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Elements of a Limited Access Program

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This section presents the basic "nuts and bolts" of limited access, carrying the discussion of limited entry beyond the general considerations reviewed in previous sections to look at specific elements. A proposed checklist of items for consideration, along with a brief description of the main options is presented in Figure 1 below. Seven basic decision categories are:

- (1) Scope of the fishing activity to be restricted or allocated
- (2) Method of limiting access
- (3) Initial allocation of harvest rights
- (4) Transferability of harvest rights
- (5) Longevity of harvest rights
- (6) Mechanisms for adjusting the number of harvest rights
- (7) Handling disputes regarding issuance and transfer of rights.

In the absence of limited access to the fishery, any U.S. resident who pays the appropriate fees to State authorities has a right to fish for groundfish. This right is circumscribed by the various restrictions on commercial gear (e.g., trawl net minimum mesh size), by fishing season closures, by "trip limits," by incidental catch allowances, and prohibitions on retaining salmon and halibut. There is no legal restriction, however, on who can participate at any given time or place, and no specific restriction on the amount that any individual can legally land during a given fishing season. Thus, while there are many restrictions on fishing practices, current fishing rights are unlimited in number, unrestricted in total harvest amounts, and very inexpensive for the individual to maintain.

The discussion of elements in Figure 1 will focus on a trawl license limitation proposal developed in November 1984 by the Fisherman's Marketing Association and Coast Druggers Association (FMA/CDA) (see Appendix A). Although that proposal is called a moratorium, it has the essential features of a license limitation program. Of interest here is the contrast between the features outlined in that specific proposal and the alternatives listed in Figure 1. We will proceed through each of the seven categories.

SCOPE

The FMA/CDA proposal envisions a relatively narrow scope for the license limitation program in some respects (limited to trawl vessels) and a rather broad scope in other respects (covers entire coast and all species of groundfish listed in the management plan (Pac. Fish. Manage. Counc. 1982)). It leaves out all other commercial gear types and recreational fishing. Except in southern California, the recreational component of groundfish catch is too small (and will probably remain too small) for this exemption to matter much. Ignoring other gear types, however, is a more substantive deletion. Although trawl gear dominates the total catch, gillnet fishing is apparently on the rise and may portend greater competition for fish and space in the future. One strength of this approach is that it limits the most important element of the commercial fleet while minimizing the number of individual fishing operations that must be regulated.

By including all groundfish species and all fishing sites on the west coast, the FMA/CDA proposal would preserve great latitude in trawl fishing operations. Trawl vessel operators have suggested that they need to have many options open to them under any regulatory system. Geographic area and fish species availability are two dimensions to these "options," but there are others. For example, with a large fishing fleet and great latitude in fishing

