

## **Comments from National Marine Fisheries Service on the May 8, 2017 recommendations on marketable permits from the Committee on Regulation of the Administrative Conference of the United States.**

### Preamble

Page 2, lines 14-15 states “After the initial allocation of permits, interested parties are generally free to further trade permits.” The NOAA Catch Share Policy discusses transferability: A “risk associated with transferability is that participants may not immediately understand the benefits and costs of leasing or selling their privileges and thus may be prone to make uninformed decisions in these newly developed markets for privileges.” Therefore, in some cases it may be preferable to “design programs that help protect fishermen during this transition period, such as prohibiting sales or limiting transactions to leases in the initial year(s), as well as providing extensive outreach and training materials to the industry on the means of conducting business in transferable privilege markets.” For example, the bluefin tuna individual bluefin quota program started a few years ago and currently only allows quota to be leased and not sold. Allowing permanent sale may be added to the program in future years. We suggest adding the following phrase to the end of the sentence: “, “...to further trade permits, though there may be some limitations placed on the trading.”

Page 2, lines 17-18 states “More open access can promote market liquidity and facilitate efficient price discovery.” While these pros are true, there are cons that may need to be mentioned. In fisheries, we sometimes limit open access to achieve other goals besides efficiency, for example protecting fishing communities and small boat operators. We suggest adding the following text to this recommendation: ““...price discovery, though there may be other factors or goals regulators also consider in establishing a program.”

Page 3, line 39. “Finally, marketable permits may reduce long-term administrative costs compared to traditional regulation.” For fisheries, the monitoring needed to ensure compliance with market permits often results in increased administrative costs compared to traditional regulation. The Magnuson-Stevens Fishery Conservation and Management Act (MSA) requires limited access privilege programs (a type of marketable permit) to include a cost recovery program where participants pay up to 3% of the value of the commodity to help administer the program. In some cases the cost recovery is not sufficient to cover the incremental costs, or the increased management costs over traditional management.

### **Recommendations**

#### Establishment of Marketable Permitting Programs

Page 4, line 56. “Among the factors agencies should consider in adopting a marketable permitting program are...” Using “should consider” is strong language. Some of the factors listed do not apply to fisheries management and thus should not be required. We suggest changing “should” to “may”.

Page 4, lines 58-59 recommendation 1a. “The marketable permit program is consistent with statutory language, the public policy goals of the regulation, and other relevant considerations.” It is not clear what “regulation” this is referring to. Is this referring to the public policy goals underlying the program? We suggest revising the reference to “the regulation” to make it clearer what is being referenced.

Page 4, lines 63-64 recommendation 1c. “Agencies have sufficient resources to design and administer the program and are capable of reevaluating the appropriate target level of activity over time.” As mentioned above, the MSA requires cost recovery on some market permit programs. Therefore, the agency needs to have sufficient resources to design the program and reevaluate appropriate target levels over time, however, the implementation of the program can and in many cases must be supplemented by the cost recovery funds provided by the participants. However, we note that the implementation of cost recovery is often delayed and may not cover the entire incremental costs associated with implementing management with marketable permits over the previous traditional management.

Page 4, lines 65-67 recommendation 1d. This recommendation is not clear and we are not sure of the need for it. If it is saying marketable permits are a method for discerning the value of a permit or the associated compliance costs in situations where this value is uncertain, then this should be stated more clearly.

Page 5, lines 73-76 recommendation 1g. There are 2 parts to this factor. First, “There is sufficient variation across different permittees’ compliance costs or their individual valuation of the permits traded to encourage trading of permits” and second, “and the overall level of an activity matters more to regulators than the identity of the actors”. The first point is assessing if there is variation between participants in their compliance costs and valuation. Does a lack of variation mean a marketable permit will not work? This does not seem like an important factor to be used when establishing a program and may be encompassed under factor 1f when regulators determine if a robust market is feasible. The second point is troubling, as it implies that the identity of the actors does not factor in to the development of a marketable permit program, when in fact, NOAA Fisheries and the Fishery Management Councils often care very much about the identity of the actors. For example, many programs include limitations on who can buy permits and include additional requirements aimed to maintain historical fleet characteristics and landing locations. While these requirements may limit the economic efficiency of the program, they meet other valid objectives associated with the programs. We suggest removing this recommendation.

