

Consideration of a Catch Share Program for the Atlantic Shark Fisheries

National Marine Fisheries Service (NMFS)

Highly Migratory Species (HMS) Management Division

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Background

On September 20, 2010 (75 FR 57235), NMFS published an Advanced Notice of Proposed Rulemaking (ANPR) to provide background information and request public comment on potential adjustments to the regulations governing the U.S. Atlantic shark fisheries to address several specific issues currently affecting management of the shark fisheries and to identify specific goals for management of the shark fisheries in the future. NMFS requested public comment regarding the potential implementation of changes to the quotas and/or permit structure that are currently in place for the Atlantic shark fisheries. NMFS also requested comments on the potential implementation of a catch share program which could take the form of a limited access privilege program (LAPP), individual fishing quota (IFQ), and/or sectors. Six public meetings were held which included one at the Atlantic Highly Migratory Species (HMS) Advisory Panel (AP) meeting in Silver Spring, MD, on September 21-23, 2010. Public comments on potential changes in quota structure addressed issues associated with species complexes/quotas, regions, and retention limits, while comments on potential changes in the permit structure addressed issues associated with permit stacking and “use it or lose it” permits. Comments both supporting and opposing catch share programs were received in addition to comments on methods for determining individuals’ initial allocation if catch shares were implemented for the Atlantic shark fisheries. A summary of all the comments received on the ANPR can be obtained from the HMS Catch Shares website (<http://www.nmfs.noaa.gov/sfa/hms/sharks/catchshares.htm>).

On April 1, 2011, NMFS received a proposal from some regional stakeholders regarding a catch share program for the Atlantic shark fisheries in the Gulf of Mexico (GOM). These stakeholders recommended establishing an IFQ system for non-sandbar large coastal sharks (LCS). During the last Atlantic HMS AP meeting on April 5-7, 2011, the stakeholder group presented its proposal and answered questions from AP members. AP members generally were supportive of moving forward with a catch share program. NMFS also attended a workshop held by the stakeholder group in June 2011 where they presented a revised version of the catch share proposal. The regional stakeholders continue to discuss and refine their IFQ proposal and presented NMFS with a modified proposal in August 2011.

In light of the comments received on the ANPR regarding a catch share program, the stakeholder proposal, and general support from the AP, NMFS is considering implementation of a catch share program for the Atlantic shark fisheries. Consistent with the objectives described in the ANPR, implementing a catch share program for Atlantic shark fisheries may be an effective means of lengthening seasons and providing participants more autonomy concerning timing of fishing activities, reducing regulatory discards, improving economic performance by allowing fishermen the opportunity to harvest sharks when conditions are most favorable, addressing intraregional differences in shark distribution that may lead to difficulty timing seasons when sharks are locally available, reducing latent effort in the fishery, reducing bycatch, simplifying regulations, and ensuring that overfishing does not occur to maintain target rebuilding timeframes for sharks.

Purpose and Need

The purpose of this white paper is to introduce catch share programs as a potential management tool in the Atlantic shark fisheries. Atlantic sharks have been managed by the

Secretary of Commerce since 1993. During this time there have been numerous modifications to the input and output controls used to manage the Atlantic shark fisheries. These individual measures were implemented for a variety of reasons, including: modifying quotas as a result of stock assessments, preventing overfishing and rebuilding overfished stocks, reducing bycatch, reducing interactions with protected resources, ensuring access to shark resources based on seasonal availability, minimizing damage to fish habitat, and others. As previously mentioned, the shark fisheries, particularly the large coastal shark (LCS) portion, continue to experience reduced quotas, a decrease in the number of active vessels, shorter seasons, more prohibited species, low retention limits, regulatory discards, and a host of other issues .

“Catch share” is a general term for several fishery management strategies that allocate a specific portion of the total allowable fishery catch to individuals, cooperatives, communities, or other entities. Each recipient of a catch share is directly accountable to stop fishing when its exclusive allocation is reached. The term includes specific programs defined in law such as "limited access privilege" and "individual fishing quota" programs, and other exclusive allocative measures such as Territorial Use Rights Fisheries (TURFs) that grant an exclusive privilege to fish in a geographically designated fishing ground. While catch share programs are not a panacea, they have been shown to effectively achieve annual catch limits and reduce the negative biological and economic impacts of the race for fish. Furthermore, they may reduce the need for input controls such as seasons and retention limits which may affect the economic potential of the fishery. After a public process for its development, in November, 2010, the NOAA Catch Share Policy was released. The policy encourages the consideration and adoption of catch share programs, where appropriate, and contains a series of guiding principles which should inform the development of catch share programs. There are numerous examples of catch

share programs throughout the United States that can be reviewed as the Agency considers next steps towards potential catch share implementation for the Atlantic shark fisheries. However, it is important for stakeholders in the Atlantic shark fisheries to understand that a catch share program can provide a great deal of flexibility, within certain statutory limitations, concerning the design of key elements and management measures that are necessary to ensure that goals specific to the Atlantic shark fisheries are achieved.