Figure 1—Limited Access Program Elements and Options

<p>I. Scope of fishing activities to be restricted or allocated</p> <p>A. Types of fishing to be included</p> <ol style="list-style-type: none"> 1. All commercial and recreational 2. All commercial plus for-profit party and charter boat fishing 3. All commercial fishing 4. Only "big-time" commercial operations, such as those landing at least 50 tons of groundfish per year. <p>B. Geographical extent</p> <ol style="list-style-type: none"> 1. All Pacific coast including at-sea sales 2. All Pacific coast shoreside landings 3. Pacific coast shoreside harvests from the 3-200 nautical mile zone (FCZ, excluding state waters). 4. Harvests in certain selected INPPC areas such as the Vancouver or Columbia areas. <p>C. Fishing gear types</p> <ol style="list-style-type: none"> 1. All gear including groundfish trawl, hook and line, fish pots, gill nets, and shrimp trawls. 2. Control only "directed" fishing with trawl gear, fish pots, and gill nets. 3. Control only the major gear type—trawls (see FMA Proposal Appendix A). <p>D. Species of fish</p> <ol style="list-style-type: none"> 1. All species listed in groundfish fishery management plan (Pac. Fish. Manage. Council, 1982). 2. Include only "important" groundfish species (e.g., all rockfishes, whiting, sablefish, Dover sole, English sole, petrale sole, Pacific cod, ling cod). 3. Focus harvest permits or rights on single species or logical groups of species. For example, a "rockfish" permit or a "whiting" joint venture permit. 	<p>B. Competitive market allocation</p> <ol style="list-style-type: none"> 1. Auction off limited number of fishing licenses or IFQs. 2. Sell licenses or IFQs at prices calculated to reflect market values. <p>IV. Transferability</p> <p>A. Nontransferable</p> <ol style="list-style-type: none"> 1. Retirement or death causes termination of fishing license or harvest right; may revert to State to be reissued. 2. Ownership transfer not allowed, but owner may lease or lend fishing right. <p>B. License or IFQ attached to specific vessel or gear</p> <ol style="list-style-type: none"> 1. Transfer requires sale of vessel or gear. 2. May be transferred among vessels of equal fishing capacity. 3. May be subject to clearance by State and qualification of new owner. <p>C. Fully transferable at discretion of owner</p> <ol style="list-style-type: none"> 1. Market sales may be subject to clearance by State fisheries agency or review board. 2. State may require that new vessel have no more harvest capacity than previously licensed vessel. <p>V. Duration of term of fishing right</p> <ol style="list-style-type: none"> 1. Perpetual. The license or IFQ can be used as long as the owner wishes. 2. Annual, renewable or nonrenewable. Renewal could be automatic or could depend upon continued participation in fishery. 3. Dependent upon lifetime or career of permit holder. License or right expires upon death or retirement of holder. 4. Fixed, multiyear term. License or IFQ might confer right to fish for, say, 10 years.
<p>II. Means of limiting access to the fishery</p> <p>A. License limitation</p> <ol style="list-style-type: none"> 1. Personal License to fish (with or without limiting to "natural persons"). 2. License attached to vessel 3. License attached to gear (e.g., net) 4. Dual system: fishing license for people plus vessel or gear permits. <p>B. Individual fisherman quota (IFQ)</p> <ol style="list-style-type: none"> 1. IFQ conveys right to take a share of the allowable yield of specific stocks. 2. IFQ conveys right to take annually a specified quantity from a specific stock. 3. Annual yield is assigned to a company or fisherman's cooperative to be subdivided among fishermen. ("Enterprise quotas") <p>C. Taxes, royalties and fees</p> <ol style="list-style-type: none"> 1. Set initial entry fees high enough to discourage excessive participation. 2. Establish landings royalties for fully utilized species. 3. Establish annual license renewal fees. 	<p>VI. Means of altering number of licenses or fishing rights</p> <p>A. Fleet reduction</p> <ol style="list-style-type: none"> 1. Attrition through retirement, termination, revocation for cause. 2. Buy-back of perpetual or long-lived licenses by State or Federal agency. 3. Automatic expiration of fixed-term licenses in conjunction with issue or sale of reduced number of new licenses. <p>B. Increase in number licenses or rights</p> <ol style="list-style-type: none"> 1. Lottery among "qualified applicants". 2. Sale to applicants at agency-established price. 3. Selection of new licensees on first-come, first-served basis. 4. Auction of new licenses or rights in competitive market open to all.
<p>III. Basis for initial allocation of harvest rights</p> <p>A. Administrative assignments</p> <ol style="list-style-type: none"> 1. Include all persons or firms with recent record of landings (e.g., landed at least one fish in the past five years). 2. Include all applicants within a specified time period. 3. Include all persons or firms meeting minimum landings requirements. 4. Hold a lottery among all applicants. 5. Include all persons meeting certain qualifications as commercial fishermen. 	<p>VII. Settling disputes regarding issuance and transfer of fishing rights</p> <p>A. State/Federal Court</p> <p>Fishermen can ultimately seek redress in the courts under any of the options.</p> <p>B. Administrative Law Judge (ALJ)</p> <ol style="list-style-type: none"> 1. ALJ could make a final administrative ruling after hearing with fisherman. 2. ALJ could make recommendation to agency administrator after hearing issue. <p>C. Special Appeals or Review Board</p> <ol style="list-style-type: none"> 1. A board of peers (industry representatives) could make rulings or recommendations to agency administrator. 2. A board of disinterested citizens could hear disputes. <p>D. Agency Administrator</p> <ol style="list-style-type: none"> 1. Administrator could make final rulings for agency (e.g., NMFS Regional Director). 2. Administrator could be bound to pass issue to Federal department head.

options, current fish stock conservation regulations have limited the ability of trawl vessels to choose timing and quantity of rockfish to catch by imposing trip limits and season closures.