Page 5, lines 80-81 again notes that marketable programs “may require significant upfront costs but require fewer resources to administer once the program has been established.” As mentioned above, marketable permits in fisheries (catch share programs) often require increased monitoring to document participants’ catch. This results in the marketable permit program costing more than traditional management in most cases.

### Desired Features of Marketable Permitting Programs

Page 5, recommendation 7, lines 99-100. “Agencies should consider open access to the market so parties besides the regulated entities can buy and sell permits.” While we recognize there are situations where open access is a preferred option, this is often not the case in fisheries. For example, some catch share programs allow open access to the market and it has resulted in non-fishing interests buying the permits and then leasing them to fishermen, often at very high costs. These non-fishing interests are able to make profits off a public resource. Therefore, many fishery programs limit access to those involved in the fishery, and many programs include “owner on board” requirements to ensure those who own the permits are actively participating in the programs. We suggest adding a clause to the end of this sentence that says: “...buy and sell permits, though in some cases, open access may not be consistent with the goals and objectives of the program” and adding a footnote explaining possible disadvantages of open access and why some fisheries programs include “owner on board” requirements. The NOAA Catch Share Policy provides some language that could be used in such a footnote: “A [Fishery Management] Council could adopt various eligibility and participation criteria to discourage privileges from being held by non-fishing interests. Both the MSA National Standards and the LAPP provisions affirm the purpose of the MSA is the conservation and management of the nation’s fishery resources, not the development of speculative financial instruments or investment opportunities for individuals or businesses not substantially participating in the fishery. The Senate Committee report on MSA20 cited that ‘Determinations of substantial participation and substantial dependence shall be established by the Secretary upon recommendation by the Council.’ Thus, Councils should design programs that are consistent with the MSA requirements and Council objectives. Councils are advised to establish a clear administrative record linking their management goals and objectives to any provisions limiting transferability such as ‘owner-onboard’ ‘use it or lose it’ or ‘active fishing entities’ criteria.”

Page 6, recommendation 8, lines 101- 102 recommends consideration of reserved permits. In the case of fisheries, fishermen are not likely to support a reserve of quota being left un-used most years. NOAA Fisheries has a challenging job regulating catch: too much catch results in depleted stocks and too little catch results in foregone yield. Therefore, allowing for increased catch when demand is high is not likely to be a viable management option, nor is setting aside a reserve for emergencies. We suggest adding a clause at the end of this recommendation that says ““ ..., though in some cases, such mechanisms may not be viable.”

Page 6, recommendation 9, lines 103-107. Even though the Council is unsure about this recommendation, we would like to suggest its retention. Historically, many catch share programs have used historical based allocations. The MSA requires the consideration of auctions, and a recommendation to also consider other allocation techniques may be useful to encourage considerations other than just historical catch.

### Oversight of Marketable Permit Programs

Page 6, recommendation 11, lines 113-114. “...establish clear criteria for verification to ensure that credits are not double-counted and constitute real offsets of the regulated activity.” It is necessary for fisheries catch share programs to create methods to monitor catch to ensure fishermen do not exceed

the catch allocated to them. Therefore, we suggest modifying this text to cover the need to verify compliance with programs as a whole (not just credits). In fisheries, compliance needs to be included in the implementation of the program. As recommendation 11 is the only recommendation that touches on this point, it needs to be clarified. For fisheries, compliance monitoring is more important than monitoring of the market (as covered in recommendations 3 and 12).

#### Information management

Page 7, recommendation 16 recommends coordination between agencies that manage marketable permitting programs. We are unsure how useful this would be for fisheries management given the large variability between fisheries programs and other marketable permits. We suggest the first sentence of this recommendation include a caveat such as “where appropriate”.