



April 8, 2010

Dr. Jane Lubchenco
Administrator
National Oceanic and Atmospheric Administration
1401 Constitution Avenue, NW
Room 5128
Washington, DC 20230

Re: Comments on Draft NOAA Catch Share Policy

Dear Dr. Lubchenco:

Thank you for the opportunity to comment on the draft National Oceanic and Atmospheric Administration (NOAA) Catch Share Policy. The Pew Environment Group (PEG) appreciates the fact that NOAA incorporated a number of our suggestions on how catch shares programs should be designed to enhance conservation and protect fishing communities. As we have noted in the past, the key to a successful catch shares program is how it is designed and implemented. A well-designed program, which takes into account the socioeconomic needs of the fishing community and is based on science-based annual catch limits (ACLs), is the only way that catch shares programs will succeed. Additionally, a properly designed program must also include sufficient monitoring and enforcement, time limits on permits that do not exceed ten years, and fair and equitable allocation of quota.

The Magnuson-Stevens Fishery Conservation and Management Act (MSA) requires that councils establish a mechanism for setting annual catch limits (ACLs) and accountability measures (AMs) by 2010 for U.S. fisheries that are subject to overfishing, and by 2011 for all other U.S. fisheries. This deadline is upon us, and the highest priority in every fishery must be establishing ACLs based on the best scientific information available, and NOAA's resources should be directed toward this top priority. ACLs are critical to ensuring an end to overfishing, which in turn is critical to putting our ocean fisheries on a path to long-term sustainability. Therefore, PEG urges NOAA to emphasize in its Policy that the first priority of any fishery management program is to establish ACLs that do not allow overfishing and allow depleted stocks to rebuild.

We would also like to reiterate our position that catch shares are not appropriate for every fishery and thank you for recognizing that important point in the draft Catch Share Policy. Catch shares programs should be considered as one of many tools available for management of ocean

fisheries, and the decision on whether to develop a catch shares program should be made by the appropriate council and not be dictated by national policy.

Again, we are encouraged that the draft Catch Share Policy incorporates several of the necessary elements PEG recommended. We offer several additional comments and proposed improvements below, many of which clarify the scope and use of financial and personnel resources for establishing and monitoring catch shares programs.

All in the Design

The success or failure of a catch shares program depends largely on the design.¹ NOAA must work to ensure that catch shares programs are constructed correctly, and resist compromising key management elements in an effort to hastily promote these programs. A properly designed program must include, at a minimum, the following: science-based annual catch limits; adequate monitoring; identification of explicit conservation, social and economic goals and objectives; limited duration permits (no more than 10 years as required by section 303A(f) of the MSA); adequate enforcement; and fair and equitable quota allocation. NOAA's Catch Share Policy should be focused on proper design, and less on encouraging the adoption of catch shares programs.

PEG commends NOAA for prioritizing specific management goals as a feature of a catch shares program, and specifically for encouraging the inclusion of social objectives in the design of a "uniquely tailored catch share program"² that would improve a community's socio-economic conditions. Defining social objectives should be a priority for fishery management and any new management plan.

While resources should not be diverted away from other important data collection activities, NOAA should encourage the collaboration of all stakeholders and fishing communities in the design and implementation of catch shares programs, and PEG commends NOAA for declaring its intent to do so. Specifically, NOAA should make an effort to include commercial and recreational fishermen and the conservation community in the development of catch shares programs. Additionally, NOAA should stress that fish are a public resource and that catch shares are a privilege, which do not create an exclusive right to fish resources.

Science Must Drive Management

Setting science-based ACLs that do not allow overfishing and allow depleted fish populations to rebuild must be the top priority of any fishery management program. Resources should be dedicated first and foremost to the data collection and analysis programs necessary to properly set and monitor ACLs. These data collection and monitoring programs will also benefit catch share programs. Therefore, building up the infrastructure for ACL implementation will also benefit the consideration and implementation of any subsequent catch shares programs.

¹ See generally The Pew Environment Group, "Design Matters: Making Catch Shares Work," 2009 (hereinafter PEG Report).

² NOAA Draft Catch Shares Policy, p. 4.

