


MEMORANDUM

TO: Council, SSC and AP Members
FROM:  Chris Oliver *for*
Executive Director
DATE: February 2, 2010
SUBJECT: Central Gulf of Alaska Rockfish Program

ESTIMATED TIME 4 HOURS All C-6 Items
--

ACTION REQUIRED

- (a) Receive 2009 Cooperative Report
- (b) Preliminary review of the analysis

BACKGROUND

At this meeting, the Council will make a preliminary review of the Central GOA Rockfish Program analysis. The draft analysis, which was mailed on January 25, 2010, analyzes many of the issues in detail. However, the document is not yet complete as some provisions have yet to be analyzed, such as excessive shares caps (for both harvesting and processing sectors), transfer rules on processor allocations, and the Kodiak landing requirement. In addition, NMFS must review and comment on certain sections, such as the effects on management, monitoring, and enforcement and associated costs, effects on other fisheries, and the program duration and review. In reviewing the document, the Council should consider that this document is a preliminary review draft. Initial review is tentatively scheduled for April. Attached is a description of the alternatives and the elements and options for the GOA Rockfish Program **(Item C-6(b)(1))**.

CGOA Rockfish Program

Description of the Alternatives

To address its problem statement, the Council has adopted for analysis alternatives for three different sectors (i.e., entry level, catcher vessels, and catcher processors). These program alternatives are derived from a common set of elements and options with differences that reflect the different operations of the sectors. The specific elements and options that define the alternatives follow the description of the alternatives (including the status quo) below.

For the **entry-level sector**, three alternatives have been defined. The first is the no action alternative, under which management would revert to the LLP, under which any holder of an LLP license could enter a vessel in the rockfish fishery. The second alternative is the current entry level management structure under the pilot program. Under this alternative, catcher vessel license holders that do not qualify for participation in catcher vessel program can participate in a derby fishery for 5 percent of the target rockfish TAC. This entry level TAC is divided equally with half available to trawl gear participants and half available to fixed gear participants. The third entry level alternative would provide for only fixed gear entry level fishery.

Two alternatives are defined for the **catcher processor sector**. The first is the no action alternative, under which the fishery would revert to LLP management. The second alternative is the existing pilot program structure, which allocates to the trawl catcher processor sector target rockfish and secondary species (historically harvested in conjunction with target rockfish) and halibut prohibited species catch (PSC) based on the harvest history of sector members. Eligible sector participants could then access exclusive allocations through cooperative membership.

Four alternatives are defined for the **catcher vessel sector**. The first is the no action alternative, under which the fishery would revert to LLP management. The second alternative would establish a cooperative program for catcher vessel sector under which eligible catcher vessels could participate in the fishery only by joining a cooperative, which would receive an allocation of target rockfish, secondary species, and halibut PSC based on historic catches. The third alternative would divide harvest share allocations of target rockfish, secondary species, and halibut PSC between historic catcher vessel participants and historic processing participants, with allocations within each sector based relative historic participation within that sector. Under the final alternative, a harvester must join a cooperative in association with a processor. The harvester has full discretion in choosing a cooperative both initially and annually thereafter and may change cooperatives (and accompanying processor associations) with forfeiture of harvest quota.

The status quo alternative

Under the status quo alternative, Central Gulf of Alaska rockfish fisheries would revert to LLP management used prior to the implementation of the pilot program in 2006. The fisheries would open to fixed gear participants on January 1 and the trawl gear season would open in early July. Directed fishing allowances would be set to accommodate incidental catch of the rockfish species in other fisheries during the remainder of the year. Harvests would be monitored in-season and each of the target rockfish fisheries would be closed when managers estimate that the directed fishing allowance for that fishery is harvested. After closure of the directed fishery, Pacific Ocean perch, northern rockfish, and pelagic shelf rockfish would be managed on a bycatch basis and would be subject to MRAs in other target fisheries, limiting the

retention of these rockfish relative to target species. Ongoing catch would be monitored by managers with fishery closures timed to coincide with harvest of the respective TACs. Trawl participants of both operation types would be subject to an aggregate limit on the amount of halibut that can be caught in all deep water fisheries, all of which must be discarded as prohibited species catch (PSC). Incidental catch species would be managed under bycatch status, with a maximum retainable allowance (MRA) limiting their retention to a percentage of retained harvest of species open to directed fishing.

Program alternatives

The different program alternatives substantially overlap with one another. The summaries that follow reference each other to avoid repetition.

Entry level alternatives

Entry level alternative 2 - Entry level trawl/fixed gear fisheries (the pilot program structure)

Under this alternative, 5 percent of each of the target rockfish species is set aside for the entry level fisheries. This set aside is divided between the trawl and fixed gear sectors such that each receives an equal allocation of the aggregated TACs of target rockfish species available to the entry level fisheries. Because of operational differences, the trawl sector would receive its portion of the aggregate TACs first from the entry level TAC of Pacific Ocean perch. If the entry level Pacific Ocean perch TAC is less than the total allocation to the trawl sector, the sector receives proportional shares of the entry level northern rockfish and pelagic shelf rockfish TACs, such that aggregate entry level TAC is divided equally between the two gear types.

The entry level fishery is open exclusively to LLP license holders that are not eligible for the cooperative program. All deliveries from the entry level fisheries must be made to processors that are not eligible for the primary program. The entry level fishery would be prosecuted as a competitive limited access fishery. The fixed gear fishery opens on January 1st each year. The trawl fishery is scheduled to open on the 1st of May. Under one option, if halibut PSC are unavailable on that date, the opening would be delayed until the next release of halibut PSC. Under a second option, if sufficient halibut PSC is not available at the time of the scheduled opening, halibut usage would be deducted against the following quarter's halibut PSC allowance. Entry level fixed gear sector would be exempt from VMS requirements.

Since historic harvests suggest that the fixed gear sector may be unable to fully harvest its allocation, trawl participants are permitted to harvest the fixed gear allocation after September 1st. This is accomplished by allowing both sectors to fish off the combined remaining TACs beginning on September 1st.

Vessels fishing the fixed gear entry level allocation in Federal waters must have an LLP (if required for the vessel to operate in Federal waters) and must have registered for the entry level fishery. Fixed gear vessels that fish exclusively in parallel waters and do not have an LLP or a federal fisheries permit do not need to register for the program. In addition, these vessels that fish exclusively in parallel waters and do not have an LLP or federal fisheries permit may deliver their catch to any processor, including processors qualified for the main program (who cannot otherwise receive deliveries from the entry level fisheries).

Entry level alternative 3 - Entry level fixed gear only fishery

Under this alternative, only fixed gear sector would receive an entry level allocation of the primary rockfish species.¹ The starting entry level set aside under this alternative would be between 1 and 10 metric tons of Pacific Ocean perch, between 1 and 10 metric tons of northern rockfish, and between 10

¹ Some vessels that fished in the trawl entry level fishery under the demonstration program may qualify for the main program depending on the qualifying option selected.

and 30 metric tons of pelagic shelf rockfish. If the fixed gear entry level participants harvest 90 percent or more of their allocation of a rockfish species in a year, the set-aside would be increased the amount of the initial allocation of the species. Allocation increases would be capped at a maximum of between 1 and 5 percent of Pacific Ocean perch TAC, between 2 and 5 percent of northern rockfish TAC, and between 2.5 and 5 percent of pelagic shelf rockfish TAC.

Prosecution of the entry level fishery will be supported by the general allowance of halibut PSC to fixed gear. Catch of all other species would be governed by existing rules to control bycatch (i.e., MRAs and bycatch status management). Any vessel or gear type exempt from CGOA LLP requirements or any holder of a CGOA fixed gear LLP may enter a vessel in the entry level fishery. The entry level fishery would be prosecuted as a competitive limited access fishery opening on January 1st each year. Entry level fixed gear sector would be exempt from VMS requirements.

Catcher processor sector alternatives

Catcher processor alternative 2 - Catcher processor cooperative only (the pilot program structure)

Under the catcher processor cooperative only alternative, allocations would be made to the trawl catcher processor sector for target rockfish species and secondary species (Pacific cod, sablefish, shortraker, rougheye, and thornyhead) based on the historic harvest of sector members. These allocations are divided among cooperatives based on individual catch histories of cooperative members. A license holder's fishing history would be the history of the vessel that led to the license and the history of any vessel that fished using the license. Any license holder with a targeted catch of target rockfish in the qualifying period would be eligible for the program.

Two set asides of the target rockfish will be made prior to the allocations to the sectors under the new program. The first of these set asides would allocate a portion of the TAC for each target rockfish species to entry level fisheries. The second set aside would be an incidental catch allowance (ICA) to support incidental catch of the rockfish by participants in other directed fisheries. This set aside will be based on the incidental catch needs of other fisheries, which are estimated using rockfish incidental catch rates from those fisheries in recent years. After removal of the two set asides, the remainder of the target rockfish would be allocated to the catcher processor sector and the catcher vessel sector participating in the program. Allocations of the target rockfish to each sector would be based on retained catch (excluding landings processed into meal) of qualified vessels in the sector during the directed fishing season using each vessel's catch history during the qualifying years. Different years could be used for each species by each vessel for determining the allocation to maximize the allocation attributable to that vessel. For catcher processors, Weekly Processing Report data will be used to determine eligibility and calculate allocations.

The sector would also be allocated three secondary species—rougheye, thornyhead, and sablefish—based on catch of those species by the sector during the qualifying years while targeting rockfish. The allocations of these species would be a percentage of the TAC based on the average annual percentage of retained catch of secondary species harvested by the sector in the CGOA rockfish fishery relative to total retained catch of that secondary species by all gear types during the qualifying years. These secondary species allocations would be subdivided in proportion to the allocations of CGOA rockfish among cooperatives and the limited access fishery.

Three options are under consideration for managing shortraker rockfish in the catcher processor sector. Two of these options would manage shortraker as an allocated secondary species, with allocations of either 30.03 percent or 50 percent. The third option would combine shortraker rockfish and rougheye rockfish managing those species using a maximum retainable allowance percentage of 2 percent. Pacific cod would be managed using a revised maximum retainable allowance percentage of 4 percent. All other

non-allocated species would be managed using the current MRA levels. Under options either all harvests of allocated species or only target rockfish harvests would be the basis for purposes of determining permitted MRA retention. MRAs would be enforced on a trip-by-trip basis.

Halibut mortality would also be allocated to the sector under the program based on halibut mortality during the qualifying period. The total allocation to the program would be based on total mortality of both sectors during the qualifying period calculated by dividing the total mortality during the qualifying period by the number of qualifying years. This overall allocation would be divided between the sectors based on each sector's relative share of the target rockfish under the program (i.e., total qualified rockfish pounds). Any allowance of halibut PSC that has not been utilized by November 15 or after the declaration to terminate fishing will be added to the last seasonal apportionment for trawl gear during the current fishing year.

To participate in the fisheries, an eligible license holder must be a member of a cooperative. An option is under consideration that would require a minimum of two independent entities to form a cooperative using the 10% AFA rule. Cooperative agreements under this alternative would have a term of one year and must include a fishing plan for the harvest of the cooperative's allocation. Cooperatives are intended only to conduct and coordinate fishing of their member's allocations and are not intended to be formed under the Fishermen's Collective Marketing Act. The cooperative agreement must have a monitoring program and may adopt fishing practice codes of conduct. Cooperative members would be jointly and severally liable for the harvest of the cooperative's allocation. The cooperative would be required to file its agreement with the NOAA Fisheries Restricted Access Management Division to receive an annual allocation. A cooperative would be required to accept membership of any LLP license holder eligible for the cooperative subject to the same terms and conditions as governing other members. Eligible catcher processors that do not file cooperative agreements with NOAA Fisheries in a timely manner will be considered to have "opted-out" of the program for that year, forgoing the opportunity to fish CGOA rockfish. History of vessels that "opt-out" of the program would be reallocated within the catcher processor sector, based on histories of participants that elect to remain in the fishery.