Three alternatives to the FMA/CDA proposal meriting consideration are (1) including all gear types in the license limitation program, (2) limiting the scope to "major" groundfish species, and (3) permitting small catch levels by unlicensed vessels. Extension to all gear types would increase the size of the licensed fleet by an order of magnitude, but would bring the various fixed gear vessels under control early. This would address the potential future problem of expanding harvest capacity by an unregulated portion of the fishing fleet. Second, the idea of licensing only those vessels fishing "major" species would alleviate the need to include in the limited fleet every vessel that catches an occasional spiny dogfish or soupfin shark. Without restricting the program to major species, the extension to all gear types would undoubtedly make the system too all-inclusive and cumbersome.

A third option might be to allow unlicensed vessels to land groundfish below a certain limit. All unlicensed vessels could be allowed, for example, to land up to 1,000 pounds of groundfish on any trip, or up to 10,000 pounds per year. This would permit the minor incidental catch of groundfish by trollers, shrimp vessels, and purse seiners without adding these vessels (and the redundant harvest capacity they might represent) to a permanent licensed groundfish fleet.

MEANS OF LIMITING ACCESS

The FMA/CDA proposal is for a groundfish fishing license attached to the vessel. The principal alternative form of licensing, the personal fishing license, has been adopted in Alaska and elsewhere. The choice between these two license alternatives should have some effect on relative bargaining strengths of vessel owners and fishermen. With personal licenses limiting the number of people who can legally fish, ownership of capital equipment is not a prerequisite for ownership of fishing rights. In the Alaska salmon case, personal fishing licenses cannot be used as collateral for loans and cannot be owned by corporations. These provisions were supposed to protect licensed fishermen from some possible threats to their continued participation in the fishery. Vessel owners might object to this because their ability to continue receiving income from a capital investment would depend upon success in recruiting a licensed crew.

Choice between attachment to individuals or vessels must be made in designing IFQs as well. If the 10,000-ton allowable bycatch for sablefish were allocated as 500 20-ton IFQs, these could be assigned on the basis of historical share to fishermen, to vessel owners, or even to corporations involved in fish processing. With personal IFQs, a trawl vessel owner would need to hire a skipper or crewmember holding an IFQ; with share assigned to vessels the owner would have control of the harvest right and fishermen not owning vessels would be at a disadvantage; and with corporate ownership of shares the processors could more easily plan and manage the fleet fishing for them.

A sub-option for IFQs is partial implementation of the system for a subset of groundfish stocks. One could allocate the estimated annual allowable catch of widow rockfish, sablefish, or Dover sole while leaving other species out of the IFQ system. Also, as suggested by Robert Stokes (1983) in his study of north Pacific halibut, one could establish IFQs for a portion of the total harvest of a given species while retaining a communal fishery for the remainder of

the harvest. This option has the advantage of providing a choice to fishermen who, for whatever reason, do not want to join a quantitative rights system. If one-half of the traditional harvesters of Dover sole object to an IFQ system, one could distribute IFQs for half the annual yield to those wishing to join the system. The traditional harvest sector would fish from January 1 until one-half of the annual allowable bycatch is taken. Fishermen with IFQs could fish whenever they wish, and would probably time their harvest to maximize its landed value.

INITIAL ALLOCATION OF FISHING RIGHTS

The FMA/CDA proposal would allocate trawl licenses only to certain groundfish trawlers (1) landing at least 100,000 pounds or (2) making at least 12 deliveries during 1984 or (3) demonstrating to an industry-governing Board that they had prior involvement in the fishery and were active in the north Pacific or Bering Sea trawl fishery in 1984 or (4) demonstrating to the Board that they signed a contract or began construction or conversion of a trawl vessel during 1984. These qualifications would exclude very few groundfish trawl fishing vessels from the licensed fleet. For that reason, this initial allocation of harvest rights would create no significant reduction in harvesting capacity.

Whether licenses or IFQs are considered, the basic choice here is between administrative assignment and some kind of "market allocation." Administrative assignments are universally chosen in existing limited access programs, largely because government agencies (and legislators) are reluctant to take away historically established fishing rights. As noted in the Introduction, when government regulations are designed to correct technical problems of communal resource usage, use rights are generally assigned to actual, historic users in order to avoid causing a redistribution of wealth. However, when developing new resources (offshore oil) or distributing public resources not previously used (National Forest timber), government mechanisms tend to use more market-oriented allocations (auctions and royalties) which extract resource value from the users.

