gear, and would need to be done in enough time for NMFS to produce and issue the pot tags. We anticipate that registration could occur both prior to and during the sablefish IFQ fishing season, but the IFQ holder would need to ensure that pot tags are received prior to gear being deployed. The IFQ permit holder could request a specific number of pot tags, but the maximum number of annual pot tags issued to a sablefish IFQ permit holder would be equal to the pot limit established for the regulatory area corresponding to the regulatory area on the IFQ permit. As part of the registration process, IFQ permit holders would be required to assign pot tags to a vessel licensed by the State of Alaska with an ADF&G vessel registration number that is consistent with the vessel length category specified on the sablefish IFQ permit. Linking each sablefish IFQ holder with a specific vessel is essential to the effective implementation of a pot tag program. This will require each sablefish IFQ holder receiving pot tags to coordinate with the vessel owner/operator fishing tagged pots to ensure that the vessel does not deploy more pots than the maximum number permitted for that regulatory area. In cases where multiple sablefish IFQ permit holders with pot tags fish from the same vessel, all IFQ holders and the vessel owner/operator would need to coordinate to ensure that no more pots are deployed from the vessel than the maximum limit. If a tag or pot is lost or damaged, the IFQ permit holder claiming the lost tag would have to file an affidavit to receive a replacement tag.

A more flexible pot tag program would allow an IFQ permit holder to transfer pot tags to another permit holder and/or to another vessel during the fishing season to accommodate changes in fishing plans, (e.g., transfers of QS to new participants, changes in crew, changes in vessels to accommodate vessel breakdowns, etc.). This approach would require NMFS to establish a pot tag transfer process for IFQ permit holders and would be more costly to implement and administer than a program that did not authorize transfers. Because NMFS has not previously implemented a pot tag program, it is likely that creating such a program could take additional time beyond the typical time required for rule making. This could delay implementation relative to a preferred alternative that does not include a pot tag program. The Council should weigh the potential benefits of a timelier implementation of a pot gear option against the

relative increase in time and costs that are required to administer, monitor, and enforce pot limits with a pot tag program.

Element 2. Element 2 would impact the retrieval of gear in a GOA sablefish IFQ pot longline fishery. The Council identified two options under this element. Option 1 would require the location of pots set in the water, left in the water, or lost on the grounds to be submitted to an electronic database. Option 2 specifies that pot longline gear cannot be left more than four or seven days without being moved.

Element 2, Option 1 would require the location of pots deployed, location of pots soaking in the water, and location of pots lost on the fishing grounds be submitted to an electronic database. NMFS acknowledges that information on where gear is left or lost is important to the fishing fleet and could help prevent one fisherman's gear from becoming entangled in another fisherman's gear. Currently, the location of a pot longline set is recorded in required NMFS logbooks on catcher vessels greater than 60 ft LOA and CPs fishing sablefish with pot longline gear in the Bering Sea and Aleutian Islands. Vessel operators have the option to add information on the location of a lost pot and begin and end buoy number. However, data from these paper logbooks have not been electronically entered. These logbooks do not require the location of individual pots set in a longline configuration. NMFS notes that electronic logbooks are available through eLandings, but like paper logbooks individual pot locations are not recorded and logbooks are not required on catcher vessels less than 60 ft LOA. Even if this information is reported to NMFS in an electronic form, it would be considered confidential and not available to other participants. OLE could confirm receipt of this information, but would not be able to verify that gear was left on the fishing grounds or the location of that gear. In addition, OLE cannot enforce a requirement to report the loss of gear because there is no way to verify that fishing gear is lost. Therefore, NMFS did not develop regulations to implement Element 2, Option 1.

An alternative approach would be to develop new recordkeeping and reporting and a new gear tracking database which would require extensive investment. Implementing a gear tracking system using technology such as AIS or a scannable pot tag to locate pot longline gear on the fishing grounds is beyond the scope of available NMFS resources in the Alaska Region. In addition, anecdotal reports suggest that AIS or other scannable systems may not be effective in all weather and sea conditions (e.g. signals can be blocked or greatly attenuated in high seas). Given that these factors and the total costs of fitting longline pot gear could be substantial, these gear tracking systems may not be appropriate at this time. Generally, NMFS has not recommended specifying technologies given the rapid rate of technological change in maritime electronics. NMFS did not consider the specific type of "performance standards" that might be required to scan and track pot longline gear given the Agency's limited expertise with this technology.