An LLP license holder that is eligible for the program would be permitted to transfer the license. The transfer would include any privilege to participate in the program that is associated with or arises from holding the license. The interest in the program that is derived from the license would not be severable from the license, or divisible. In addition, cooperatives that meet a minimum two member threshold would be permitted to engage in the transfer of annual allocations. Catcher processors could also transfer annual allocations to catcher vessel cooperatives, but could not acquire annual allocations from catcher vessel cooperatives. Any transfers would be temporary transfers of a single year's annual allocation with the history reverting to the LLP license from which it came.

No persons would be permitted to hold or use in excess of 20 percent of the catcher processor pool. This cap would be applied to limit the amount of shares that an individual could bring to a cooperative, either through license holding or through intercooperative leasing. To apply this cap, intercooperative transfers would need to be conducted through individuals. In addition, no catcher processor could harvest in excess of 60 percent of the catcher processor pool.² Persons or vessels with history in excess of these limits would be grandfathered at their historic levels.

The rockfish season for cooperatives would open on the 1st of May, and extend until the 15th of November. All catch of allocated species must be retained and fishing must be stopped by all cooperative members when any allocation is fully harvested or PSC is fully utilized.

² History transferred to catcher vessel cooperatives would remain subject to the catcher processor caps and would not be subject to catcher vessel or shoreside processor caps.

Included in the program is an option to establish sideboards. Sideboards limit encroachment of participants in the rockfish program on other fisheries. Since the CGOA rockfish fishery is prosecuted in July, sideboards are generally intended to limit program participants to their historic harvests in other fisheries during July. Specifically, in Gulf fisheries that are historically constrained by TAC, eligible participants from each sector would be limited to their historic catch, in the aggregate.

Included as an option for consideration is the removal of sideboard limits for WYAK and WGOA primary rockfish species (Pacific ocean perch, Northern rockfish, and pelagic shelf rockfish) given this same catcher processor fleet is already limited by sideboards from Amendment 80.

Sideboards for Gulf fisheries that are historically constrained by halibut PSC would limit eligible participants in each sector to their historic halibut mortality in the month of July, in the aggregate. Since halibut in the Gulf is managed Gulf-wide for the deep-water complex and the shallow-water complex, management of the sideboard on a fishery-by-fishery basis would be substantially more complicated than managing one sideboard for the deep-water complex and a second sideboard for the shallow-water complex. NOAA Fisheries would manage two separate halibut sideboards (one for the deep-water complex and the other for the shallow-water complex).³ These July halibut sideboards would be administered by ending fishing in halibut limited fisheries in a complex by sector members eligible for the rockfish program when the sector halibut limitation is reached in that complex.

Included as an option for consideration is to remove 3rd season halibut PSC sideboards given this same catcher processor fleet is also limited by Amendment 80 sideboards. The Council has also included an option for consideration that would limit all catcher processors to the deep water halibut complex fisheries for the month of July.

Additionally, each catcher processor participant would be required to abide by a stand-down in all the Gulf of Alaska non-pollock groundfish fisheries. The stand-down would start on the July opening of the rockfish fishery and end on the earlier of two weeks or on the harvest of 90 percent of the participant's cooperative allocation, if the harvest of the allocation began on the traditional July opening. The maximum stand-down would allow participants to begin at a time other than early July, provided they are willing to abide by the two week stand-down.

In lieu of the stand-down in the Gulf of Alaska groundfish fisheries (other than the CGOA rockfish fisheries), a cooperative may (subject to NMFS approval) manage a sideboard of its catch in Gulf of Alaska groundfish fisheries. Under this approach, a cooperative would be limited in the aggregate to the historic catch of target species, if target catch constrains the fishery (or halibut PSC, for halibut PSC constrained fisheries) of its members in the qualifying years.

The duration of all CGOA rockfish program permits are 10 years. These permits shall be renewed before their expiration, unless the permit has been revoked, limited, or modified. An option could be adopted to limit the duration of the CGOA rockfish program to 10 years after implementation.

The program will also include a cost recovery program to cover the costs of administering the program. The fee, not to exceed 3 percent of the ex vessel value, will be charged on all landings.

A program review would also be conducted 5 years after implementation. Additional reviews will be conducted 7 years thereafter. This review would assess the progress of the program in achieving the goals identified in the purpose and need statement and the MSA.

³ The deep-water complex includes sablefish, rockfish, deepwater flatfish, rex sole, and arrowtooth flounder. The shallow-water complex includes flathead sole, shallow water flatfish, pollock, and Pacific cod.

Catcher processor alternative 3 – Cooperative or limited access

This alternative is largely the same as the catcher processor cooperative only alternative, except that catcher processors that choose not to join a cooperative are permitted to fish in a limited access fishery. Eligible catcher processors wishing to fish in the limited access fishery would need to apply for that fishery in a timely manner. The allocation of primary rockfish species and halibut PSC to the limited access would be based on the histories of LLP licenses registered for participation in the fishery. The allocations that would have been made based on the histories of LLP licenses that are not registered to fish (either in a cooperative or the limited access) would be allocated to cooperatives and the limited access fishery based on the histories of participants in those fisheries.

As under pilot program structure, the limited access portion of the catcher processor CGOA rockfish fishery would open in the beginning of July, and would close when managers estimate that its participants have fully harvested the target rockfish allocations in that fishery. All species, except for the target rockfish, would be managed with MRAs. MRAs would be enforced on a trip-by-trip basis. The secondary species would be managed under the following reduced MRAs, intended to maintain catch levels below the allocated amount:

- Pacific cod – 4 percent
- Sablefish – 3 percent
- Shortraker/rougheye – 2 percent
- Thornyhead – 4 percent

Since the limited access fishery changes some of the dynamics in the GOA fisheries to include opportunities for participants to expand into other fisheries, sideboard measures would apply under this alternative. Participants that choose to fish in the limited access fishery and who account for less than 5 percent of the allocated catcher processor history of Pacific Ocean perch, would be subject to no sideboard or stand-down, beyond the aggregate sector sideboards. Limited access fishery participants that account for 5 percent or more of the sector's Pacific Ocean perch would be required to stand-down in Gulf of Alaska, until 90 percent of the limited access Pacific Ocean perch is harvested.

Eligible catcher processors that do not join a cooperative (i.e., choose to “opt-out” of the program for a year) would be subject to two week stand-downs in the Gulf of Alaska fisheries in which they have less than two years of participation during the first week of July in the qualifying years.

The sideboards for those that join a cooperative under this alternative are the same as those described under the allocation of catcher processor cooperative only structure.

Rules limiting use and holdings of shares by individuals and cooperatives, share duration and renewal provisions, program review, and cost recovery are the same as under the preceding alternative.

Catcher vessel sector alternatives

Catcher vessel alternative 2 - Harvester only cooperative

This catcher vessel alternative establishes a cooperative program for sector members. The distinguishing characteristic of the alternative is that historic processors receive no direct protection of their interests.

Under this alternative, the catcher vessel sector would receive a sector allocation of target rockfish, secondary species (except shortraker rockfish and rougheye rockfish), and halibut PSC based on catcher vessel histories using the same methodology as described under the catcher processor alternatives. The catcher vessel sector, however, would also receive an allocation of Pacific cod based on average annual percentage of total CGOA retained catch of Pacific cod taken by the sector during the CGOA rockfish fishery (instead of fishing under an MRA, as the catcher processor sector would). The catcher vessel

sector would fish shortraker rockfish and roughey rockfish under an MRA of 2 percent. If the sector's harvest of shortraker rockfish reaches 9.72 percent of the TAC, it would go on PSC status for the sector, under which any retention is prohibited. Cooperative allocations of target rockfish, secondary species (except shortraker rockfish and roughey rockfish), and halibut PSC would be based on the collective target rockfish histories of members during the qualifying years based on the method described under the catcher processor alternatives. Any allowance of halibut PSC that has not been utilized by November 15 or after declaration to stop fishing by a cooperative will be added to the last seasonal apportionment for trawl gear during the current fishing year. Under an option, Pacific cod and sablefish could be managed under a modified MRA that has yet to be defined.

Holders of permanent catcher vessel trawl LLP licenses with directed catch of target rockfish in the qualifying years would be eligible for the cooperative program. Allocations of target rockfish to these licenses would be based on their catches during the qualifying period. In addition, under an option, a permanent license assigned to a vessel that previously used an interim license for targeted rockfish catch in the qualifying period would qualify for the program, provided the permanent license was acquired and assigned to the vessel prior to December 31, 2003. The allocation to these licenses would be the catch of the vessel using the interim and later assigned permanent license. Three qualifying period are under consideration, including periods of years between 1996 and 2006. Qualifying years may differ from the catcher processor sector qualifying years. Qualified catch is based on fish tickets and includes all landings (excluding meal) of target rockfish during the directed fishery.

An option could also be applied to include in the cooperative program other ineligible LLP licenses that participated in the pilot program entry level fishery. To be eligible under the option, an LLP license would need to have registered for the entry level fishery in both 2007 and 2008 and made at least one landing from the entry level fishery in one of those years. An option could be selected to consider 2009 catch history for determining eligibility of pilot program entry level participants. Options defining the allocations to these catcher vessel LLP licenses would be based on 1) the average allocation of the lowest one-third or one-quarter of catcher vessel LLP licenses that participated in the pilot program in either 2007 or 2008, 2) the average allocation of the lowest one-quarter to one-third of all qualified LLP licenses, 3) the actual catch history of the vessel in 2007 or 2008, 4) the average catch history of vessels that participated in the entry level fishery in 2007 or 2008, or 5) the average allocation of all qualified catcher vessel LLP licenses. Under a suboption, 2009 catch history could be considered when defining allocations to entry level pilot program participants. An option could be selected to make allocations of target rockfish, secondary species, and halibut PSC to eligible entry level processors. These allocations would a percentage of the harvest shares that are allocated to trawl LLPs that qualify from the entry level trawl fishery.

To participate in the fisheries, an eligible license holder must be a member of a cooperative.⁴ Eligible LLP license holders that do not file cooperative agreements with NOAA Fisheries in a timely manner would not be permitted to fish CGOA rockfish. History of LLP licenses not participating would be reallocated within the catcher vessel sector, based on histories of participants that elect to remain in the fishery.

A cooperative would be required to file its agreement with NOAA Fisheries to receive an annual allocation. Cooperative agreements would have a term of one year and must include a fishing plan for the harvest of the cooperative's allocation. Cooperatives are intended only to conduct and coordinate fishing of their member's allocations and are not intended to be formed under the Fishermen's Collective Marketing Act. Cooperative members would be jointly and severally liable for the harvest of the

⁴ The option for a limited access fishery is excluded, as that option appears unnecessary in a fishery with flexible cooperative formation. In addition, a provision that requires a cooperative to accept membership of any LLP license holder eligible for the cooperative subject to the same terms and conditions as governing other members seems unnecessary given the level of flexibility in cooperative formation.

cooperative's allocation. A cooperative could include fishing practice codes of conduct in its membership agreement. Processor affiliated license holders would be permitted to join cooperatives, but would not be permitted to engage in price negotiations, except as permitted by antitrust laws. Cooperatives would be permitted to engage in the transfer of annual allocations. Catcher vessel cooperatives would be permitted to acquire annual allocations from catcher processor cooperatives, but could not transfer annual allocations to catcher processor cooperatives. Any transfers would be temporary transfers of a single year's annual allocation, with the history remaining with the LLP license of origin. Future annual allocations would be based on the cooperative membership of the LLP holder.