A case could be made that both historic use and new uses are found in the Pacific groundfish fishery. Extensive historic use of most flatfish, rockfish, and sablefish by commercial fishing fleets could establish an informal "ownership" of the right to harvest. At the same time, however, new or developing fisheries have no such specific historic use. Pacific whiting, shortbelly rockfish, sanddabs, and possibly other groundfish stocks would be essentially "new" from this perspective. A mix of administrative and market allocation of initial harvest rights could be justified on this basis. Ultimately, there is no technically correct answer to the initial allocation question. Distribution of public resources can and has been done in many ways.

TRANSFERABILITY OF HARVEST RIGHTS

Under the FMA/CDA proposal, the trawl licenses would be transferred with sale of the vessel and could be shifted from one vessel to another by the owner if the licensed vessel is lost or if the owner wants to "upgrade" or "downgrade" his vessel. Although the license itself would not be saleable under this system, it would be fairly easy to perform almost any kind of transfer. For example,

if a licensed vessel owner wants to take his vessel to a different fishery, he could replace his vessel with another and then sell the new vessel with license. Or, he could sell the original vessel with license to another fisherman, who would then replace the vessel and sell the original vessel back to the original owner. There would be no apparent market value to a license, but the difference between vessel prices with and without a license would provide a good indication of license value. The restriction on sales simply makes transactions involving limited harvest rights a cumbersome and roundabout process.

An alternative to this is a fully saleable license. If sufficient numbers of licenses or quantitative harvest rights (IFQs) change hands on a routine basis, the market allocation of fishing rights would have all the advantages and disadvantages of market allocations that are experienced in sectors of the economy. Market allocations are presumed to facilitate the efficient entry and exit of resource users. Less adept or profitable harvesters would be encouraged to sell their rights and enter a different line of work, while more efficient operators could expand. No coercion would be necessary, since anyone with a license or harvest right would have the option of not selling.

With vessel licenses as proposed by FMA/CDA, sufficient transferability seems to be incorporated. For an IFQ system to work, however, true market sales would be almost a necessity. One alternative is for annual harvest quotas to be initially allocated among vessel owners in proportion to their historic shares. A vessel owner with a vessel that breaks down for an extended time would want to sell any quotas he owns to another operator. Also, a vessel which is harvesting mostly rockfish may want to shift into shrimp or Dover sole fishing. The owner will need to sell one set of quotas and buy a new set. Without the freedom of market sales, it would be difficult to maintain operating flexibility with quantitative harvest rights.

LONGEVITY OF HARVEST RIGHTS

In view of the long-lived investments inherent in both fishing vessels and fishing know-how, there seems to be no logical reason for licenses or IFQs to expire annually or over a short period of years. The FMA/CDA proposal allows perpetual trawl licenses. Only if a vessel owner fails to meet minimum landing requirements and fails to seek an exemption for his vessel, would a license be automatically retired. Personal licenses in Alaska and elsewhere are also perpetual. The Pearse Commission recommended that British Columbia salmon licenses be issued for a 10-year term, but that proposal was part of an intended fleet reduction program that would end with issuance of a smaller number of perpetual licenses.

In a limited access program incorporating all gear types, however, it might be useful to issue short-term licenses to vessels that really intend to fish only for a short time or which temporarily exceed some maximum harvest level allowed for unlicensed vessels. With a fully marketable IFQ system, anyone wanting to temporarily enter or leave the groundfish fishery would have the opportunity to do so.

MECHANISMS FOR ADJUSTING NUMBERS OF HARVEST RIGHTS

Under the FMA/CDA proposal, the number of trawl licenses, once established, would change only where individual owners allowed their licenses to lapse. Because these licenses would be potentially valuable in the future, it would be unlikely that significant numbers of vessel owners would voluntarily withdraw from the licensed fleet. Assuming that there will be slow attrition from the trawl fishery, the FMA/CDA proposal calls for an annual review of the size and condition of the fleet. No specific procedures are included, however, for either causing more rapid decrease in the fleet or for increasing the number of licenses at some future time.