The Agency will be hosting a series of scoping workshops to elicit feedback to aid in the preparation of an “issues and options” paper for a potential catch share program for the Atlantic shark fisheries. At this stage, the Agency is requesting feedback from the public, particularly potentially affected constituents, on some of the design elements that will be paramount to the program’s success, including but not limited to: eligibility, specification of the resource unit, means of initial allocation, and additional management measures, among other elements (see Appendix 1).

Design of Catch Share Programs

1. Region

Because there are some shark species/species complexes that have had regional quotas since 2004, there is a need to consider how the resource unit for the Atlantic shark fisheries would be defined. Furthermore, shark stock assessments may provide regional determinations concerning a species’ status or recommendations affecting management for individual species, species complexes, or fish stocks. Designing a catch share program for one or all regions could have implications for eligibility and fishing opportunities for all shark fishermen. The potential exists to implement a catch share program specific to the Gulf of Mexico consistent with the proposal received from the regional stakeholder group. Alternatively, in the interest of being inclusive and maintaining consistency across the fishery, a catch share program could be

designed to include all regions and participants in the Atlantic shark fisheries. Furthermore, in establishing quotas and managing the shark fishery, NMFS accounts for all shark mortality, including mortality that occurs by state-water fishermen. Therefore, if NMFS develops and implements a catch share program, the program would need to include consideration of historical shark fisheries in state waters. A total of 15 states (Maine, New Hampshire, Massachusetts, Rhode Island, New York, New Jersey, Delaware, Maryland, Virginia, North Carolina, South Carolina, Alabama, Mississippi, and Louisiana) allow a commercial state-water shark fishery. Many of those states do not report landing a large number of sharks commercially. NMFS would also need to consider inclusion of recreational fishermen in this catch share program in order to account for all shark mortality.

2. Specification of the resource unit

The resource unit refers to the species, stocks, or aggregations that would have a total allowable catch (TAC) or quota, with associated harvesting privileges, distributed using a catch share program. Defining the resource unit(s) when implementing a catch share program is important because, once defined, it may impact eligibility, initial allocation, and overall management of a catch share program. Any limited access program, such as any catch share program to be considered for the Atlantic shark fisheries, would need to maintain consistency with Section 303(b)(6) of the Magnuson-Steven Fishery Conservation and Management Act (MSA), which allows the Secretary in a Fishery Management Plan to establish a limited access system in order to achieve optimum yield if taking into account certain factors. When developing such system, NMFS needs to take into account present participation in the fishery, historical fishing practices and dependence on the fishery, economics of the fishery, capability of fishing vessels used in the fishery to engage in other fisheries, cultural and social frameworks

relevant to the fishery and any affected fishing communities, fair and equitable distribution of access privileges in the fishery, and any other relevant considerations. Furthermore, if individual species or species complexes are not included in a catch share program, the Agency would need to continue to ensure consistency with the MSA and other relevant statutes.

Defining the resource unit would entail identifying which species or species complexes should be included in the program and how each of the included species should be classified (*i.e.*, stocks or geographically distinct units of the same species) (Anderson and Holliday 2007). Specification of the resources that could be included in a catch share program also needs to be examined in conjunction with commercial and biological relationships between species, availability of species-specific stock assessments, gear type, and species specificity, potential for interactions with sensitive species that may be caught as bycatch, interactions with threatened or endangered species, and other factors. The more stocks included in a catch share program, the more inclusive the system would be, which may reduce the need for separate management programs to handle species and stocks that may not be included in a catch share program, but could have interactions with species managed by a catch share program. Additionally, if the scientific advice or life history of species warrants regional management it may be easier to focus management on more narrowly defined species or species complexes (Anderson and Holliday 2007). Currently, the resource units for sharks include a combination of species and species complexes. The species complexes for which a specific quota is administered include: large coastal sharks, small coastal sharks, and pelagic sharks (other than blue sharks and porbeagle sharks). Shark species for which there is a species-specific quota include: sandbar sharks, blacknose sharks, porbeagle sharks, and blue sharks. The Agency is interested in attaining feedback from the public on which species and/or species complexes and which

authorized gear types (i.e., bottom longline and/or gillnet) should be included in a potential catch share program for the Atlantic shark fisheries.