To protect community interests, an option could be adopted to require all landings to be made in the Port of Kodiak.

A vessel use cap would limit any catcher vessel from catching more than 4 percent to 10 percent of the target allocations to the sector. An option could be selected to grandfather vessels that historically exceeded that limit. No catcher vessel cooperative would be permitted to hold or use in excess of 30 percent of the catcher vessel sector's allocation, while no person would be permitted to hold or use in excess of 5 percent of the catcher vessel sector's allocation. This cap would be applied to limit the amount of shares that a person could bring to a cooperative, either through license holding or through inter-cooperative leasing. To apply this cap, inter-cooperative transfers would need to be conducted through individuals. Persons receiving an allocation in excess of the cap would be grandfathered at the level of the allocation.

A processing cap could be adopted to prohibit any processor from processing in excess of between 20 percent and 33 percent of the primary rockfish species landings and secondary species landings from the catcher vessel sector. An option could be selected to grandfather any processor that historically processed in excess of the processing cap.

Sideboards would limit the participation of eligible catcher vessels in other fisheries. As would be applied to catcher processors, a general sideboard would limit catcher vessel participants, in the aggregate, to their historic harvests in other fisheries in the month of July, the month during which the rockfish fisheries have been prosecuted historically. To accomplish this end, in Gulf fisheries that are historically constrained by TAC, eligible participants from each sector would be limited to their historic catch in the month of July, in the aggregate.

The Council included an option for consideration that would prohibit catcher vessels from directed fishing for WYAK and WGOA primary rockfish species.

Sideboards for Gulf fisheries that are historically constrained by halibut PSC would limit eligible participants in each sector to their historic halibut mortality in the month of July, in the aggregate. Since halibut in the Gulf is not managed in each fishery, but is managed for the deep-water complex and the shallow-water complex, management of the sideboard on a fishery-by-fishery basis would be substantially more complicated than managing one sideboard for the deep-water complex and a second sideboard for the shallow-water complex. NOAA Fisheries would manage two separate halibut sideboards (one for the deep-water complex and the other for the shallow-water complex).⁵

The Council has included an option for consideration that would limit all catcher vessels to the shallow water halibut complex fisheries (except for rockfish target fisheries in CGOA, WYAK, and WGOA) for the month of July.

⁵ The deep-water complex includes sablefish, rockfish, deepwater flatfish, rex sole, and arrowtooth flounder. The shallow-water complex includes flathead sole, shallow water flatfish, pollock, and Pacific cod.

A set of options are included in the alternative that would prohibit or allow qualified catcher vessels entry to the Bering Sea and Aleutian Islands direct fisheries for yellowfin sole, "other" flatfish, or Pacific Ocean perch in the month of July. In addition, two options are also included in the alternative that would limit qualified catcher vessels in the month of July to their historic average total catch in the Bering Sea and Aleutian Islands Pacific cod fishery, in the aggregate or can participated unrestricted during the month of July. Catcher vessel participants in the AFA that are not exempt from Gulf sideboards under the AFA would be exempt from any sideboards under this program.

Program review, cost recovery, and share and program duration options are as described for the catcher processor sector.

Catcher vessel alternative 3 – Allocation of harvest shares to processors

This catcher vessel alternative establishes a cooperative program for sector members. The distinguishing characteristic of the alternative is an allocation of harvest shares to historic and dependent processors in the fisheries, intended to protect interests of those processors.

Under this alternative, the catcher vessel sector allocations of target rockfish, secondary species, and halibut PSC would be the same as described under the previous catcher vessel alternative. In addition, rules governing unallocated species (including options to establish MRAs for some secondary species) would apply to this alternative. Allocations of target rockfish under this alternative would be divided between eligible license holders (i.e., harvesters) and eligible processors, with processors receiving 10, 20, or 30 percent of the sector's pool, depending on the option selected for making that allocation.

Allocations of the harvester portion of sector's pool would be made under the rules described in the previous alternative. Options for including persons who fished with interim licenses and persons who participated in the entry level fishery could be applied.

To make the processor allocations, the fixed percentage of the harvest share pool (i.e., exclusive harvest share allocations) would be allocated among eligible processing sector participants based on processing in the fisheries during a specified time period. Annual allocations for processors will be subject to the same allocation and harvest rules governing catcher vessel allocations. Included in the allocation would be target rockfish, secondary species and halibut PSC, with latter allocations based on aggregate allocations of target rockfish.

An option could be adopted to specifically qualify processors that participated in the entry level fishery under the pilot program. Under the option, these entry level processors would receive allocations of harvest shares based on their processing histories during a special qualifying period. Two options could be used for defining specific allocations to entry level processors. Under the first, an entry level processor's allocation would be based on its processing during the entry level qualifying period relative to all other qualified processors' histories (including other entry level processors). Under the second option, entry level processors collectively would receive the same share of the processor pool of harvest shares as is allocated to entry level harvesters under the harvest sector allocation rules. This portion of the processor harvest share pool would be divided among eligible entry level processors based on their histories during the entry level processing qualifying period.

To participate in the fisheries, an eligible license holder or processor must be a member of a cooperative. Eligible LLP license holders and processors that do not file cooperative agreements with NOAA Fisheries in a timely manner would not be permitted to fish CGOA rockfish. History of LLP licenses and processors not participating would be reallocated within the catcher vessel sector, based on histories of participants that elect to remain in the fishery. Cooperative rules, including rules governing transfers and participation of affiliates of processors, would be the same as those described in the previous alternative.

The Council has included an option in this alternative that would require that a processor's allocation of harvest shares be harvested by a vessel that is not affiliated with the processor.⁶ In addition, to protect community interests, the Council has included for consideration an option that would require all landings to be made in the Port of Kodiak.

Harvest shares held by processors will be subject to a 5 percent cap for holding and use. Included in this alternative is option to increase the limit to 10 percent for holding and use of harvest shares held by the processor. An option to grandfather initial recipients is included in this alternative.

For purposes of the transferring harvester shares held by the processor, these harvest shares can be divisible. There are currently three options for who may receive transferred harvest shares held by a processor. The first option would allow these shares to be transferred to processors, at the plant level, who where initially issued harvest shares. The second option would allow shares to be transferred to processors who have processed at least 100-250 metric tons of rockfish delivered by catcher vessels within any two year period during the new rockfish program. Included in this option are two suboptions that would further narrow eligible processors to either ones in the Port of Kodiak or a shoreside processing facility. Finally, the third option would allow harvester shares held by a processor to transfer those shares to a holder of a CGOA rockfish program qualified LLP.

Rules limiting use and holdings of shares by vessels, individuals, and cooperatives, processing caps, sideboard limitations, share duration and renewal provisions, program review, and cost recovery are the same as under the preceding alternative.

Catcher vessel alternative 4 - Severable harvester/processor association – no forfeiture

Eligible harvesters will receive allocations based on qualifying harvest histories. To access the allocation, a harvester must join a cooperative in association with a processor in the community to which it delivered the most pounds in a designated time period. The harvester has full discretion in choosing a cooperative both initially and annually thereafter and may change cooperatives (and accompanying processor associations) annually without forfeiture. An option could be applied that would require a cooperative to accept any eligible license holder as a member subject to the same terms and conditions applicable to other members.⁷ As with the preceding alternatives, no explicit processor delivery requirement would be established by the program, but delivery requirements could be included in the negotiated associations; a Port of Kodiak delivery requirement is being considered; and no limit on processor entry would be included in the program.

Under this alternative, the catcher vessel sector would receive allocations of CGOA rockfish, secondary species, and halibut PSC using the same methodology as described under the harvester only cooperative alternative with no allocation to pilot program entry level participants. Eligibility for the program and long term and annual allocations of these species would be made to sector members and cooperatives, respectively, as described under the harvester only cooperative alternative.

Rules limiting use and holdings of shares by vessels, individuals, and cooperatives, shore-based processing limitations, sideboard limitations, share duration and renewal provisions, program review, and cost recovery are the same as under the preceding alternative.

⁶ It is unclear whether this provision can be effectively implemented, as tracking of individual share usage in a cooperative management program may be infeasible. It is possible that a variant of this provision could be developed that would prevent processors using these allocations to expand harvest sector activity in a manner that does not impose an unreasonable administrative burden.

⁷ The Council should note that, at this time, staff has included this option only in this alternative. This alternative is the only one that imposes any limitation on cooperative formation choices for catcher vessels, which is the arguable rationale for the inclusion of this provision (see sections 9.4 and 11 of the following elements and options).

Elements and options defining the program alternatives

The Council has identified the following elements and options to define its alternatives

Alternatives, Elements, and Options

Entry-Level Fishery Alternatives (EL)

1. Status Quo (revert back to LLP management)
2. Entry level trawl/fixed gear fisheries (the pilot program structure)
3. Fixed gear only fishery

Catcher Processor Alternatives (CP)

1. Status Quo (revert back to LLP management)
2. Catcher processor cooperative only
3. Cooperative or limited access (the pilot program structure)

Catcher Vessel Alternatives (CV)

1. Status Quo (revert back to LLP management)
2. Harvester only cooperative
3. Harvester cooperatives with allocation of harvest shares to processors
4. Severable harvester/processor association – no forfeiture

The above alternatives are defined by the following elements and options.

1 ICA Set Aside

Prior to allocation of catch history to the sectors, NMFS shall set aside an Incidental Catch Allocation (ICA) of Pacific Ocean perch (POP), northern rockfish, and pelagic shelf rockfish to meet the incidental catch needs of fisheries not included in the cooperative program. (EL – all)

2 Entry-level Set Aside (EL – all)

A percentage of CGOA POP, northern rockfish and pelagic shelf rockfish for catcher vessels not eligible to participate in the program.

2.1 Trawl and fixed gear entry level fisheries (EL – 2)

The annual set aside will be 5 percent of each of these target rockfish species.

Set-asides shall be apportioned at 50% for trawl gear and 50% for fixed gear.

The trawl sector's allocation by weight (based on the aggregate TAC for Pacific Ocean perch, Northern and pelagic shelf rockfish) shall first be Pacific Ocean perch.

Unharvested allocations to either sector shall be available to both sectors at the end of the third quarter.

The entry level fishery will be managed as a limited entry fishery.

Start dates for the entry level fishery should be January 1 for fixed gear and approximately May 1 for trawl gear.

2.1.2 Halibut PSC Limit Allocation

Prosecution of the entry level fishery will be supported by general allowance of halibut PSC to the gear type and the general allocations of secondary species.

Trawl halibut PSC options

- Option 1: If sufficient halibut PSC is not available at the start of the trawl gear fishery (May 1), the start date will be on the next release of halibut PSC.
- Option 2: If sufficient halibut PSC is not available at the start of the trawl gear fishery (May 1), halibut usage will be deducted against the following quarter's halibut PSC allowance.