To achieve an economically efficient fleet size, some reduction in number of vessels would be necessary under a license limitation program. On the other hand, an expansion of the currently developable fisheries for Pacific whiting and shortbelly rockfish might justify adding to the fleet.

For fleet reduction, attrition and buyback programs are the only frequently discussed alternatives. For attrition to have much effect, there must be fairly stringent annual requirements for renewal of licenses, and the licenses must not be transferable to new fishermen. This approach, therefore, seems to impose a rather arbitrary distribution of fleet reduction burden among fishermen. Also, while waiting for attrition to take its toll, many fishermen may be led to remain in the fishery when they should not for health or safety reasons.

Buyback of vessel licenses provides a positive means of reducing the number of vessels, but it requires a source of funding. In their extensive review of buyback of fishing rights, Schelle and Muse (1984) found only one that was not a government subsidized program. If Congress and state legislatures are not prepared to provide financing, then fees and royalties from the fishery could be used to create a fund for buyback. A large number of technical issues need to be addressed in designing a buyback system, including (1) determining the target fleet size, choosing (2) whether to buy licenses only or to include vessels and gear, and (3) whether to target the buyback on a specific distribution of vessel sizes and capacities, and (4) determining the specifics of the application and offer system.

One innovative means of reducing vessel numbers was implemented in the British Columbia roe herring license system. The fishery was divided into three sub-areas and each licensed fisherman was allowed to choose one area. Licenses are saleable, however, and a license owner may buy up licenses from all three areas. If management authorities stagger the openings of herring fishing seasons in the three areas, this method of fleet reduction allows consolidation of fishing operations with attendant reductions in fishing costs. Potentially, the total number of participants could fall to one-third the original number. In fact, from 1981 to 1985 the total number of licenses fell from 1,557 to 1,132. As of 1985, only 17 vessels had three licenses. P. MacGillivray (1986) notes that the British Columbia system resulted in both improved product quality and reduced fishing costs.

Under an IFQ system, numbers of participants need not be adjusted directly. Instead, the quota initially allocated will be redistributed in private market transactions to determine the number of participants. With marketable IFQs, adjustment of numbers of vessels or fishermen is not administered by the management program. Nevertheless, ownership of IFQs may be restricted to some defined class of "qualified" fishermen, and the number of such fishermen may be of concern. It is difficult to anticipate what issues

might arise under such a system in the absence of any experience with it or a specific proposal.

HANDLING DISPUTES ---

Disputes are likely to arise concerning the initial allocation of harvest rights (whether licenses or IFQs), and in exercising the mechanisms for license transfer, renewal and termination. Most existing license limitation programs avoid disputes regarding initial allocation by including almost every conceivable claimant. Alaska's salmon license program did not, much to the chagrin of the Commercial Fisheries Entry Commission. The Alaska system required the Entry Commission to establish means of determining the extent to which applicants met various criteria concerning historic participation and dependence on the fishery. Challenges to the Commission's procedures and decisions still, after 10 years of operation, constitute a significant portion of the Commission's business. This could be avoided by establishing quantitative criteria in law or regulation at the outset, rather than leaving interpretation of some vague criteria to a quasiregulatory body.

To deal with the disputes that occur, several alternative procedures could be established. A review board dominated by fishermen and other industry members could decide whether individuals should be given licenses and whether proposed license or vessel transfers should be allowed. A variant on this is to use the board to make recommendations to an agency administrator (e.g., an NMFS Regional Director) who would make an official ruling. Fishermen affected by decisions of the Board may feel that they will get a more sympathetic hearing before their peers than before a nonfishing administrative or judicial panel. On the other hand, both fishermen and the public-at-large occasionally may fear that conflicts of interest or favoritism are more likely to affect the decisions of an industry-dominated review board.

Other approaches could include use of an Administrative Law Judge to hear evidence and make recommendations or rulings. Agency administrative procedures could be used to hear grievances and make rulings. In any case, a fisherman has access to the courts to seek redress of arbitrary or wrongful actions by the management agency.

CONCLUSIONS ---

A tremendous variety of combinations of limited access program elements can and have been attempted. This chapter has introduced and explained many of the most commonly discussed alternatives under seven categories. Further innovation in developing variants on these alternatives will surely be an activity for fishermen, managers, and scientists involved in limited access programs.