

LIMITED ACCESS PRIVILEGE PROGRAMS: A NEW TWIST IN US FISHERIES MANAGEMENT

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ABSTRACT

The current Senate Bill to reauthorize the Magnuson/Stevens Act, the key US fishery management law, will allow some significant changes in the way that Individual Transferable Quota programs can be developed. First, the bill will expand the range of individuals who will be permitted to obtain harvesting privileges. In addition to vessel owners, captains, crew members, and implicitly owners of processing plants and fishery related business may also, at the discretion of a Fishery Management Council, be permitted to own them. In addition, councils may allow for the creation of entities known as fishing communities (FCs) and Regional Fishery Associations (RFAs). The former would be more geographically based and would be formed to assist in regional economic development. The latter could be more spread out and would be a voluntary association with established by-laws and operating procedures consisting of participants in the fishery, including commercial or recreational fishing, processing, and fishery-dependent support businesses. The only purpose for RFAs that is stipulated in the law is to mitigate any untoward distributional or other effects that would be caused by allocating privileges only to individuals. The paper will analyze the situations in which these entities likely will be used, how they will be set up, and the overall effect they will likely have on rights based fishery management in the USA.

Keywords:

Rights based fishing, individual transferable quotas, dedicated access privileges.

INTRODUCTION

The US Ocean Commission on Ocean Policy (2004) recommended among other things, that “dedicated access privileges” be used to help end the race for fish. The recommendation is not surprising, but the term is relatively new. And it was chosen very carefully to help make a policy point.

While this term (dedicated access privileges, DAPs) is not new, it is not yet in wide use. More commonly used are the terms “rights-based management,” “individual transferable quotas” (ITQs) or “individual fishing quotas” (IFQs). None is satisfactory as a general term. “Rights-based management” implies granting an individual the “right” to fish. However, ...fishermen are granted a privilege to fish, subject to certain conditions. Because this privilege can be taken away, it is not a right. The second two terms, ITQs and IFQs, are too narrow for general application. Both terms describe specific kinds of dedicated access privileges. Their general use has caused confusion, creating the impression that ITQs or IFQs are the only tools that can end the race for fish. In addition, both terms imply that individual fishermen own a share of a public resource. The term dedicated access privileges is preferable for several reasons. First, it highlights the fact that fishing is a privilege, not a right. Second, it is an umbrella term that includes access privileges assigned to individuals (ITQs, IFQs, individual gear quotas), as well as to groups or communities (community development quotas, cooperatives, area-based quotas, community-based quotas). Finally, it reflects the fact that the dedicated privilege being granted is access to the fish, rather than the fish themselves, (page 289)

It appears as if those who wrote the various drafts of the bills to reauthorize the Magnuson-Stevens Act took some of this to heart. They have introduced a new type of DAP and they have introduced new types of entities which can receive and use the harvesting privileges. The purpose of this paper is to describe these changes and to provide preliminary thoughts on policy implications.

The Senate has passed a reauthorization bill (S2012) but the House version (H5018) which is similar in many respects is, at this writing, still under consideration.¹ The final version of the law will depend upon the negotiations during the House/Senate joint conference to work out any differences. Therefore the analysis provided here will be somewhat tentative because some things could change. Bearing this in mind, a second purpose of the paper is to look at how some of the important components of the legislation have changed during the debate and interactions between legislators and their constituents. In particular, there will be a comparative analysis of changes in the definition of Regional Fishery Associations.

LAPs vs IFQs

The basis unit for a DAP program in the current law, is what is defined as the "individual fishing quota". Quite frankly, the term follows from the more standard term "individual transferable quota" but because some felt that transferability was not necessarily a good thing, political correctness demanded that it be removed from the title. In the law, it is defined as follows:

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

The community development quotas are a different program where the privileges are given to communities to assist in economic development.

The new legislation introduces the new concept of a limited access privilege. It is defined as follows:

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

It is hard to see any real difference between the two, but one fundamental difference is that IFQs are based on a percentage of a TAC, while LAPs are not. That difference can have some very serious repercussions, the most obvious of which is that it is hard to maintain the appropriate number of privileges in the hands of participants as the safe harvest level changes due to natural fluctuations.