Vessels that can participate in the entry level fishery are those vessels that did not qualify for the CGOA rockfish cooperative program. Before the beginning of each fishing year an application must be filed with NMFS by the interested vessel that includes a statement from a non-qualified processor confirming an available market.

Entry level fixed gear sector are exempt from VMS requirements.

2.2 Fixed gear only entry level fishery (EL-3)

The annual set aside will be;

- 1 – 10 mt of the POP TAC
- 1 - 10 mt of the northern rockfish TAC
- 10 - 30 mt of the pelagic shelf rockfish TAC.

If the entry-level fishery harvests 90% or more of their allocation of a species, the set-aside would increase by the amount of the initial allocation the following year:

- 1 - 10 mt POP
- 1 - 10 mt Northern rockfish
- 10 - 30 mt pelagic shelf rockfish

This increase would be capped at a maximum of:

POP

- a. 1%
- b. 3%
- c. 5%

Northern Rockfish

- a. 2%
- b. 3%
- c. 5%

Pelagic Shelf Rockfish

- a. 2.5%
- b. 3%
- c. 5%

The entry level fishery will be managed as a limited entry fishery.

Start date for the entry level fishery should be January 1.

Prosecution of the entry level fishery will be supported by general allowance of halibut PSC to the gear type and the general allocations of secondary species.

Any vessel or gear type exempt from CGOA LLP requirements or any holder of a CGOA fixed gear LLP may enter a vessel in the entry level fishery.

Entry level fixed gear sector are exempt from VMS requirements.

3 Program eligibility (CP – all and CV – all)

The eligibility for entry into the cooperative program is one targeted landing of POP, Northern rockfish or PSR caught in CGOA during the qualifying period using a CGOA trawl LLP license.

Option: In addition, the following participants would be eligible to enter the program: those persons whose vessel had one targeted landing of POP, northern rockfish or PSR caught in CGOA during the qualifying period with interim trawl CGOA license that was later determined to be an invalid trawl CGOA endorsement, but who acquired a valid CGOA trawl license prior to December 31, 2003, which has been continuously assigned to the vessel with the target landing since acquired until the date of final Council action.

4 Qualified catch (CP – all and CV – all)

4.1 Basis for the allocation to the LLP license holder is the catch history of the vessel on which the LLP license is based and shall be on a fishery-by-fishery basis. The underlying principle of this program is one history per license. In cases where the fishing privileges (i.e., moratorium qualification or LLP license) of an LLP qualifying vessel have been transferred, the allocation of harvest shares to the LLP shall be based on the aggregate catch histories of (1) the vessel on which LLP license was based up to the date of transfer, and (2) the vessel owned or controlled by the LLP license holder and identified by the license holder as having been operated under the fishing privileges of the LLP qualifying vessel after the date of transfer. (Only one catch history per LLP license.)

Option: For licenses qualified based on catch of a vessel using an interim license, the basis for the allocation will be the catch history of such vessel, notwithstanding the invalidity of the interim Central Gulf trawl LLP endorsement under which the vessel operated during the qualifying period. History allocated under this provision shall be assigned to the LLP license.

4.2 Catch history will be the history during the following qualifying period:

- 1) 1996-2002 (drop two)
- 2) 1998-2006 (drop two or four)
- 3) 2000-2006 (drop two)

4.3 Qualified target species history is allocated based on retained catch (excluding meal) during the rockfish target fishery. Different years may be used (or dropped) for determining the history of each of the three rockfish species.

The CP catch history will be based on WPR data.

CV catch history will be based on fish tickets.

4.4 Entry level trawl qualification/allocation for the main program:

- 1) Vessels / LLPs that do not qualify for Cooperative quota (CQ) for the CGOA rockfish cooperative program.
- 2) The trawl LLP must have registered for the entry level fishery both in 2007 and 2008.
Option: Add 2009
- 3) The trawl LLP must have made a landing of fish in the entry level fishery with trawl gear in either 2007 or 2008.
Option: Add 2009

4.5 The qualified entry level trawl LLP would receive an allocation of QS for the primary rockfish species equivalent to:

- 1) Average of the lowest one-quarter to one-third of the qualified CV LLPs that actively fished in the RPP program in either 2007 or 2008.

- 2) Average of the lowest one-quarter to one-third of all qualified CV LLPs.
- 3) Actual catch history of the vessel/LLP in 2007 or 2008 (information would be withheld due to confidentially restrictions unless the vessel(s) agrees to have the data released to the public).
- 4) Average of the qualified CV LLPs that actively fished in the RPP program in either 2007 or 2008
- 5) Average of all qualified CV LLPs

Option: Add 2009 to options calculated from catch history in the entry level fishery.

Note: secondary and halibut PSC allocations are calculated the same as the other qualified LLPs.

5 Sector definitions (CP – all and CV – all)

Trawl catcher vessel – A trawl catcher-vessel that has a CV or CP LLP license, but does not process its catch on board.

Trawl catcher processor - A trawl catcher-processor is a trawl vessel that has a CP LLP license and that processes its catch on board.

6 Rationalized areas (CP – all and CV – all)

History is allocated for the CGOA only (NMFS statistical areas 620 and 630).

7 Sector allocations (CP – all and CV – all)

7.1 Target rockfish species

Catch history is determined by the sector's qualified catch in pounds as a proportion of the total qualified catch in pounds.

Sector allocations of target rockfish species are based on individual qualified vessel histories applying any applicable drop year provision at the vessel level.

Full retention of the target rockfish species required

7.2 Secondary species

Secondary species history is allocated based on retained catch of the species while targeting rockfish over retained catch in all fisheries.

7.2.1 Except as provided below, history will be allocated to each sector for the following secondary species:

- sablefish,
- shortraker rockfish
- roughey rockfish,
- thornyhead rockfish, and
- Pacific cod.

7.2.3 Except as otherwise provided below, secondary species allocations will be based on: The sector's average annual percentage of retained catch of the secondary species by the rockfish target fisheries during the qualifying period. For each qualifying year calculate the sector's retained catch of the species in the target rockfish fisheries divided by the retained catch of all CGOA fisheries. Sum these percentages and divided by the number of qualifying years. The calculated average annual percentage is multiplied by the secondary species TAC for that fishery year and allocated to each sector in the cooperative program.

7.2.4 Exceptions:

For the catcher processor sector, Pacific cod history will be managed by MRA of 4 percent.

For shortraker and rougheye:

For the CP sector, a shortraker allocation of the TAC will be:

Option 1a: 30.03 percent

Option 1b: 50 percent

To be managed as a hard cap, and a rougheye allocation of 58.87% of the TAC, to be managed as a hard cap.

Option 2: shortraker and rougheye will be managed with a combined MRA of 2%.

For the CV sector, shortraker and rougheye should be managed with a combined MRA of 2 percent. If harvest of shortraker by the CV sector reaches 9.72% of the shortraker TAC, then shortraker should go on PSC status for that sector.

Option 1: No directed fishing for secondary species Pacific cod and sablefish

Option 2: Manage Pacific cod and sablefish under a modified MRA.

Participants must retain all allocated secondary species and stop fishing when cap is reached.

MRAs in the CP sector will be enforced on a trip-by-trip basis.

7.3 Prohibited species (halibut mortality)

Allocation to the rockfish cooperative program will be based on historic average usage, calculated by dividing the total number of metric tons of halibut mortality in the CGOA rockfish target fisheries during the qualifying years by the number of years. This allocation will be divided between sectors based on the relative amount of target rockfish species allocated to each sector (e.g., the sector's share of total qualified catch).

Any allocation of halibut PSC that has not been utilized by November 15 or after the declaration to terminate fishing will be added to the last seasonal apportionment for trawl gear during the current fishing year.

8 Allocation from sector to vessel (CP – all and CV – all)

Within each sector, history will be assigned to LLP holders with CGOA endorsement that qualify for a sector under the 'sector allocations' above. The allocations will be to the current owner of the LLP of the vessel which earned the history.

Target Species

Each LLP holder will receive an allocation of history equivalent to the license's proportion of the total of the sector qualifying history.

Secondary Species

Each LLP holder will receive an allocation of allocated secondary species equal to the license's proportion of the sector's target rockfish history.

PSC (Halibut Mortality)

Each LLP holder will receive an allocation of halibut mortality equivalent to the license's proportion of the sector's target rockfish history.

Halibut PSC in the CP sector shall be divided between the co-op(s) and limited access according to the history of the participating vessels.

Allocations are revocable privileges

The allocations under this program:

- 1) may be revoked, limited, or modified at any time,
- 2) shall not confer any right of compensation to the holder, if it is revoked, limited, or modified, and
- 3) shall not create or be construed to create any right, title, or interest in or to any fish before the fish is harvested by the holder.

Domestic processing

All fish harvested with an allocation from this program must be processed in the U.S.

Regionalization – Apply to catcher vessel sector only:

Option 1: All CV CQ must be landed in the Port of Kodiak.

9 Catcher vessel/shore based processor provisions (CV – all)

9.1 Processor eligibility (CV-3)

An eligible processor is a processing facility that has purchased:

Option 1 - 250 MT of aggregate Pacific Ocean perch, northern rockfish, and pelagic shelf rockfish harvest per year, for 4 years, from 1996 to 2000.

Option 2 - 250 MT of aggregate Pacific Ocean perch, northern rockfish, and pelagic shelf rockfish per year, for 4 years, from 2000 to 2006.

Suboption: (entry level fishery processor): 250 MT of aggregate Pacific Ocean perch, northern rockfish, and pelagic shelf rockfish harvested from 2007 to 2008.

Suboption: Add 2009

Processor qualifying years

Each eligible shore based processor is allocated processor catch history based on individual processor histories of CGOA target rockfish for the years:

Option 1 - 1996-2000 (drop 1 year)

Option 2 - 2000–2006 (drop 2 year)

Suboption 1: (entry level processors): 2007–2008

Suboption: Add 2009

Suboption 2: (entry level processors) Eligible entry level processors will be allocated target rockfish, secondary species, and halibut PSC from the processor pool of harvest shares that are derived from those trawl LLPs that received allocations based on participation in the entry level trawl fishery into the main program.

For alternatives with processor associations the drop year is selected by the processor and applied to all LLP licenses when determining those associations.

9.2 Option A - Harvester only cooperative (CV-2)

Allocation of the primary rockfish, secondary species, and halibut PSC to the CV sector shall be to harvesters (i.e., 100/0).

A holder of catcher vessel harvest history may join a cooperative to coordinate the harvest of allocations. (Cooperatives are subject to general cooperative rules below.) Membership agreements will specify that processor affiliated cooperative members cannot participate in price setting negotiations except as permitted by general antitrust law.

Cooperatives are intended only to conduct and coordinate harvest activities of the members and are not FCMA cooperatives.

Co-ops may engage in inter-cooperative transfers of annual allocations to other cooperatives.

Membership agreements will specify that processor affiliated cooperative members cannot participate in price setting negotiations except as permitted by general antitrust law.

9.3 Option B - Harvester cooperatives with processor allocation of harvest shares (CV – 3)

Allocation of the primary rockfish, secondary species, and halibut PSC to the CV sector shall be apportioned between harvesters (CV only) and shore based processors:

- Option 1: 90/10
- Option 2: 80/20
- Option 3: 70/30

Eligible processors will be allocated target rockfish, secondary species, and halibut PSC from the processor pool of harvest shares in proportion to its qualifying processing history. Annual allocations will be of the same species and subject to the same allocation and harvest rules governing catcher vessel allocations.