3. Eligibility

Eligibility refers to the individuals or entities that are allowed to participate in a catch share program throughout the duration of the program. Eligibility may have immediate implications on initial distribution and subsequent transferability because it defines who is eligible to participate in the fishery. All parties that are eligible may not necessarily be able to receive initial quota shares depending on criteria selected for initial distribution (e.g., if a minimum quantity of landings over a predetermined period were selected as the criteria for receipt of a quota share). Defining which entities are eligible needs to be closely connected to the goals and objectives of a catch share program and should also consider past participation in the fishery and the amount of flexibility needed or wanted to allow opportunities for new entrants to gain access.

The MSA provides guidance concerning requirements for eligibility in limited access privilege programs (LAPPs). If NMFS decides to implement a LAPP under section 303A, then NMFS must authorize privileges to be held, acquired, used by or issued to persons who substantially participate in the fishery with flexibility for NMFS to determine how to define “substantially participate”. A LAPP would 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 meet the requirements established in the program from being eligible to participate in a catch share program. Outside of the restriction noted above, there is latitude in determining the eligibility requirements for a LAPP and existing programs have used a variety of criteria such as minimum number of days participating in the fishery, owners of a specific permit type, minimum landings levels, owner-on-board

requirements among many other options. In addition to vessel owners, recipients may also include captains, crew, fish processors, or participants in fishery dependant support businesses (Anderson and Holliday 2007). Section 303A also allows specific entities to participate in a LAPP, “fishing communities” (Section 303A(c)(3)) and “regional fishery associations” (Section 303A(c)(4)). “Fishing communities” must be located within the management area, meet criteria developed by NMFS, consist of residents who conduct fishery-related (commercial or recreational), processing, or fishery-dependent businesses in the management area, and develop and submit a community sustainability plan. “Regional fishery associations” must be located within the management area, meet criteria developed by NMFS, be a voluntary association with established by-laws and operating procedures, consist of participants in the fishery who hold quota share that are designated for use in the specific area of the regional fishery association, will not be eligible for initial allocations, and develop and submit a regional fishery association plan. For limited access programs other than 303A LAPPs, NMFS would comply with the requirements of the MSA, section 303(b)(6) if a catch share program is implemented.

NMFS recently published a Notice of Intent (76 FR 57709; September 16, 2011) that established a control date of September 16, 2011 for eligibility participants who possession of a valid federal directed or incidental limited access shark permit as of that date. If NMFS takes future action to implement a catch share program in the Atlantic shark fisheries, the control date could affect eligibility to participate in and receive an initial allocation of quota in the Atlantic shark fisheries. The Agency may or may not make use of this control date as part of the qualifying criteria for participation in any future catch share or other management program. Fishermen are not guaranteed future participation in a fishery regardless of their entry date or intensity of participation in the fishery before or after the control date under consideration.

The Agency is interested in feedback related to eligibility. Specifically, the Agency is seeking feedback on whether the catch share program should consider only directed shark permit holders or if other permit holders such as incidental or recreational permit holders should be included. If the Agency only considered directed shark permit holders, then a portion of the TAC may be reserved for incidental shark permit holders and the recreational sector. For example, if 20 percent of the TAC were allocated to 3,000 participants in the recreational and incidental shark fisheries and 80 percent to 250 directed shark permit holders in the commercial shark fisheries and the total was divided equally, each directed shark permit holder would receive 0.4 percent of the 80 percent of the TAC. The baseline TAC for non-sandbar LCS is 1,045.6 mt dw. Under the above example, the commercial shark fishery would be allocated a quota of 836.4 mt dw (80 percent of 1,045.6), with each of the 250 commercial permit holders receiving 3.3 mt dw (7,275.2 lbs dw) of the TAC. If the Agency included all incidental and recreational permit holders in the catch share program and the total TAC was divided equally then 100 percent (1,045.6 mt dw) of the TAC would be distributed among the 3,250 participants in both the commercial and recreational fishery, with each receiving 0.3 mt dw (661.4 lbs dw) of the catch. However, NMFS would likely not distribute 100 percent of the TAC to all commercial shark and angling permit holders as NMFS would also need to consider other sources of shark mortality not discussed above (e.g., state water shark fishing, dead discards). The Agency is interested in feedback with respect to other eligibility criteria it should consider such as minimum landing levels.