FISHING COMMUNITIES AND REGIONAL FISHERY ASSOCIATIONS

S2102 allows Councils to grant limited access privileges (LAPs) to entities other than individuals (i.e., persons, partnerships, or corporations.) They can be granted to Fishing Communities (FCs) and Regional Fishery Associations (RFAs). Fishing communities are defined in the current act as follows:

The term "fishing community" means a community which is substantially dependent on or substantially engaged in the harvest or processing of fishery resources to meet social

and economic needs, and includes fishing vessel owners, operators, and crew and United States fish processors that are based in such community.

The concept of a regional fishery association is new and it is defined as follows.

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

The eligibility requirements for FCs are that they must:

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

The eligibility requirements for Regional Fishery Associations (RFAs) provided in the penultimate version of S2012 are similar. See below however. The first and second are identical and third and fourth are modified as follows.

- 3’. be a voluntary association with established by-laws and operating procedures consisting of participants in the fishery, including commercial or recreational fishing, processing, fishery-dependent support businesses, and fishing communities;
- 4’. develop and submit a regional fishery association plan to the Council and the Secretary for approval based on criteria developed by the Council that have been approved by the Secretary and published in the Federal Register.

Given the differences, it appears that FCs must be actual communities which can be identified as a location on a map, and they can be selected as a qualifying entity because they are in need of, or merit, regional economic development. On the other hand, RFAs are voluntary organizations that are not necessarily geographically specified. There is no reference to the need for regional economic development.

According to the bill, councils must stipulate criteria that potential groups must meet in order to be classified as an FC or an RFA and hence be eligible to receive harvesting privileges. In developing the participation criteria for FCs, the Council is directed to consider:

1. traditional fishing or processing practices in, and dependence on, the fishery;
2. the cultural and social framework relevant to the fishery;

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

When developing participation criteria for RFAs, the list of things the Council is directed to consider is the same except that item 6 is omitted and the following phrase is added to item 4: “upon the administrative and fiduciary soundness of the association and its by-laws.”

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

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

It is interesting to consider the possible motivations for introducing RFAs. One hypothesis is that it would allow for the opportunity to directly include processors into DAP programs under the MS Act. This was previously done through independent legislation for the rationalization of Alaska Crab and Groundfish² This hypothesis is supported because previous versions of the bill had provisions for processing privileges as well as harvesting privileges. Using the definitions provided above, it would be possible to form an RFA consisting of harvesters and processors from a given area and allocate harvesting privileges to be used according to the sustainability plan. Such plans could be similar to those used in crab and groundfish.

Viewed in this light, the definitions provided in the final version of S2012 are somewhat surprising. . The original item 3 in the definition of an RFA, as described above, was:

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

In the final bill, this was changed into three separate items as follows:

3. be a voluntary association with established by-laws and operating procedures;
4. consist of participants in the fishery who hold quota share that are designated for use in the specific region or subregion covered by the regional fishery association, including commercial or recreational fishing, processing, fishery-dependent support businesses, or fishing communities;
5. not be eligible to receive an initial allocation of a limited access privilege but may acquire such privileges after the initial allocation, and may hold the annual fishing privileges of any limited access privileges it holds or the annual fishing privileges that its members contribute;

The voluntary organization aspect remains, but otherwise the organizations are really quite different. Before, they could be organized as part of the plan development process and could receive an initial allocation of privileges. As it is now written, RFAs can only be formed after a plan is approved and in place and members can only be entities that already own quota share. However, there were no changes in the text with respect to the other differences between FCs and RFAs. Note that the word quota not privilege is used in the new (4). It appears that the flexibility for Councils to mimic the processes used for crab or groundfish has been reduced. It is interesting to ponder why this change was made. What groups lobbied for such a change?