Option: Processor allocations of CV harvest shares may be harvested only by vessels that are not owned or controlled by the holder of those harvester shares (using the AFA rules for determining control and ownership).

A holder of catcher vessel harvest history or processor histories may join a cooperative to coordinate the harvest of allocations. (Cooperatives are subject to general cooperative rules below.) Membership agreements will specify that processor affiliated cooperative members cannot participate in price setting negotiations except as permitted by general antitrust law.

Cooperatives are intended only to conduct and coordinate harvest activities of the members and are not FCMA cooperatives.

Co-ops may engage in inter-cooperative transfers of annual allocations to other cooperatives.

Membership agreements will specify that processor affiliated cooperative members cannot participate in price setting negotiations except as permitted by general antitrust law.

9.4 Option B - Harvester cooperatives with severable processor associations and no forfeiture (CV-4)

Harvesters must join a cooperative to participate in the target rockfish fisheries.

10 Catcher processor cooperatives

More than one co-op may form within the sector.

Allocations may be transferred between co-ops of at least two LLPs.

Participants have a choice of participating in:

- Option 1: a co-op or opt out of the rockfish program,
- Option 2: a co-op, a limited access fishery, or opt of the rockfish program

Option: A minimum of two independent entities are required to form a CP cooperative (using the 10% AFA rule)

Under the LLP/open access fishery option, the LLP's historic share will be fished in a competitive fishery open to rockfish qualified vessels who are not members of a cooperative. The secondary species would be managed under the following reduced MRAs, intended to maintain catch levels below the allocated amount: Pacific cod - 4 percent, sablefish - 3 percent, shortraker/rougheye - 2 percent, and thornyhead - 4 percent. All other species would be managed with MRAs at their current levels.

11 General cooperative provisions – apply to both sectors

Duration of cooperative agreements is 1 year.

The cooperative membership agreement (and an ancillary agreement with an associated processor, if applicable) will be filed with the RAM Division. The cooperative membership agreement must contain a fishing plan for the harvest of all cooperative fish.

Cooperative members shall internally allocate and manage the cooperative's allocation per the cooperative agreement.

Subject to any harvesting caps that may be adopted, allocated history may be transferred and consolidated within the cooperative.

The cooperative agreement must have a monitoring program. Cooperative members are jointly and severally responsible for cooperative vessels harvesting in the aggregate no more than their cooperative's allocation of target rockfish species, secondary species and PSC mortality, as may be adjusted by inter-cooperative transfers.

A cooperative may adopt and enforce fishing practice codes of conduct as part of their membership agreement.

Option: Cooperative membership agreements shall allow for the entry of other eligible harvesters into the cooperative under the same terms and conditions as agreed to by the original agreement.

Cooperatives will report annually to the Council as per AFA.

12 Sector Transfer provisions

CP annual allocations may be transferred to CV cooperatives. CV annual allocations may not be transferred to CP cooperatives.

All transfers of annual allocations would be temporary and history would revert to the original LLP at the beginning of the next year.

A person holding an LLP that is eligible for this program may transfer that LLP. That transfer will effectively transfer all history associated with the LLP and any privilege to participate in this program that might be derived from the LLP.

Permit post-delivery transfers of cooperative quota (annual allocations to cooperatives).

There would be no limits on the number or magnitude of post-delivery transfers. All post-delivery transfers must be completed by December 31st.

No cooperative vessel shall be permitted to begin a fishing trip unless the cooperative holds unused cooperative quota.

Harvest shares held by processors will be divisible for transfer.

Harvest shares held by processors may be transferred to:

Option 1: Those processors, at the plant level, who were initially issued harvest shares

Option 2: Those processors who have processed at least 100-250 metric tons of rockfish delivered by catcher vessels within any two-year period during the new program

Suboption 1: in the port of Kodiak

Suboption 2: to a shoreside processing facility

Option 3: a holder of a Central GOA rockfish program eligible LLP

13 Cooperative Harvest Use Caps

CV cooperatives

No person may hold or use more than 5% of the CV historic shares, using the individual and collective rule (with grandfather provision).

Control of harvest share by a CV cooperative shall be capped at 30% of aggregate POP, Northern Rockfish and PSR for the CV sector.

No CV may catch more than 4-10 % of the target CV allocation
(Option: with grandfather provision).

Harvest shares held by processors will be subject to the same 5% cap for holding and use that applies to harvest shares held by harvesters

Suboption: 10% cap

Suboption: Grandfather initial recipients

CP cooperatives

No person may hold or use more than 20% of the CP historic shares, using the individual and collective rule

(Option: with grandfather provision).

Control of harvest share by a CP shall be capped at 60% of aggregate POP, Northern Rockfish and PSR for the CP sector.

Option: Eligible CPs will be grandfathered at the current level.

Shoreside Processor Use Caps

Shoreside processors shall be capped at the entity level.

No processor shall process more than 20%, 25%, 30% or 33% of aggregate POP, Northern Rockfish and PSR for the CV sector.

No processor shall process more than 20%, 25%, 30%, or 33% of aggregate secondary species for the CV sector.

(The year 2002 will be used as a base (or index) year for applying the aggregate caps.)

Option: Eligible processors will be grandfathered.

14 Harvesting provisions

The cooperative season start date is May 1 and closing date is November 15. Any limited access fishery will open in early July, as under the previous License Limitation Program management.

All non-allocated species will be managed by MRA, as in the current regime. This includes Arrowtooth flounder, deep water flatfish, shallow water flatfish, flathead sole, rex sole, pollock, other species, Atka mackerel and other rockfish. Basis species for purposes of determining MRAs will be:

Option 1 - Only primary allocated rockfish species

Option 2 - All allocated species

Secondary species allocations may be fished independently of the primary species allocations.

Option: No directed fishing for secondary species Pacific cod and sablefish.

Full retention of all allocated species is required.

15 Program review

A formal detailed review of the program shall be undertaken 5 years after implementation. The review shall assess:

- 1) the progress of the program in achieving the goals identified in the purpose and need statement and the MSA, and
- 2) whether management, data collection and analysis, and enforcement needs are adequately met. Additional reviews will be conducted every 7 years there after coinciding with the fishery management plan policy review.

16 Duration

Share Duration

The duration of all CGOA rockfish LAPP program permits are 10 years. These permits shall be renewed before their expiration, unless the permit has been revoked, limited, or modified.

Option: Program Duration

Absent Council review and recommendation to extend, the CGOA rockfish LAPP program expires 10 years after implementation.

17 Cost recovery

A fee, not to exceed 3 percent of ex vessel value, will be charged on all landings to cover the costs of administration of the program.

18 Sideboards

18.1 General Provisions

There are no exemptions from sideboards, except for a partial exemption for CP vessels which opt out of the cooperative program or join cooperatives.

WYAK and WGOA Primary Rockfish Species

Option 1: For fisheries that close on TAC in the GOA, the qualified vessels in each sector (trawl CV and trawl CP) would be limited, in aggregate, in the month of July to the historic average

catch of those vessels based on the retained catch as a percentage of the retained catch in the fishery in the month of July during the qualification years. Fisheries that this sideboard provision would apply to include West Yakutat rockfish and WGOA rockfish.

Option 2: For catcher processors, remove sideboard limits for WYAK and WGOA primary rockfish species.

Option 3: For catcher vessels, prohibit directed fishing for WYAK and WGOA primary rockfish species.

Halibut PSC

Option 1: For flatfish fisheries in the GOA that close because of halibut bycatch, the qualified vessels in each sector (trawl CV and trawl CP) would be limited, in the aggregate, in the month of July to the historic average halibut mortality taken by those vessels in the target flatfish fisheries in the month of July by deep and shallow complex as a Gulf-wide cap.

Option 2: For catcher processors, remove sideboard limits for WYAK and WGOA 3rd season halibut PSC.

Option 3: For the month of July, limit all CVs to the shallow halibut complex fisheries (except for rockfish target fisheries in CGOA, WYAK and WGOA).

Suboption: Limit all CPs to the deep water halibut complex fisheries for the month of July.

In the event that one or more target rockfish fisheries are not open, sideboard restrictions will not apply for those target allocations.

IFQ halibut and sablefish are exempt from sideboard provisions

18.2 CP Specific Sideboard Provisions

CP vessels may decide to opt out of the CGOA cooperative program on an annual basis. These CP vessels may not target POP, Northern rockfish or Pelagic Shelf rockfish in the CGOA in the years they choose to opt out. They may retain these species up to the MRA amount in other fisheries. They will be sideboarded at the sector level in the GOA as described in the general provisions.

The history of CP vessels which opt out will remain with the sector.

CPs that opt out of the rockfish cooperative program will be prohibited, for two weeks following the start of the traditional July rockfish fishery, from entering other GOA fisheries in which they have not previously participated. Participation shall be defined as having been in the target fishery during the first week of July in at least two of the qualifying years. For purposes of qualifying under this provision, history from area 650 (SEO) will be considered the same as history from area 640 (WY). The following weekending dates will be used for determining participation in a target fishery:

1996 – July 6
1997 – July 5
1998 – July 4
1999 – July 10

2000 – July 15
2001 – July 7
2002 – July 6

Opting out is an annual decision. CP vessels which choose to opt out must so notify NMFS. The decision to opt out should not in any way alter the status of their catch history for future rationalization programs.

For the CP sector, the cooperative program fishery participants must either:

- 1) start fishing in the target rockfish fisheries at the same time as the opening of the CGOA rockfish limited access fisheries (in July) and harvest 90% of their CGOA rockfish allocation prior to entering any other GOA non-pollock groundfish fishery, or 2) standdown for two weeks from the opening of the CGOA rockfish limited access fishery prior to participating in any other GOA non-pollock groundfish fishery.

A vessel which has met either standdown requirement can then move into the GOA open access fisheries subject to the sector level limitations in the GOA in the general sideboard provisions.

To the extent permitted by the motion, history may be leased between vessels. Each member of a cooperative that transfers its history to another CP or CV must still refrain from operating in any other GOA groundfish fishery until the earlier of:

- 1) 90% of all of the CGOA rockfish allocation on the stacked vessel is harvested in the CGOA, provided fishing of the allocation began on or after the opening of the limited access fishery
- 2) two weeks from the opening of the limited access fishery prior to participating in any other GOA groundfish fishery.

Members of a cooperative will be subject to all limitations and restrictions described in the general sideboard provisions and CP specific sideboard provisions except that cooperative members shall not be subject to any standdown in the GOA groundfish fisheries, if all vessels in the co-op maintain adequate monitoring plan during all fishing for CGOA rockfish sideboard fisheries.

In addition to the other limitations and restrictions described above, each cooperative will be limited in the aggregate:

- 1) for fisheries that close on TAC in the GOA in the month of July, to the historic average total catch of the cooperative members in the month of July during the qualification years 1996 to 2002. Fisheries that this sideboard provision would apply to include West Yakutat rockfish and WGOA rockfish, and
- 2) for flatfish fisheries in the GOA that close because of halibut bycatch in the month of July, to the historic average halibut mortality taken by cooperative members in the target flatfish fisheries in the month of July by deep and shallow complex.

The limited access fishery starts at the same time as the traditional rockfish target fishery (early July). For vessels that account for less than 5% of the allocated CP history in the Pacific Ocean perch fishery that participate in the limited access rockfish fishery, there are no additional intra-sector sideboards. For vessels that account for greater than or equal to 5 percent of the allocated CP history in the Pacific Ocean fishery that participate in the limited access rockfish fishery and GOA standdowns are in place until 90% of the limited access Pacific Ocean perch quota is achieved.