Means of Initial Allocation

After determining the criteria for eligibility in the catch share program, the next step would be to determine how the allocation would be initially distributed among the eligible

participants. The methods and criteria employed for determining the initial allocation of a catch share program are extremely varied. Overall, NMFS would like the process of initial allocation to be administratively straight forward, equitable, based on transparent and readily available data, and consider all eligible participants while adhering to the objectives of the catch share program. The NOAA Catch Share policy advises consideration of a broad range of participation criteria to ensure the most fair and equitable catch share distribution for the given circumstances. In addition to a historical landings criterion, some part of the allowable catch could be allocated equally among participants, some part may be auctioned, and/or some part may be reserved or set aside for special purposes such as new entrants (NOAA Catch Share Policy). Establishing the process for initial allocation is often the most contentious design element in any catch share program because it is only done once and initially determines if and how much an entity can participate in the fishery. Section 303A of the MSA requires a LAPP include an appeals process for administrative review of decisions regarding initial allocation of privileges.

If NMFS decides to implement a LAPP, section 303A(c)(5) of the MSA provides guidance concerning the initial allocation and compels the Agency to consider current and historical harvests, employment in the harvesting and processing sectors, investments in, and dependence upon, the fishery, and, the current and historical participation of fishing communities when determining an initial allocation in a catch share program. In addition, NMFS must also consider the basic cultural and social framework of the fishery, include measures to assist, when necessary and appropriate, entry-level and small vessel owner-operators, captains, crew, and fishing communities, and ensure privilege holders do not acquire an excessive share. .

Generally, there are two ways that the initial allocation can be distributed: either according to a specified allocation formulae (i.e., based on landings history/past participation, equal allocation,

or a combination of these) or allocating the shares using an auction under section 303A(d). This paper will focus on options available for using specified allocation formulae for initial allocation to participants in the commercial Atlantic shark fisheries. For limited access programs other than 303A LAPPs, NMFS would use the factors in section 303(b)(6) to implement a catch share program.

Equal Allocation

While most of the catch share programs implemented in the United States to date have determined the initial allocation based on metrics that measure past participation in the fishery, primarily catch, capital investment, and number of years fished over a reference period (Anderson and Holliday 2007), another possible methodology would be to divide shares equally among participants that are deemed eligible to participate. If NMFS were to implement equal allocation and restrict shares to eligible participants, shares could be divided among all existing federal shark permit holders or vessel owners. For example, if there were 250 shark permit holders or participants in the fishery and 100 percent of the commercial quota was distributed, each participant would receive 0.4 percent of the catch. The current adjusted baseline for non-sandbar LCS quota is 677.8 mt dw. Under the above example, the 250 shark permit holders would each receive 2.7 mt dw (5,952.4 lbs dw). However, NMFS would likely not distribute 100 percent of the commercial quota to shark permit holders as NMFS would also need to consider state fishermen and fishermen who may not be eligible to participate in the catch share program but who may be able to legally land sharks commercially (e.g., incidental permit holders if the catch share program only considers directed permit holders to be eligible).

This equal allocation method would provide equal fishing opportunities and security for those who are determined to be eligible to harvest the available shark quota. If only federal

shark permit holders are eligible, this method could also allow inactive permits/vessel owners to be brought back into the fishery, resulting in decreased shares for those active participants. In general, quotas for LCS have decreased over time; therefore, it is possible that under some scenarios, providing an equal share to all participants may result in all individuals being distributed a share that is not economically viable to remain active in the fishery. However, if transferability is provided for, it is possible both the inactive and active permits/vessel owners could benefit by selling or leasing inactive shares to active participants.

Catch history and/or level of participation

As an alternative to equal allocation, NMFS could distribute allocations based on catch history and/or level of participation in the fishery. If NMFS were to implement allocations exclusively based on “valid” catch history (landings with a valid shark permit), this would mean that each individual’s landings history would be determined within a set of qualifying years and then compared to the total of all eligible participant landings. This would result in each participant’s catch history expressed as a share of the total. For example, an individual’s share could be based on a shark fishermen’s catch history from the 2005 to 2010 shark fishing seasons. Alternatively, an individual’s share could be based on the best four years of a six year period. This approach would accommodate participants who may have not landed fish in a particular year due to unavoidable circumstances, such as inclement weather, and/or unforeseen circumstances affecting fishing opportunities (e.g., Gulf of Mexico oil spill). A third approach could allocate initial quota shares based on the level of participation in the fishery such as how many years each individual actively participated in the fishery and whether they still remain active in the fishery. Under this approach, a fisherman who participated all six years of a six year qualifying period would have a higher initial share than a fisherman who participated in

only three year of the six year qualifying period even if the fisherman who participated in only three years landed more sharks in total than the fisherman who participated in all six years. This approach would favor the currently active fishermen who have continually fished for sharks over a period of time while potentially removing inactive permits/vessels from the fishery. While not required, other catch share programs have not distributed all of the shares, such as the shares from the inactive permits/vessels, to make it available to a specific group, such as new entrants.