Resources for NOAA's core responsibilities and programs, such as stock assessments and fisheries monitoring, must not be diminished in order to promote catch share programs. The draft NOAA Catch Share Policy proposes creating a NOAA Catch Shares Center of Expertise, which would be staffed by 4-5 core staff, including a rotating staff and external contractors.³ PEG questions the wisdom of allocating limited NOAA resources for only catch shares programs. If NOAA is going to add staff to any fishery management program, it should be for improvements in systems for collecting key fisheries data, fisheries monitoring, and research programs that benefit all fishery management systems. Additionally, the draft Catch Share Policy appears to promote extensive outreach and education activities to encourage the consideration and adoption of a catch shares management program over another fisheries management program. PEG does not support directing scarce resources to such an extensive long-term catch shares promotion program.

Monitoring and Enforcement is Critical Infrastructure

In addition to setting science-based ACLs that do not allow overfishing and allow depleted fish populations to rebuild, and before implementing any catch shares programs, NOAA first must create the infrastructure for monitoring and enforcement. PEG agrees with NOAA's recommendation that councils identify enforcement "best practice" protocols and that councils periodically review all catch shares and non-catch shares programs in order to ensure that goals and objectives based on specified performance metrics are being met.⁴ Additionally, PEG appreciates NOAA's commitment to work with councils and other stakeholders to establish relevant performance measures that must be linked back to the initial objectives in a FMP.⁵ However, the draft NOAA Catch Share Policy must provide more substantive guidance on monitoring, oversight and regulation of catch shares programs. Infrastructure for monitoring and enforcement, in addition to data collection and analysis, are the backbone of ACLs and AM systems.

A well-designed catch shares program must include reliable fisheries monitoring and enforcement and the ability to report verifiable trip and catch information in "real time." When monitoring and enforcement measures are implemented correctly, catch shares may provide conservation benefits such as the decrease in the number of discards in multispecies fisheries. For example, in British Columbia's groundfish trawl fishery, an IFQ system for 22 species with 100% at-sea observer coverage has successfully discouraged discarding and led to matching catches for individual species to their quotas in this multispecies fishery.⁶ Again, the focus of catch shares implementation must be on doing it correctly, with adequate monitoring and enforcement.

Enforcement poses a unique problem in a catch shares program as individual vessel and business quotas must be enforced. Increasing resources for regulatory enforcement and monitoring seems

³ *Id.* at 14.

⁴ *Id.* at iii.

⁵ *Id.* at 17.

⁶ T. A. Branch and R. Hilborn, "Matching Catches to Quotas in a Multispecies Trawl Fishery: Targeting and Avoidance Behavior Under Individual Transferable Quotas." *Canadian Journal of Fisheries and Aquatic Sciences* 65:1435-1446 (2008).

particularly important to consider in the wake of the Office of Inspector General report on enforcement problems in New England. However, increasing enforcement and monitoring for catch shares programs must be done with new funding, and not at the expense of non-catch shares fisheries.

Fair Initial Allocation

Initial quota allocations must be fair and equitable and conducted through a transparent and open process that includes mechanisms to provide access opportunities to recreational anglers, working fishermen and coastal communities. Allocation schemes must also provide opportunities for new fishermen to enter the fishery, and must contain ownership caps so that one entity does not hold an excessive amount of quota. Without allocations that are carefully designed to address potential social and economic consequences, fishing businesses and communities could be harmed by the consolidation of quotas or by allocation schemes that favor just a few participants.

The issue of fairness during the initial allocation of catch share privileges is particularly important in mixed-use fisheries and in situations where past catch records are not available. NOAA should provide further technical guidance on possible remedies to initial allocation issues in these situations so that the elements of fairness, objectivity, and transparency are maintained. Many fisheries in the southeast United States, for instance, are largely or predominantly recreational, and basic information such as who and how many individual users participate in specific fisheries is largely unknown. This information is critical to set up a catch shares program. While individual participants in select segments of these recreational fisheries can be more easily identified, such as in the for-hire sector, their catch history may be unavailable for use in determining initial allocation. Since there is no way currently to develop this information for private anglers, developing fair and equitable initial allocations for recreational fisheries where much of the catch is taken by private anglers, as is the case for the Gulf of Mexico red snapper and gag grouper fisheries, would be particularly challenging. NOAA's draft Catch Share Policy should address and offer technical guidance to address these issues, as several of these fisheries are already under commercial catch shares regimes in the Gulf of Mexico region, and additional catch shares programs are under development or proposed.