The Council requests staff analyze the effect of removing the stand-down for CP vessels in the limited access fishery which have 5 percent or more of the allocated CP history in the Pacific Ocean Perch fishery.

18.3 CV Specific Sideboard Provisions

The qualifying vessels in the trawl CV sector cannot participate in the directed yellowfin sole, other flatfish (flathead, etc) or Pacific Ocean perch fisheries in the BSAI in the month of July.


Option 1: The qualifying vessels in the trawl CV sector can participate in the limited access yellowfin sole, other flatfish or Pacific Ocean perch fisheries in the BSAI in the month of July.

Qualifying vessels in the trawl CV sector would be limited, in aggregate, in the month of July, to the historic average catch of those vessels in the BSAI Pacific cod fishery based on the retained catch as a percentage of retained catch in the CV trawl fishery in July during the qualification years 1996 to 2002.

Option 2: The qualifying vessels in the trawl CV sector can participate in the BSAI Pacific cod fishery in the month of July.

AFA non-GOA exempt CVs qualified under this program are subject to the restraints of AFA sideboards and their coop agreement, and not subject to additional sideboards under this program.

Global Seafoods North America, LLC
11100 NE 8th St., Suite 310
Bellevue, WA 98004 USA
Phone: 425-451-0602
Fax: 425-451-1067



Global Seafoods North America

North Pacific Fishery Management Council (NPFMC)
196th Plenary Session — For the Record by Fax to 907-271-2817
February 8-16, 2010 Benson Hotel Portland, Oregon
Public Comment from: Global Seafoods North America, LLC ("GSNA")

**Re C-6 GOA Rockfish Program – (a) Receive 2009 Cooperative Report
& (b) Refining Alternatives for Analysis**

Discontinuing a Catch Shares Program Designed in Restraint of Trade

Dear Secretary Locke, Chair Olson and members of the NPFMC:

GSNA is a U.S. owned company that operates a small processing facility in Kodiak that suffered economic losses due to the ill conceived and, in large part, illegal Rockfish Pilot Program since 2007. We'd like to make it clear that we're not talking here about the CP sector, but rather the shoreside plants.

GOA Rockfish alternatives are being rushed through to serve the interests of particular competitors only. The Secretary and Council should return to Status Quo — i.e. restore competition to the GOA Rockfish and related fisheries. Only then — under a complete stand down — can the 5-years of Demonstration be fully and properly evaluated before proceeding.

The C-6 (a) 2009 Cooperative Reports are once again self-serving products of those who made millions in profits from the RPP to-date, at GSNA's expense, and lack independent review (see more below). This is especially important regarding Bycatch components and data.

GSNA had a clear record of historical deliveries that quantifies our severe losses under the RPP. Yet, under any allocation scheme undertaken by the NP Council — especially given the lack of recusal by competitive members with conflicts of interest — it is obvious that the interests of GSNA and its serious investments in the Rockfish and groundfish processing sector will never be recognized. The Restraint of Trade and fleet boycotting mindset will continue to cost GSNA and its workers severely.

There is clear justification for a stand down and returning to Status Quo, given:

- (1) considerable economic harms to GSNA under deliberate Restraints of Trade, and incoherence with MSA requirements and standards of equitable distributions etc.;
- (2) the widespread desire of the trawl segment's captains and even processing plant workers to return to open competition;
- (3) the lack of value-added production and failure of the monopsony (large processors) to create price increases at the ex-vessel level;

- (4) national concerns over Catch Share systems, and State of Alaska and local reluctance to echo the harms of Crab Rationalization by creating more privatization (quotas) in the GOA;
- (5) original discussions of status quo as an unacceptable alternative focused primarily on the fleet and derby style fisheries as reasons for rationalization, and did not fully consider alternative management tools – in large part because of CAA-2004's highly specified instructions;
- (6) there is inadequate proof that "technical efficiency in processing" has improved overall in light of the absence of significant value-added improvement;
- (7) the lack of Antitrust review despite horizontal pricing and absence of value-added improvement, and for other reasons (e.g. bycatch allocations).

The situation also begs for a complete EIS process, as the original program was legislatively mandated and did not follow normal Council due process, including full analysis and review of harms.

In addition, specific to GSNA, the May 2005 final review draft for Amendment 68, a RIR/RFA, considered these arguments:

- (8) the original arguments regarding alternatives for the RPP alleged that processors (those still in the program) would be "likely to capture most of the increase in rents under this alternative, improving overall processing efficiency" – that is a poor definition of efficiency — given the desire to contain the at-sea derby and entry of new vessels as the primary goal — and more a definition of the bottom line goals of a greedy monopoly.
- (9) GSNA also could have coordinated processing with a larger fleet — and benefit from such higher rents, even sharing them with the fleets to encourage deliveries adding to our efficiencies — but was denied those opportunities by being excluded (and boycotted).

And regarding protecting competition and opportunities in the play of market forces, versus protecting particular competitors, the 2005 RIR/RFA review draft noted:

- (10) Status quo's problems allegedly included: "*Few consumer benefits from this production are realized in the U.S., as most fish is sold in foreign markets. For the shore-based sector, quality of landings and value of processed products suffer decreasing production efficiency. Consumer benefits of these harvests are diminished by the quality and product value.*"

But with RPP principally awarding linked cooperatives to foreign-owned shoreside entities, how was this problem addressed by the RPP; or for that matter, by any of the "overlapping alternatives"?

As stated in GSNA's December public comment, the State of Alaska has not explored the program for violations of state antitrust laws. Likewise, ex-governor Palin stated, "*My administration will make sure we fully understand the impacts of rationalization before it creates more situations like we saw*" in the severe ex-vessel price drop for crab in year one of the BSAI Crab privatization program's implementation.

We have on more than one occasion advised the Council of our concerns not only about anti-competitive Restraints of Trade but Antitrust itself — reminding that the provision in P.L. 109-479 (Jan. 2007) amending the MSA (P.L. 94-265) contained in the BSAI Crab Rationalization program [Redline version page 113 at (j)(6)] regarding the development and implementation of a mandatory information collection and review process to provide for Justice Department and FTC determinations — "whether any

illegal acts of anti-competition, anti-trust, or price collusion have occurred" regarding quota recipients — is germane. Ultimately, the value of Rockfish fisheries could exceed Crab's value.

We believe the ultimate purpose of the RPP and its extension is to enact similar quota shares, and it cannot be denied by the Council that it has been on this one-species after another path since as early as 1992. Inherent in that is the deliberate goal of denying GSNA fair and equitable participation, even if we were to agree to harvesting quota for processors. Our larger competitors would then control more of the supply side powers recently set straight by the legal determination that linked shares are not allowed. The move for harvest shares for processors is both a reaction to disallowed linkages and the mistakes of the Pacific Council, who in 2009 shamelessly granted HS to processors on the West Coast.

It bears mentioning that when GSNA invested over \$9 million in Kodiak processing, it had to annually obtain a State of Alaska processors' permit, among other documents. We invested in the State of Alaska. We created jobs in the State of Alaska. When we competitively outbid others on the ex-vessel level, we enhanced the mandate of the State Constitution which requires that Alaska receive the best benefits from its resources. Yet we have received no support from the State's members on the federal Council for our efforts to end Restraints of Trade, and several Governors and AGs stood by as the illegal linked cooperatives and allocations harmed GSNA, failing at the same time to fight for State rights.

We were never informed by the State of Alaska upon investing in Kodiak that our future would be held hostage by the influence of five (5) large processors who are predominantly controlled by Japanese and Korean fishing conglomerates' global strategies rather than the rule of law in Alaska and under the MSA. One corrupt Alaskan delegate to Congress aided and abetted those firms to our detriment and the Council has failed to overturn that when given the chance to end the RPP altogether. How is it that the Governor and Legislature agree with the votes of each of the State-chosen council members, abrogating Alaska's rights to freedom of competition and from foreign domination in GOA fisheries?

Let's review a few things from the State's "Goals for the Gulf of Alaska Groundfish Fisheries" of November 2006. Among the State's overarching goals for all fisheries were:

- First, optimum sustainable yield *"while minimizing adverse impacts to the marine ecosystem."*
- *"Second, the fishery resources should be managed in a manner that realizes the greatest value from the fishery and provides economic opportunity and community stability for those involved."*
- *"Third, the fishery resources should be managed to bring the greatest share of that value to Alaskans and Alaska."*
- *"increased product utilization that enables value-added production and optimum infrastructure utilization. There should be clear opportunities for those who can enhance the market potential and economic value of the GOA fishery resources... balanced in a manner that does not drive up costs to processors or dissipates their economic returns." And "any successful plan must foster economic stability while allowing for the play of market forces in purchasing and processing product."*

GSNA was involved and had economic opportunities taken from it, and our plant and workers were destabilized, and the greatest value to Alaskans was harmed, as well. There has not been increased product utilization through significant value-added production, and GSNA had an infrastructure that deserved

optimized utilization as much as any other firm, before RPP was implemented. Our economic returns were dissipated, and the RPP monopsony erased the play of market forces so cherished under the competition of capitalism and contrary to the State's goals.

As you know, the RPP extension process recently underwent serious modification when the issue of linked cooperatives was placed under the bright lights of proper legal analysis revealing (as long known) that *"requiring fixed linkages between harvesters and shore-based processors is similar to issuing processing quota, which is not authorized by [the MSA] except for the Crab Rationalization Program."* But the Council cannot simply set aside the actual functioning of the Rockfish regime's illegal mechanism of linkages to date, and the direct harm it did to GSNA of over \$3 million. Nor can it set aside the fact that these inter-functioning networks have no value to the consumer in themselves.

Amplify the concerns about foreign-serving domination by the dramatic shift in Market Power in the RPP by the factor of how the same few large foreign-dominated shoreside plants also have the Pollock and Crab privatization quota regimes, and consider this situation as an unacceptable level of overall acquisition and product mix control. Obviously, Justice Antitrust and FTC officials should review RPP and the current situation and motion before proceeding. A return to Status quo and immediate stand down (better than a delayed expiration) is the logical and correct approach.

The structure of the RPP fish input-market strongly predisposed it to collusion; and created an economic situation where there was still no legitimate basis for an exchange of price information, because *"it was not necessary to enable demand and supply to be equilibrated or for other reasons."* The goal was to stop competitors from GSNA from using capitalist means of rational price competition and from returning a greater percentage of overall industry profits to the producer's level (ex-vessel).

Surely the Council recognizes the nefarious desires of a buying-side cartel, like the GOA Rockfish monopsony it created, and should have taken greater protective measures. The agency and Council must consider the horizontal pricing among the large 5 (and usually foreign controlled) shoreside plants (and their linked cooperatives). It is past time for FTC review on the restraint of trade.

Again, a key reason they conspired to push GSNA from the market was because we raised input prices by competing. In addition, they could not control the upstream marketing of any fish we obtained, or the likelihood of comparable post-processor pricing that together would shed unfavorable light on their horizontal pricing practices at the ex-vessel level and structurally low wholesale pricing for exports to their parent firms in home nations. I.E., there are key reasons why this government-created monopsony would want all other competition eliminated — none of any benefit to the U.S.A., or GSNA.