A combination of these methods could also be employed. For example, 30 percent of the quota could be divided equally amongst all participants to ensure that everyone is allocated at least a base-amount of quota that would provide for incidental landings of sharks. Then the remaining 70 percent of the quota could be assigned to each participant based on their catch history over a range of qualifying years.

In all cases, if a participant's catch history over a range of years were used as a measure of past participation in the fishery and as a basis for determining initial allocation, NMFS would need to determine how landings by a particular permit/vessel would be partitioned because a number of vessels and permits have been transferred among participants, making it difficult to determine the owner of the landings history for a particular permit/vessel. One option would be to require the landings history be matched to the current permit holder, with the landings history not transferring to the new permit owner (see Table 1). Under this option, all participants in possession of a valid shark permit as of the control date would receive all of the landings associated with their shark permit. For example, NMFS could determine that all participants in possession of a shark permit as of September 2011 would receive a share based on all the landings associated with their shark permit. Under this scenario, a participant who has had the same shark permit for seven years up until September 2011, with landings totaling 120.1 mt dw

(264,772 lbs dw), would be eligible to receive a share of the catch based on the entire landings history (120.1 mt dw) for that permit. On the other hand, a participant may have recently bought a new permit with 35.7 mt dw (78,704 lbs dw) and sold their old one with a landings history of 84.4 mt dw (186,068 lbs dw) by the specified date. Under this scenario, the participant's share would be based on the landings history of his old shark permit (84.4 mt dw) instead of the newer shark permit. In a third scenario, a new participant in the fishery who purchased a new shark permit, with a landings history of 120.1 mt dw, would not receive an allocation regardless of the landings history associated with the new permit.

Table 1. Comparison of allocation scenarios among permit holders.

Permit Holder	Example	Landings used for allocation
A	Same permit for 7 yrs (120.1 mt dw)	120.1 mt dw
B	Bought new permit, sold six-year old permit (new permit (1yr) 35.7 mt dw; old permit (6yrs) 84.4 mt dw)	84.4 mt dw
C	New entrant (0 yrs) Bought new permit (120.1 mt dw)	0.0 mt dw

Alternatively, if the landings history were to be matched to a vessel's landings, with the landings history transferring to the new vessel owner, then any vessel owner with a valid shark permit during the qualifying years would be in possession of the landings history for the current vessel (see Table 2). Using the preceding scenarios and the 2003 to 2005 fishing seasons as the qualifying years, the participant that has had the same vessel, with a landings history of 120.1 mt dw, throughout the qualifying period, would be allocated the entire amount of landings associated with the vessel (120.1 mt dw). On the other hand, the landings history of a participant who upgraded their vessel, would be associated with the new vessel's landings (35.7 mt dw) regardless of the landings history associated with his previous vessels (84.4 mt dw). Finally, the

participant who has bought a new vessel would be in possession of the landings history of the vessel in his possession (120.1 mt dw). These scenarios would only apply to landings history associated with federal directed and incidental shark permit holders. NMFS could develop a catch share program for the commercial fishery, and manage the recreational fishery differently. As described in the “Specification of the Resource Unit” section, NMFS would also have to account for shark mortality in state water fisheries.

Table 2. Comparison of allocation scenarios among vessel owners.