IMPLEMENTATION UNDER THE REAUTHORIZED ACT

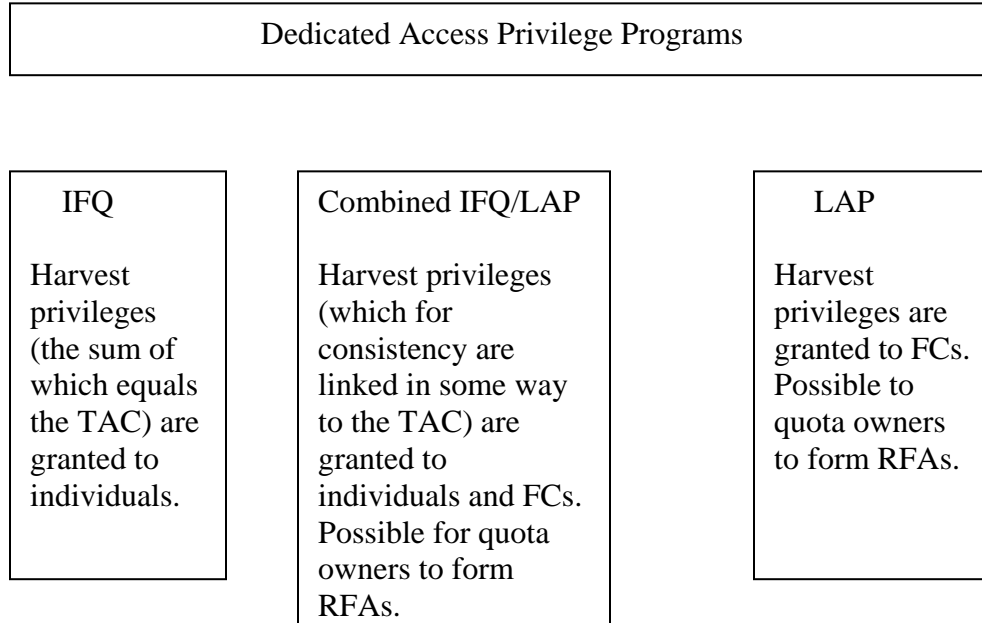


Figure 1

Although not specifically spelled out in the bill, there are likely three potential types of DAPs programs that Councils can choose from. See Figure 1. Councils can continue to create IFQs such as the halibut/sablefish program, they can have a combined IFQ/LAP program, or they can

have a program that uses LAPs only. Exactly how the last two type of programs will be developed and operate is somewhat of an open question at this point.

The choice between an IFQ program and an expanded LAP program is an important one that, in addition to the long term effects on the fishery, will also have serious implications for the complexity of the plan development and implementation process. To be blunt, it would be quite difficult to speculate on the range of options that will be available when using the expanded LAP program. This is uncharted territory. The eligibility and participation criteria spelled out in the Act are very general. FCs are likely intended to be cousins of CDQs, but given the lack of specificity it is doubtful that Congress was considering something quite so elaborate. Similarly RFAs may related, conceptually at least, to COOPs on the West Coast or the cod hook sector in New England, but the analogy is far from perfect, especially given that they must be comprised of individuals who own quota share.

Quite frankly, however, the true range of potential options when using FCs and RFAs can not be known at this time. When faced with the opportunity to use them to address management objectives of specific fisheries, councils will likely come up with some very innovative ideas

FCs AND RFAs: WHAT WILL LIKELY HAPPEN?

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

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

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

The prospect for the use of RFAs is much narrower than it would have been under the original definitions. There are prospects for voluntary organizations based on some recent activity in the North Pacific Council and on the development of the hook sector in New England. While one criteria for the development of RFAs is to address the impacts associated with the implementation of DAPs, the range of choice for doing so is more restricted than in earlier drafts. It appears that using something similar to Crab Rationalization will be problematic.

Conclusions

It is hard to offer any strong conclusions for an analysis of a bill that has only passed one of the Houses in Congress. None the less, the new Magnuson Stevens Act will provide more options for the use of what are now called dedicated access privileges. It will be interesting to see what the final reauthorization will look like and how the Councils will use the new options available to them.

REFERENCES

US Commission on Ocean Policy 2004 *An Ocean Blueprint for the 21st Century, Final Report*, Washington DC ISBN #0-9759462-0-X.

ENDNOTES

¹ The various drafts of bills to reauthorize are (or have been) available in electronic form from Congressional staffs. However, there is no permanent citation that will remain available through time. Only the final approved bill will be available. The following quotes are from drafts in the author's possession which will be maintained for a reasonable period of time and which will be available on request.

² See the webpage of the North Pacific Fisheries Management Council for information on both these programs.
http://www.fakr.noaa.gov/npfmc/current_issues/