The Council has not adequately reviewed the lack of value-added processing that was promised as a benefit from the RPP. Maybe it is stymied by co-op affiliates with a lack of objectivity.

The issue is that competitors were protected (not competition itself), when you knowingly and willingly granted this excessive Market Power. The exercise of it on the market's (input) buy side brought about by the linked cooperatives has caused competing buyers to exit the market or to be forced from it by accompanying mechanisms like the low "entry-level" specifications — a cap on opportunities. True to form for those practicing antitrust against competitors such as GSNA, once that power and allocation to a linked monopsony was firmly in place, the predatory bidding process could ensure a driving down of input prices to reap supracompetitive profits for the buyers involved — not to mention the millions gained by sheer misappropriation of GSNA's profits (well over \$3 million under RPP).

Legal review (the Sept. 30, 2009 NOAA GC/Lindeman letter to NPFMC) indicated that the MSA does not authorize placing a limit on the number of shore-based processing sites if the purpose is to allocate shore-based processing privileges with an exception that there might be "*an adequate record demonstrating that an action ... was necessary for legitimate management or conservation objectives.*" A specific example was "*protection of processing sector employment or protection of fishing communities that depend on the fisheries... then there could be a legal basis for such an action.*" This is troubling yet supportive language. Why should GSNA jobs have been given (unjustly shifted) to the monopsonists?

First, the answer focuses on "sites" rather than "number of processors" — especially troubling to GSNA who was already (prior to RPP) an active and significant buyer in the Kodiak rockfish industry.

Second, we know of no legitimate management or conservation objective that would require the exclusion of GSNA and the jobs shift, yet our firm has been repeatedly ignored, dismissed and eliminated.

Third, supporting our right to process that which was taken from us, is that we operate in the same fishing community (Kodiak) within mere blocks of the particular competitors your actions protected to our demise.

Fourth, we believe that the processing sector employment was enhanced and protected by our former level of presence in the rockfish processing segment, and the Council therefore has a legitimate reason to overturn the obviously failed demonstration program. You have never outreached to GSNA's workers in Kodiak to see where they stand on the issues.

In addition, the very idea that "the Congress" intended in CAA-2004 to authorize the allocation of shore-based processor privileges in a FMP need serious review in the Congress itself. It was former Senator Ted Stevens who under his exclusive powers at chair of Appropriations illegitimately circumvented the normal jurisdictional committees and due process, not "the Congress" — who had to vote for a must-pass funding bill.

Senator John McCain held subsequent hearings that outlined that no debate in the Commerce Committee or on the floor of the Senate occurred and stated, "*we, the committee of jurisdiction, must try retroactively to figure out what the problems were that the law purports to address, and how and if the law addresses them.*"

Senator McCain was expressly talking about the abuse of power by Chair Stevens when he also said, on Wednesday February 25, 2004, that:

- ... "*the Appropriations Committee has circumvented our authorizing function, short-circuited the normal legislative process, and advanced, without meaningful debate or deliberation, controversial legislation on issues of significant public interest*" regarding the BSAI crab privatization.
- "*The creation of crab processor quotas is by no means the only troubling major policy change summarily executed by the Appropriations Committee. During the past few years, the Appropriations Committee has circumvented our authorizing function, short-circuited the normal legislative process, and advanced, without meaningful debate or deliberation, controversial legislation on issues of significant public interest.*"
- "*For centuries, fishermen have used market forces to negotiate their dockside prices and foster competition that ultimately benefits consumers. Requiring fishermen to sell their catch to only a handful of processors sets this economic principle on its head, effectively*

removes competition, potentially violates our antitrust laws, and ultimately could hurt both fishermen and consumers. What justifies such a fundamental change, and one that did not go through the normal deliberative process?"

Clearly, absent debate and normal due process, there is no support in the record for arguing Congressional intent was to allocate shoreside processing rights, let alone capriciously or deliberately leave out GSNA's historical participation. It is disingenuous for NOAA GC to characterize the intent of Congress as desirous of having a few multinational corporations, largely foreign-owned and -controlled, possessing the rights to pollock, crab and rockfish fisheries across Alaska's EEZ.

We also noted before the lack options and alternatives for inclusion of trawl vessel Crewmembers, contractually owed between 30% and 40% of the trip settlements in the producer segment. Like GSNA, the crew segment was also disenfranchised, or will soon be, due to the lack of support in the program for their historical participation rights. Likewise, there is no prohibition in the Alternatives against going forward to Catch Shares or privatized quotas, and no prohibition against Processors being gifted Harvester Share quotas in the future. In fact, it is commonly known that these are the eventual goals driving the current package forward without adequate analysis of the 5-year RPP and despite its failures to deliver benefits to the producer segment and given its harms to competition.

The thin-stringed authorization for the Rockfish Demonstration Program in the Consolidated Appropriations Act of 2004 (CAA-2004), §802 was based on a Rider, by Senate Appropriations chair Ted Stevens, whose merits were never debated in committee or on the Senate floor. Its capricious cutoff of eligible years for processing historic participation (best 4 of 5 years, 1996 to 2004 – in contrast with vessels, from 1996-2002) was a deliberate and/or capricious and arbitrary action [*i.e., for the most part contingent solely upon discretion inherent in Section 802; the Council's unreasonable lack of recusals, and unsupported by current facts—*] directly harming GSNA.

This flies in the face of a meaningful application of "recency," a principle the Council also manipulates on a regular basis to fit its membership. There is ample proof available that cutting GSNA was deliberate, and competitors conspired with a known close-family friend and lobbyist of Senator Stevens.

It remains an unanswered question about who crafted Stevens' highly specified and unusual Rider (Sec. 802 included). Congress did not "recognize the draft Problem Statement (let alone subsequently changed versions); it never even saw it or debated it. Why does the Council continue to ignore this abrogation of the law?

Moreover, the purpose of "*providing economic incentives to reduce excessive capital investment*" should not have required the destruction of an *in situ* investment of \$9 million by GSNA that was recoverable by maintaining competition and our role in processing. It was arbitrary and capricious, as defined — in *Natural Resources v. U.S.*, 966 F.2d 1292, 97, (9th Cir.'92) and elsewhere — as: "*Absence of a rational connection between the facts found and the choice made. A clear error of judgment; an action not based upon consideration of relevant factors and so is arbitrary, capricious, an abuse of discretion or otherwise not in accordance with law or if it was taken without observance of procedure required by law. 5 USC. 706(2)(A) (1988).*"

More specifically, it was deliberate, and the Council bears a responsibility to ask the Justice Department to investigate – or at the least to let the RPP expire. [Consider the federal criminal acts of *INTERFERENCE WITH COMMERCE BY EXTORTION INDUCED UNDER COLOR OF OFFICIAL RIGHT* Vio. 18 U.S.C. § 1951(a) and § 2, and other fraud sections of 18 U.S.C.]

There is no hope for reasonable amendments to the ongoing Motion, given the ongoing drive to speed toward a Rockfish Rationalization regime, and who is driving it. The Council is rushing pell-mell with this mingled and disordered Motion, absent a proper analysis of the RPP 5-years of malfunction and an EIS, and truthful Problem Statement.

The existing arrangement (as true for the mingled and inadequate Alternatives still on the extension table) did not only exclude small processors such as GSNA and severely harm our profits, fishermen, customers and workforce. Especially due to its 3-year extension in MSAR 2007, the 'rockfish demonstration' program acted as a *de facto* government subsidy to our competitors — a means of wealth transfer to specific competitors in advance of designing a permanent program to continue restraint of trade. As such, it provided the funds for those included parties to not only lobby the Council and Congress at GSNA's expense, but to sit in a prominent position today while designing these new alternatives, often behind closed doors.

Regarding C-6 (a) Receive 2009 Cooperative Report(s)

GSNA would like to note the following:

- (1) Several Advisory Panel members are co-op presidents with whom the Alaska Groundfish Data Bank, Inc. and the various foreign-owned entities work "in collaboration and coordination," namely:
 - i. Mike Martin, a trawl vessel owner, for the International Seafoods of Alaska Rockfish Cooperative (Korean affiliated, as ISA is owned by Rev. Moon's multinational corporation) and the Western Alaska Fisheries Rockfish Cooperative (Japan affiliated, as WAF is owned by Maruha-Nichiro of Japan).
 - ii. Matt Moir (currently running for an Alaska seat on the NPFMC), Alaska Pacific Seafood's plant manager in Kodiak, for the North Pacific Rockfish Cooperative (Japan affiliated, as APS and WAF Inc. and Westward Seafoods Inc. are owned by Maruha-Nichiro of Japan).
- (2) The RPP program is clearly an economic allocation stepping-stone toward future Quota shares in direct access privilege program fashion, as the co-op reports all state: "*These allocations are distributed to the cooperative members based on the amount of primary rockfish that the cooperative member holds.*"
- (3) While the Problem Statement's emphasis on the race for fish in derby style fisheries, the Co-ops all state that "*The primary RPP objective is to stabilize the residential processing work force by filling times of year with low processing volumes, particularly May and June, and to remove the processing conflict with salmon.*"
- (4) Additionally, they claim that the RPP reduces competition for fish among harvesters thereby promoting safety, high quality seafood production, and increased economic

performance and stability for co-op members, fishermen and processors. The extended,

non-derby style season allowed co-op members to improve harvesting efficiency in the

- target fisheries while reducing incidental bycatch of prohibited species through better fishing practices and efficient fleet monitoring and information distribution.
- (5) The reports lack in reporting halibut bycatch, especially due to the lack of specifying poundage and including a summary table, rather than mere percentages.
 - (6) For Sablefish (highly valued black cod that is retained), lacking a summary, it appears that the five co-ops in AGDB's report combined with the FCA report (metric tons?) indicate a total catch of 850,808 pounds plus 64,081 pounds. Contrast this total of 914,889 pounds with the repeated number of 689,473 pounds in the short tables (to figure percent of sablefish for each coop), and it looks like an excessive catch of 225,436 pounds caught versus allocable pounds. This may represent a 32.7 percent surplus catch in this valuable species. Staff should present better summary tables and verify all statistics in these co-op self-reporting documents.

There should be obvious concerns about such a high level of coordination and collaboration with foreign entities that have such overwhelming control over means of production, product mix, and export goals to minimize U.S. profits and a high incentive to lower ex-vessel prices. The inherent conflicts of interest and foreign affiliations on the AP and Council pose significant problems to GSNA and others. Also, the move toward GOA catch shares, especially given this high level of foreign-control as well as related anticompetitive and predatory trade practice concerns, should be of great unease to the State of Alaska and the federal Public. U.S. owners like GSNA deserve that fish — to benefit the U.S.A.

The emphasis on stabilizing employment in the residential processing workforce remains the greatest insult to GSNA's employee and our costly investments, because the RPP erased all of such benefits for us.

There were "other tools in the toolbox" of bycatch management and available to slow down the race to fish, and the Council has never embraced those in its discussions of alternatives and options.

In conclusion, the RPP has been used as a tool to harm competition, harm fleets and crews, harm plant workers, and establish a 5-year new history that is being used as if a legitimate basis for extension. The Council knows this history, knows it is wrong, knows it violates national standards of fairness and equity, knows it does not reduce bycatch, and knows it serves foreign interests and horizontal price-fixing by continuing a government sponsored set of coercive monopolist that operates as a generally unified monopsony.

Once more, it is time for the Department of Justice and Federal Trade Commission to review this entire program and the similar anti-competitive and trade restraint aspects of other rationalization FMPs which also primarily serve the same non-USA interests.