Vessel Owner	Example	Landings used for allocation
A	Same vessel (7yrs) (120.1 mt dw)	120.1 mt dw
B	Upgraded vessel (old vessel 84.4 mt dw; new vessel 35.7 mt dw)	35.7 mt dw
C	Bought new permit (0 yrs) (120.1 mt dw)	120.1 mt dw

Selection of Qualifying years

Designing a catch share program often requires establishing a set of qualifying years on which to measure participation (e.g., catch history, level of effort) in the fishery in order to determine how quota shares will be allocated among eligible participants. Since the management measures for the Atlantic shark fisheries have changed frequently over the last several years, becoming more restrictive in recent years, there is a split among the “historic” and “recent” participants in the fishery. Historically, fishermen fished under a 4,000 lb per day trip limit until Amendment 2 to the 2006 Consolidated FMP (Amendment 2) was implemented in 2008. After Amendment 2, the trip limit was reduced to 33 non-sandbar LCS per trip. Sandbar sharks, which then comprised the majority of the LCS landings, were removed from the authorized species

list.¹ Some of those fishermen chose to leave the shark fishery when trip limits were reduced, while new participants entered into the fishery. Currently, the fishery participants consist of the historical fishermen who were able to adjust to the reduced trip limit (either by landing sharks incidentally or by changing their fishing style) and the new participants who have only ever fished under the reduced trip limits. As such, taking into account the objectives of the program, the qualifying years chosen as a basis for the initial allocation should try to balance past and recent participation and regulatory modifications, while also being based on readily available data to minimize the need for appeals. For instance, NMFS could consider any combination of years from 2002 (the year the 1999 limited access program implementation was complete with all appeals finalized) to 2011. Since management measures changed significantly several times during those years, NMFS needs to consider how best to include historic and current participants. For example, NMFS could consider an equal number of pre- (2004-2007) and post-Amendment 2 (2008-2011) qualifying years to include both historical and currently active participants. NMFS could also select the best four years of a six year period from the 2006 to 2011 shark fishing seasons as qualifying years for initial allocation. Under this scenario, the qualifying years selected would include the historical and newer, most active fishermen in the fishery. This scenario, however, eliminates more historical participants who might have been very active in the fishery at one time, but were no longer able to participate in the fishery after the implementation of restrictive management measures (e.g., vessel upgrading restrictions, 33 non-sandbar LCS per trip limit) or least active shark fishermen who still rely on the fishery. In all cases, NMFS also could take into consideration that there were several years with lengthy closures in one or more regions. For example, in 2009, the non-sandbar LCS fishery was closed

¹ Under a catch share program, shark fishermen would not be subject to a trip limit provided they continue to have quota shares available to them.

for 6 months in the Atlantic region and in 2010, the non-sandbar LCS fishery for the Gulf of Mexico region was closed for approximately 11 months. Thus, NMFS may consider expanding time frames or reducing the number of qualifying years accordingly. NMFS is seeking comments specific to qualifying years from the public at this stage to ensure that the qualifying years selected minimize disputes and result in historic and active participants attaining an equitable share consistent with their intended level of participation following the implementation of a catch share program and with the objectives of the program.

4. Additional Management Measures

Under the MSA, for LAPPs there are additional design elements concerning post-implementation management of a catch share program for the Atlantic shark fisheries that must also be considered during program development, including, but not limited to duration and review, transferability, monitoring and data collection, enforcement, excessive share caps, and cost recovery. Many of these design elements will be addressed as the Agency moves forward in the process. Additional details with respect to these elements and other considerations can be found in the NOAA Catch Share Policy (http://www.nmfs.noaa.gov/sfa/domes_fish/catchshare/docs/noaa_cs_policy.pdf) and The Design and Use of Limited Access Privilege Programs cited in this document. More general information regarding catch share programs can be found on the following NMFS website:

http://www.nmfs.noaa.gov/sfa/domes_fish/catchshare/index.htm.

Duration and Review

The duration of a catch share program refers to the lifetime of a privilege or share itself and not its possession by any one entity. The MSA provides clear directives concerning duration of a catch share program. Under section 303A(f), the MSA states that privileges can be issued for any duration provided it is less than 10 years, with the option for extension. Section

303A(c)G includes a provision to ensure regular monitoring and review of the catch share program. Specifically, five years after implementation and every seven years thereafter, programs must be reviewed to ensure that the goals of the program are being met. If goals are not being met, modifications to the program should be implemented as necessary.