Element 2, Option 2 would require each vessel to retrieve all of their pot longline gear every four or seven days. To determine compliance with gear movement on the fishing grounds, OLE personnel would conduct dockside inspections of a vessel's logbook record for the dates pot longline gear is deployed and retrieved. OLE conducts dockside inspections of the catch and mandatory logbooks at the time of landing. OLE currently completes dockside inspections of the HAL sablefish IFQ fishery, and anticipates this practice could be continued for pot longline gear vessels in a GOA sablefish IFQ fishery. However, logbooks are not required on all vessels fishing sablefish IFQ. Currently, the operator of a catcher vessel greater than 60 ft LOA using fixed gear, setline gear, or pot gear (includes pot longline gear) to harvest sablefish IFQ, halibut IFQ or CDQ halibut from the GOA is required to maintain a daily fishing logbook (DFL). The operator of a CP that is using longline or pot gear to harvest sablefish IFQ, halibut IFQ, or CDQ halibut from the GOA must use a combination of daily CP longline and pot gear logbook (DCPL) and eLandings. Both DFL and DCPL require catch by set information which includes pot gear begin and end position in latitude and longitude to the nearest minute when the pot gear entered the water and where the last pot of a set is retrieved. To determine that all vessels in a pot longline fishery move their gear, logbooks would be required to be maintained by vessels participating in the fishery that are less than or equal to 60 ft LOA. The Council may wish to consider additional gear retrieval regulations. First, while

Element 2, Option 2 allows gear to remain in place for four to seven days, it does not require pot longline gear to be removed from the fishing grounds at the end of the sablefish fishing season. In addition, if a vessel cannot comply with pot longline gear removal at these times due to incapacity, vessel/mechanical inoperability, and/or poor weather, then the regulations would need to be revised to require that fish caught in the pots upon gear retrieval would need to be discarded. Second, the Council may wish to consider whether to recommend regulations that prohibit retention of fish and use of specific gear prior to the opening of a fishing season in order to provide a “fair start” for participants in the fishery. For example, section 19 of the IPHC annual management measures specifies that no vessel may be used to catch or possess halibut if that vessel was used to fish for any species in halibut regulatory areas during the 72-hour period immediately before the opening of the halibut fishing season unless that vessel either (1) makes a landing and completely offload its entire catch of other fish, or (2) submits to a hold inspection by an authorized officer, before the vessel may be used to catch or possess halibut. Such a regulation may alleviate concerns about grounds preemption and gear conflicts between hook-and-line and pot longline gear at the beginning of the IFQ fishing season because it would reduce incentives for sablefish IFQ permit holders in the GOA to deploy pot longline gear prior to the season opening.

Element 3. Element 3 would require both ends of the sablefish pot longline set to be marked with buoys and/or flagpoles and transponders that work with AIS or an equivalent system (flagpole assembly). Element 3 is specific to the sablefish IFQ fishery in the GOA that uses pot longline gear and would not be applied to all groundfish pot gear in all areas. Existing NMFS and ADF&G groundfish regulations have similar descriptions of pot gear buoy marking requirements, but do not require a flagpole assembly. NMFS revised the identification marking requirements for fishing gear marker buoys used in federal waters off Alaska on April 3, 2014 (79 FR 18655) to align with ADF&G requirements.

NMFS recommends, and the Council’s Enforcement Committee noted in December 2014, that longline pot gear should have a specific buoy marking requirement that is distinct from HAL gear, so that enforcement agency personnel on vessels or aircraft could readily identify which gear is pot longline gear. Current regulations require any vessel fishing under the IFQ Program to mark all buoys carried on board or used be marked with the vessel’s FFP number or ADF&G vessel registration number. Adding the initials “LP” before the FFP number or ADF&G number would distinguish pot longline buoys from HAL buoys and pot-and-line buoys that are also used in IFQ fisheries. In addition to buoys, Element 3 would require both ends of a set of pot longline gear be marked with a flagpole and transponder that is detectable by an AIS receiver or an equivalent system. Existing AIS or equivalent technology is currently available and used throughout the North Pacific, though the scale of the application necessary to mark a flagpole is in development. Given the state of technology, the necessary infrastructure to implement monitoring of the locations pot longline sets and enforcement for compliance, NMFS is not able to support a requirement for a flagpole assembly with available resources. Therefore, NMFS did not develop regulations to implement the Element 3 requirement that both ends of the sablefish longline pot set be marked with “flagpoles and transponders that work with AIS or an equivalent system.”

Element 3 could not be enforced prior to fishing, or dockside, because the number of sets of pot longline gear and thus the number of buoys and/or flagpole assemblies is unknown until the gear is deployed on the fishing grounds. Monitoring and enforcement of marking both ends of a pot longline set could be minimally accomplished by requiring a mandatory logbook on all vessels using pot longline gear in the sablefish IFQ fishery in the GOA. Monitoring and enforcement could be best achieved on the fishing grounds through direct observation of the pot longline gear being deployed. OLE does not have the personnel or resources on the fishing grounds to observe or verify buoys and/or a flagpole assembly on both ends of a pot longline set. Observers would not be able to monitor a vessel’s buoy and/or flagpole assembly because once fishing begins they are occupied with sampling and data collection duties. Additionally, as noted above, observers are not deployed on all vessels. Therefore, monitoring and enforcement of buoys and/or a flagpole assembly at both ends of a pot longline set is limited by current resources.

Although NMFS is not able to support a regulatory requirement for a sablefish pot longline set to be marked with flagpoles and transponders that work with AIS or an equivalent system, the Agency encourages the use of gear construction that enhances the safety as well as the reliable retrieval of gear. Gear enhancements that are beneficial to the IFQ fishing fleet should incorporate best practices and technology.