We urge the Council to table the Rockfish program altogether. This would restore competition and demonstrate once again the benefits of not having seafood Commerce constrained by poor regulations and suffer from the ill designs of large foreign corporate interests over the rights of U.S. citizens.

Sincerely,

Thomas Hennessey - Controller

Attached: GSNA's December 2009 GOA Rockfish letter.

Global Seafoods North America, LLC

11100 NE 8th St, Suite 310
Bellevue, WA 98004 USA
Phone: 425-451-0602
Fax: 425-451-1067



Global Seafoods North America

For the Record of the 196th Plenary Session — February 2010 — C-6(b)

North Pacific Fishery Management Council (NPFMC)
195th Plenary Session — For the Record by Fax to 907-271-2817
December 9-15, 2009 Hilton Hotel Anchorage, Alaska
Public Comment from: Global Seafoods North America, LLC ("GSNA")

Re C2 GOA Rockfish Program – Refining Alternatives for Analysis
A Catch Shares Program Designed in Restraint of Trade

Dear Secretary Locke, Chair Olson and members of the NPFMC:

GSNA is a U.S. owned company that operates a small processing facility in Kodiak, and again we would like the Secretary and Council to discontinue the flawed package of Alternatives and restore competition to the GOA Rockfish and related fisheries.

Designed to bridge the Rockfish Pilot Program's final season (2010) immediately into a permanent two-pie Catch Share regime, the C2 package of alternatives is being rushed through to serve particular interests. This program is not being designed by a proper public process, but rather primarily at the hands of the Alaska Groundfish Data Bank ("AGDB") and trawl interests in conjunction with the larger processors, all of which are wrongfully combined in linked cooperatives — now ruled in violation of law.

This arrangement did not only exclude small processors such as GSNA and severely harm our profits, fishermen, customers and workforce. Especially due to its 3-year extension in MSAR 2007, the 'rockfish demonstration' program acted as a *de facto* government subsidy to our competitors — a means of wealth transfer to specific competitors in advance of designing a permanent program to continue restraint of trade. As such, it provided the funds for those included parties to not only lobby the Council and Congress at GSNA's expense, but to sit in a prominent position today while designing these new alternatives, often behind closed doors.

On several occasions GSNA has provided the Council with testimony to the Restraints of Trade — specifically a fleet boycott "eliminating as much opposition as possible" (AGDB memo January 11, 2000) from the closed class of processors the program was to create. Today, ten years later, the most telling sentence remains, [Lobbyist Gilman's] "thinking is that Nordquest & Icicle [Seafood companies] will not put in pollock processing capacity & that Global cannot succeed unless it can get the boats." In hindsight this is clear evidence that the linked cooperatives were engaged in "collusive and per se illegal conduct" (warned by GSNA attorney James Beaulaurier's letter of February 3, 2000 to the involved parties).

By failing to recuse themselves from votes regarding the RPP agenda, certain members of the Council and Advisory Panel who are employed by our direct competitors have been complicit in the continuation of these harms on behalf of the companies they represent. Our competitors have directly benefited from the RPP and will continue to do so regarding the proposed alternatives — upon which they will cast votes, further exercising serious conflicts of interest.

The State of Alaska has not explored the program for violations of state antitrust laws. This is rather remarkable when one considers that on October 19, 2006, gubernatorial candidate Sarah Palin observed the Crab Rationalization program and its immediate drop in ex-vessel king crab prices approximating \$1 per pound in the first year after implementation. Her news release said, "This is a good example of why I am concerned about rationalization in the Gulf of Alaska. We are seeing here issues and circumstances that need to be better understood before we expand rationalization further."

She continued, "We've created a system where commercial fishermen are forced to sell to a specific processor even though another processor might be offering more money." As the competitive price-setter in the Kodiak region for many years, GSNA's efforts in attracting a fleet and providing higher quality production was raising prices across the docks. GSNA had doubled cod and pollock prices but, absent its participation due to its exclusion by the RPP's restraints of trade, those prices are down. Our competitive, uncontrolled pricing stood as a major reason our competitors had to find political means to lock GSNA out of the processing arena in the RPP and other GOA fisheries.

Palin stated, "My administration will make sure we fully understand the impacts of rationalization before it creates more situations like we saw earlier this week in Dutch Harbor." Now, Sean Parnell is Alaska's governor and in our eyes his administration remains obligated to ensure that this program expires and returns to pre-RPP 'Status Quo' — oddly named "alternative 1" because it is clear that there is no other alternative in the flawed package that would correct the antitrust and restraint of trade problems and restore competition at the bargaining table for a rational (best) price.

An additional example of how devoid are the Alternatives and Options for the Rockfish program's continuation is the absence of an alternative for inclusion of trawl vessel crewmembers, who traditionally received between 30% and 40% of the trip settlements, as their split of ex-vessel prices in the producer segment of the industry. GSNA has noted crewmembers' testimony regarding the application of maritime laws known as "lay share" contract provisions under 46 U.S.C. §10601 and related. All stakeholders should be included and a program designed in accordance with the MSA standards of "fair and equitable" distributions.

GSNA opposes the allocation of any harvesting rights to shoreside processing companies. We believe that the legal opinions of the past three decades by NOAA GC, as well as the provisions of the MSA and other Fisheries Acts, clearly defines participation in a fishery as harvesting at sea, an activity for which shoreside plants have no historical basis to justify such allocations. If this were to occur, it would unfairly negatively impact GSNA, to the specific benefit of our competitors.

At the time the Rockfish Pilot Program was implemented GSNA was long past mere entry-level participation in GOA groundfish processing. Otherwise, we would not have the clear record of deliveries that demonstrates our severe losses under the RPP. To have been relegated to compete in a highly discriminatory and unfair low entry level competition arena, was simply proof positive that the collusion worked against us in restraint of trade — we might add, with the Council's support. It harmed over 150 workers in Kodiak, and our local economy as well.

The Council is rushing to implement a flawed continuation of the Rockfish program to move toward full privatization (Catch Shares), by avoiding a full public process while employing the false fear of returning to status quo (open competition) to justify that rush. You intend to hold vital meetings outside Alaska (e.g. Portland session in February 2010), making it all the more difficult for our company and its workers, Gulf of Alaska crewmen and skippers, and the GOA communities to participate.

The nearly 200 pages of flawed alternatives and often contradictory, yet certainly exclusionary and incomplete materials, are so poor as to be unusable – and a severe burden on managers and the Public to decipher. Mr. Secretary, please try to read it for yourself — at best, it is a “cobbled together” rush job that is an embarrassment to the entire regional fishery Council process.

It does little good at this meeting to pretend that it can be clarified as to a few issues, then roll forward to ongoing privatization in the GOA. Furthermore, sector splits for cod – designed to take up 14 hours at this session – is simply another misallocation technique to move species after species (one way or another) toward privatization that overwhelmingly awards the trawl sector’s current participants. As a processor we know the difference in product quality for fish delivered by the other gear groups and how that superior product serves consumers and the goal of maximizing the net national benefits from these fisheries. It makes no sense to constrain those groups.

We urge the Council to table the Rockfish program altogether. Let it expire, and take the time to gather the full data required to analyze pre- and post-RPP in all its regards. This stand down period would restore competition and demonstrate once again the benefits of not having seafood commerce constrained by poor regulations. It would also save the Council money, especially if Congress moves the national Catch Shares debate back into the authorizing committees. That is the only way competitors such as GSNA will get a fair chance to be heard, and our evidence and experience taken into equitable consideration.

Sincerely,

Thomas Hennessy - Controller

ADDENDUM A:**CENTRAL GULF OF ALASKA ROCKFISH PILOT PROGRAM
UPDATED TO APRIL 7, 2005
PROBLEM STATEMENT**

The present management structure of the CGOA rockfish fishery continues to exacerbate the race for fish with:

- Increased catching and processing capacity entering the fishery,
- Reduced economic viability of the historical harvesters (both catcher vessels and catcher processors) and processors,
- Decreased safety.
- Economic instability of the residential processor labor force,
- Reduced product value and utilization,
- Jeopardy to historical groundfish community stability.
- Limited ability to adapt to Magnuson-Stevens Act (MSA) requirements to minimize bycatch and protect habitat.

While the Council is formulating GOA comprehensive rationalization to address similar problems in other fisheries, a short-term solution is needed to stabilize the community of Kodiak. Kodiak has experienced multiple processing plant closures, its residential work force is at risk due to shorter and shorter processing seasons and the community fish tax revenues continue to decrease as fish prices and port landings decrease. Congress recognized these problems and directed the Secretary in consultation with the Council, to implement a pilot rockfish program with the following legislation:

SEC. 802. GULF OF ALASKA ROCKFISH DEMONSTRATION PROGRAM. The Secretary of Commerce, in consultation with the North Pacific Fishery Management Council, shall establish a pilot program that recognizes the historic participation of fishing vessels (1996 to 2002, best 5 of 7 years) and historic participation of fish processors (1996 to 2000, best 4 of 5 years) for pacific ocean perch, northern rockfish, and pelagic shelf rockfish harvested in Central Gulf of Alaska. Such a pilot program shall (1) provide for a set-aside of up to 5 percent for the total allowable catch of such fisheries for catcher vessels not eligible to participate in the pilot program, which shall be delivered to shore-based fish processors not eligible to participate in the pilot program; (2) establish catch limits for non-rockfish species and non-target rockfish species currently harvested with pacific ocean perch, northern rockfish, and pelagic shelf rockfish, which shall be based on historical harvesting of such bycatch species. The pilot program will sunset when a Gulf of Alaska Groundfish comprehensive rationalization plan is authorized by the Council and implemented by the Secretary, or 2 years from date of implementation, whichever is earlier.

The fishing fleets have had little experience with cooperative fishery management and needs to begin the educational process. For the fishery to be rationalized all aspects of the economic portfolio of the fishery needs to be recognized. To stabilize the fishery economy all the historical players – harvesters (both catcher vessels and catcher processors) and processors need to be recognized in a meaningful way. The demonstration program is designed as a short-term program for immediate economic relief until comprehensive GOA rationalization can be implemented.

###

PUBLIC TESTIMONY SIGN-UP SHEET

Agenda Item: C-6(B) Rockfish Program Analysis

NAME (PLEASE PRINT)	TESTIFYING ON BEHALF OF:
1 Kimberlee Cochran	Kurt Cochran - fisherman
2 Bob Krueger	Alaska Whitefish Trawlers Assn.
3 Mark Chandler	F/V Topuz
4 BRENT PAINK	UCB
5 Margaret + George Hall	F/V: Progress + Vanguard
6 Susan Robinson	Fishermen's Front
7 Heather McLarty	Island Seafoods
8 Don Ashley	F/V Gold Rush
9 Lori Swanson	Groundfish Forum
10 Julie Benney	AGDB
11	
12	
13	
14	
15	
16	
17	
18	
19	
20	
21	
22	
23	
24	
25	

NOTE to persons providing oral or written testimony to the Council: Section 307(1)(I) of the Magnuson-Stevens Fishery Conservation and Management Act prohibits any person "to knowingly and willfully submit to a Council, the Secretary, or the Governor of a State false information (including, but not limited to, false information regarding the capacity and extent to which a United State fish processor, on an annual basis, will process a portion of the optimum yield of a fishery that will be harvested by fishing vessels of the United States) regarding any matter that the Council, Secretary, or Governor is considering in the course of carrying out this Act.