Transferability

A LAPP or catch share program that provides for transfers will more easily generate economic benefits and reduce overcapacity than a program with no, or severely limited, transferability. At the same time, a LAPP or catch share program may also include specific distributional goals that justify certain restrictions on the sale and lease of harvest shares. An example of an IFQ-managed fishery that allows, but constrains, such transfers is the Alaska halibut and sablefish IFQ program. In this program, transfers are constrained by eligibility and excessive share requirements which were designed to maintain the character of the fishery. Unless grandfathered in based on original landings history, no one can hold more than 0.5 – 1.5 percent of the halibut or sablefish shares in various combinations of areas (Gulf of Alaska, Bering Sea, Aleutian Islands). There are similar restrictions on the amounts that can be used on any single vessel. For the purposes of discussing transferability it is important to define two terms, “quota share” and “annual harvest privilege.” Quota Share (QS) is usually a percentage of the Total Allowable Catch (TAC). Annual Harvest Privilege (AHP) is usually the weight of the allowable harvest in a given year. NMFS, with stakeholder input, would need to decide whether either or both QS or AHP will be transferable. If NMFS decides to implement a LAPP, under section 303A(c)(7) of the MSA, the Agency would establish a policy and criteria for transfer of shares (through sale or lease) that is consistent with the allocation requirements of section 303A(c)(5) and establish a process for monitoring of share transfers. Transferability has many

benefits including providing flexibility for existing participants to increase their share, receive compensation for leaving the fishery, and/or lease shares for years when they know they would not have an opportunity to fish (e.g., repairing vessels); providing opportunities for new entrants to enter the fishery or for fishermen in other fisheries to obtain shares and reduce regulatory discards; and providing a means for participants to ensure that the quota is harvested efficiently. However, unrestricted transferability can also disrupt current industry structure, allow an individual to gain from sale or lease of a privilege without actually harvesting fish, and could concentrate privileges in the hands of a few. It is important to consider all aspects of transferability at the outset because a catch share program for the Atlantic shark fisheries can be designed to mitigate these impacts such as by establishing excessive share caps or establishing “owner-on board” requirements. Consistent with goals and objectives of the program, NMFS could regulate when privilege holders may transfer privileges, the amount of allocation that can be transferred, and how many times a privilege holder may transfer privileges. For example, the Gulf of Mexico Red Snapper IFQ restricted transferability of IFQ shares/allocation for the first 5 years of the IFQ program to individuals/vessels with a valid commercial reef fish permit. After the first 5 years, all U.S. citizens and permanent residents will be eligible to purchase shares/allocation.

One risk associated with allowing transferability is the potential accumulation of excessive shares. The MSA establishes requirements to implement measures that prevent individuals or entities from accumulating excessive shares. Excess share accumulation and resultant impacts on competition must also be consistent with federal antitrust law. An excessive share cap establishes the maximum amount of quota share or annual harvest pounds an entity can own or lease. The excessive share cap or other measures should prevent the concentration of

excessive shares and inequitable concentration of privileges. For example, measures could be established that would prevent excess concentration of privileges in a particular geographic region. However, overly restrictive excessive share caps should be avoided because any measure that reduces autonomy can restrict a participant's ability to take advantage of economies of scale and make business-driven decisions that may improve economic efficiency in the fishery. Such measures including the excessive share cap should consider the objectives of the catch share program, fair and equitable distribution of privileges, conservation goals, and the social and cultural characteristics of a fishery.

Monitoring and Data Collection

Accountability is a critical component of catch share programs, in particular the need for timely and accurate landings data. Monitoring and collecting sufficient data for managing a catch share program may require an electronic logbook, increased observer coverage or dockside monitoring, or vessel reporting system that employs Vessel Monitoring Systems (VMS). Enforcement of a catch share program may also require specific rules and regulations to be implemented to manage the program properly. These might include VMS, hail in/out requirements, restricted offloading times, and approved landings sites. In the Gulf of Mexico red snapper IFQ, fishermen must make a landing notification 3-12 hours in advance of landing with an estimated amount of landings in pounds. Fishermen are required to offload at an IFQ dealer between 6 a.m. and 6 p.m. local time. Other catch share programs have required 100 percent observer coverage or a combination of at-sea and dockside monitoring to ensure accountability. These types of measures can increase the cost of the management program. In the current uncertain fiscal environment, it will be important to consider the costs and benefits of new or additional measures and infrastructure that may be needed such as administrative information

systems to manage quota catch accounting, permit issuance, transfers of both permanent quota share, and annual quota amounts.

Cost Recovery

Section 304(d)(2)(A) of the MSA stipulates that all LAPPs include a cost recovery provision to cover management, data collection, and enforcement costs associated with the program. The fee cannot exceed 3 percent of the ex-vessel value and is collected at the time of landing, filing of a landing report, or sale of such fish during a fishing season or in the last quarter of the calendar year in which the fish is harvested. Unlike other design elements, implementation of cost recovery is not optional for LAPPs. It is NOAA policy to only recover the incremental costs associated with a catch share program. Incremental costs are those that would not have been incurred but for the LAPP. For example, the cost of conducting a stock assessment would not be included under cost recovery because stock assessments need to be done regardless of whether there is a LAPP in place or not; however, development and maintenance of a real-time quota catch accounting system could be covered. It is the responsibility of NMFS to determine the additional, incremental costs associated with implementation of the program to ensure that the appropriate cost recovery rate (up to 3 percent) is implemented.