Additionally, NOAA should be more explicit in directing the regional councils to adopt mechanisms to address the problems of absentee ownership and excessive consolidation of shares. Unrestricted allocation giveaways and not limiting quota ownership to active fishermen drives up the price for quota shares, and it drives down the crew shares for the working fishermen left in the fishery. Strict consolidation limits, quota distribution among vessel classes (as in the Alaskan halibut and sablefish catch shares program), and initial allocations not based entirely on catch history all help avoid the negative consequences of excessive consolidation of shares. Because of these design features, the Alaskan halibut and sablefish catch shares program is characterized by increased economic efficiency, decreased operating costs, higher prices at the dock, decreases in lost gear and higher value for quota shares. However, until a community development quota (CDQ) was implemented, absentee ownership resulted in lost jobs, high cost

of entry into the fishery, consolidation of quota holdings and high administrative costs.⁷ This led to the U.S. General Accounting Office stating that “the easiest and most direct way to help protect communities under an IFQ program is to allow the communities themselves to hold quota.”⁸ Therefore, we commend NOAA for prioritizing historic and cultural use patterns in a port, and urge it to strongly encourage the councils to place caps on consolidation, ensure that small scale fishermen will be able to buy in to the market, limit allocation of shares to owner/operators and allow communities to hold quota.

Catch Shares Are Not a Panacea

In its draft Catch Share Policy, NOAA states that consideration of catch shares is not mandatory and that a “one size fits all” approach is inappropriate. The policy also indicates that the decision about whether to consider a catch shares program should be made by the appropriate council on a case-by-case basis. PEG strongly agrees with these statements. The current draft Catch Share Policy only lists characteristics of fisheries for which catch shares could be beneficial. To further emphasize that catch shares are not mandatory in all fisheries, the Policy should also discuss which fisheries characteristics are not appropriate for catch shares programs.

Characteristics of fisheries where catch shares programs may not be appropriate include:

- recreational fisheries where managers lack real-time data or the ability to effectively manage an allocation of quota (for-hire and charter segments may be an exception);
- fisheries in which wide fluctuations in population size and distribution make catch shares impractical;
- fisheries with poor or unreliable catch data; and
- fisheries that lack adequate monitoring or enforcement.

Ultimately, catch shares should be viewed as an allocation tool that is appropriate only in certain fisheries after being carefully designed to address potential negative consequences. PEG agrees that councils and NOAA should evaluate the effects of catch shares on all sectors associated with a fishery. We further recommend that NOAA emphasize in this policy that the appropriateness of moving to a catch shares program should be evaluated fishery by fishery, and how to best allocate available fish resources within these fisheries should be part of the evaluation process. Even in fisheries where catch shares are not the appropriate management tool, a data collection and analysis infrastructure must be created to ensure proper fisheries management.

Conclusion

When properly designed and implemented, catch shares programs can lead to better-managed fisheries. However, they should only be implemented if science-based ACLs are properly set and implemented to ensure that fish populations are not subject to overfishing and depleted populations are rebuilt. We urge NOAA to ensure that the necessary resources are available to accomplish this core mission, and to support the data collection and monitoring programs for all

⁷ *Supra* note 1.

⁸ U.S. General Accounting Office. *Individual Fishing Quotas: Methods for Community Protection and New Entry Require Periodic Evaluation*. Washington, D.C., February 2004, p.8.

fisheries that are essential to this effort. Catch shares programs may be a part of a fishery management plan that can effectively implement the ACL system, but the emphasis needs to be on better management through ACL implementation. Unless and until that standard is met, we urge you to refrain from diverting resources away from these programs to catch shares programs. We look forward to continuing to work with you, NOAA staff and the regional fishery management councils to ensure sustainable fisheries that can provide jobs, food and recreational opportunities for generations to come.

Sincerely,

A handwritten signature in blue ink that reads "Lee R. Crockett". The signature is written in a cursive style with a light blue circular stamp or watermark behind it.

Lee Crockett
Director, Federal Fisheries Policy
The Pew Environment Group