Element 4. Element 4 would allow retention of halibut caught incidentally with pot longline gear in the GOA sablefish IFQ fishery, provided the sablefish IFQ holders onboard the vessel also hold sufficient halibut IFQ. Under Element 4, the amount of halibut retained on a vessel fishing for sablefish IFQ with pot longline gear would be limited by the amount of IFQ for the regulatory area being fished that was currently held by IFQ holders onboard the vessel. Element 4 addresses management of Pacific halibut, which is shared among the Council, IPHC, and NMFS.

Allowing retention of halibut IFQ in addition to sablefish IFQ in pot longline gear in the IFQ fishery for sablefish in the GOA would require a separate and complementary action by the IPHC to redefine allowable gear for the retention of halibut in the GOA. If Element 4 is included in the preferred alternative for this action, the Council could recommend that IPHC revise regulations to allow persons to fish and possess IFQ halibut taken with pot longline gear. If Federal (NMFS) regulations and IPHC annual management measures regulations are recommended to identify pot longline gear as legal gear for halibut, NMFS would coordinate the timing of implementation of complementary sets of regulations with IPHC.

Currently, legal size incidentally caught halibut are required to be retained in the GOA HAL sablefish fishery if any permit holder on the vessel has unharvested halibut IFQ. The procedures NMFS uses to verify that sufficient halibut IFQ are held by permit holders onboard a HAL vessel fishing sablefish could be used for a vessel fishing sablefish IFQ with pot longline gear. Since IFQ are specific to regulatory area and vessel size category, the amount of halibut retained and landed by a vessel is crosschecked against the IFQ permit database to verify that the permit holder's IFQ balance is sufficient for that area and vessel size category. In addition, OLE can reference information in NMFS logbooks and IPHC logbooks at the time of landing.

If the Council recommends Element 4, NMFS would require the lengths of halibut retained onboard a pot longline vessel be verified to ensure that they are at or above the commercial size limit. Observers collect data on retained halibut such as number, length, and viability. However, observers would not be onboard all vessels fishing. Thus, retention of legal sized halibut could only be verified on a portion of the vessels fishing. NMFS notes that this situation exists currently in the halibut IFQ fishery – observers are not deployed on all vessels to verify that all legal sized halibut are retained. Retention of legal sized halibut on unobserved vessels could be accomplished through OLE dockside inspections of the catch and mandatory logbooks at the time of landing. OLE currently completes dockside inspections of the HAL sablefish IFQ fishery, and anticipates this practice could be continued for pot longline gear vessels in a GOA sablefish IFQ fishery. It is common for offloads to contain both sablefish and halibut IFQ landings, so OLE would not expect difficulty in enforcing fishing activities allowed under Element 4.

II. C-8 Observer Coverage on Small CPs – Initial Review

Background

In December 2014, the Council reviewed a discussion paper for a regulatory amendment analysis to revise the allowances for placing small catcher/processors in the partial coverage category. The Council had previously identified this regulatory change as a high priority for potential regulatory amendments to the Observer Program. Currently, under the Program, there is a general requirement that all

catcher/processors are placed in the full coverage category, with two limited exceptions based on a vessel's activity from 2003 through 2009, and one exception based on a minimal amount of processing. The analysis, prepared by NMFS staff, evaluates different ways that the Council might consider revising the thresholds for catcher/processors with relatively small levels of groundfish production, while still maintaining an appropriate balance between data quality and the cost of observer coverage, and ensuring the threshold is not unduly difficult to apply and enforce.

III. Review Draft Enforcement Precepts and Discuss Development of a Technical on VMS Usage

Background

At the December 2014 meeting, the Enforcement Committee provided a report to the Council that assessed the utility of several advance Vessel Monitoring System (VMS) in the North Pacific. These features include geo-fencing, increased polling rates, declarations of species, gear, and area, and two-way communication. The report was tasked to the Committee out of a series of discussion papers during 2012 that evaluated the use and requirement of VMS in the North Pacific fisheries and other regions. The report provided an overview of the VMS, advance features of VMS not currently utilized in the North Pacific, uses of VMS by the different user groups, where VMS fits into the Strategic Plan for Electronic Monitoring/Electronic Reporting (EM/ER) in the North Pacific, and the Enforcement Committee's implementation recommendations to the Council.

After reviewing the report, the Council tasked the Enforcement Committee to review its April 2005 "Enforcement Considerations for NOAA Fisheries and North Pacific Fishery Management Council Staff" paper to include advance VMS features, where appropriate, amongst the matrix of different management measures noted in the paper. In addition, the Council also tasked the Committee to review other enforcement considerations in other regions to determine if there are other enforcement tools that might be of use for the North Pacific. At the December 2014 meeting, the Council tasked the Enforcement Committee to prepare a technical document on VMS usage for the universe of non-VMS vessels in the North Pacific for use by the Council in considering enforcement and electronic monitoring issues associated with future FMP and regulatory actions.

Since the December 2014 tasking, the a draft North Pacific Enforcement Precepts has been prepared for your review at this meeting that include both advanced VMS features and other enforcement considerations from other regions.