Appendix 1: Questions for Public Comment

1. Region
 - a. Should a catch share program encompass all regions (Atlantic and Gulf of Mexico) or only the Gulf of Mexico?
 - b. Should the National Marine Fisheries Service (NMFS) include commercial state-water fishermen into a catch share program into a regional state-water allocation?
2. Specification of the resource unit
 - a. What shark species should be included into a catch share program?
 - b. Should there be complex-specific (e.g., non-sandbar large coastal sharks (LCS), sandbar sharks, non-blacknose small coastal sharks (SCS), blacknose sharks, pelagic, smoothhound sharks) catch share programs?
 - c. Should there be species-specific (blacktip, bull, tiger, lemon, scalloped hammerheads, etc.) catch share programs?
 - d. Should the program encompass all species in the shark fishery?
 - e. Should NMFS consider all commercial gear types (bottom longline, gillnet, pelagic longline) in a catch share program?
3. Eligibility
 - a. Who should be eligible to participate in the catch share program?
 - b. Should NMFS consider catch shares for directed, incidental, or both types of permit holders?
 - c. Should state-water fishermen be eligible to receive a catch share?
 - d. Should NMFS include the recreational sector within the catch share program? If so, how would the total allowable catch (TAC) be allocated between sectors (e.g., commercial, recreational)?
 - e. Should NMFS include a minimum landings requirement to determine eligibility?
 - f. If a minimum landings requirement is used, should those inactive permits/vessels that don't meet the requirement be removed from the fishery permanently or should NMFS provide those permits to other fishermen (e.g., new entrants)?
4. Means of Initial Allocation
 - a. Should an individual's landings history be associated with the permit or the vessel?
 - b. How should NMFS account for state water landings by state-water fishermen?
 - c. If a federal catch share program were implemented in the Atlantic, how would the program work with the states or Atlantic States Marine Fisheries Commission (ASMFC) coastal state shark Fishery Management Plan (FMP)?

- d. Would the states or ASMFC have their own allocation or would they be included in the federal catch share allocation?
 - e. Should NMFS distribute the initial quota shares equally among all eligible participants?
 - f. Should NMFS distribute initial quota shares based on catch history and/or level of participation in the fishery?
 - g. Should NMFS consider an auction process for the initial allocation of quota shares under section 303A(d)? If so, who would be eligible to participate in the auction? What would participants be purchasing in an auction (e.g., share, landings)? Should there be a limit to the number of shares that participants can purchase in an auction?
 - h. Should NMFS use a combination of the previously mentioned allocation formulas (e.g., equal allocation, catch history, fishing activity, auction)?
 - i. Should set aside some allocations to account for new entries into the fishery in the future?
 - j. Should NMFS set aside a certain amount of quota to account for new entrants into the fishery in the future, research, or other reasons?
 - k. Should NMFS base a participants' catch history on a set of qualifying years to distribute shares? If so, what qualifying years should NMFS pursue?
 - l. Should the qualifying years selected include allocations for both historical and active participants or should they be selected to only include the most active shark fishermen at present? If NMFS were to implement a combined approach (e.g., including both active and historical participants), how would the shares be allocated?
5. Additional Management Measures
- a. Should NMFS allow transferability of quota share (the percent of the TAC an entity receives) in the catch share program? Should NMFS allow transferability of quota pounds (the amount of fish that can be landed in a specific year)? If so, what, if any, restrictions should be placed on transferability (e.g., amount of shares that can be transferred, number of transfers an entity can perform, when transfers can occur)? How would NMFS track transfers?
 - b. How should NMFS determine an excessive share cap? Should there be a share cap for both quota shares and quota pounds?
 - c. What types of monitoring and data collection methodologies should NMFS implement for this catch share program (e.g., electronic logbooks, VMS, landing requirements)?
 - d. What accountability measures should NMFS implement for this program?
 - e. If a LAPP is developed, how should the cost recovery fee be calculated?

References

Anderson, L. G. and M. Holliday. 2007. The Design and Use of Limited Access Privilege Programs.

NOAA Catch Share Policy. 2010.

http://www.nmfs.noaa.gov/sfa/domes_fish/catchshare/docs/noaa_cs_policy.pdf