

MEMORANDUM

TO: Council, SSC and AP Members

FROM: Chris Oliver *CO*
Executive Director

DATE: February 1, 2005

SUBJECT: Central Gulf of Alaska Rockfish Demonstration Program

ESTIMATED TIME 2 HOURS <i>3-4 hrs.</i>
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ACTION REQUIRED

Finalize alternatives and elements for analysis.

BACKGROUND

Section 802 of Title VIII of the Consolidated Appropriations Act of 2004 directed the Secretary of Commerce to develop a rockfish demonstration program for the Central Gulf of Alaska rockfish fisheries in consultation with the Council. At its April and June 2004 meetings, the Council responded to the directive of the legislation, public testimony, and an industry stakeholder proposal, by adopting for analysis a set of alternatives and elements that could be used to select an alternative to establish the demonstration program. At its October 2004 and December 2004 meetings, the Council further defined the alternatives including options for sideboards of pilot program participants. A copy of the current alternatives, elements, and options is Appendix I to (Item C-3(a)).

To further facilitate the analysis of alternatives, staff has prepared three discussion papers for consideration by the Council at this meeting (Items C-3(a), (b), (c)). The first discussion paper provides analyses of options within each alternative of the main demonstration program. The second discussion paper concerns the undecided options in the entry level fishery to which 5 percent of the target rockfish species would be allocated. The third discussion paper provides observer estimates of the harvest of secondary species when targeting allocated rockfish and estimates of harvests of shortraker and rougheye in the Pacific cod and sablefish longline fisheries, as requested by the Council at its December 2004 meeting. Staff is also preparing a paper that will show the estimated catch of shortraker and rougheye in the IPHC halibut survey in the Central Gulf of Alaska. That paper will be distributed at the meeting, if available. Staff is requesting that the Council choose specific provisions that would apply to the applicable alternatives. Selection of specific provisions, instead of leaving open decision points for future resolution, would substantially streamline analysis of alternatives. Any decisions points that Council chooses to leave unresolved could be resolved at a later meeting, including at the time of final action. The analyses provided in the discussion paper should also provide some preliminary information concerning the alternatives developed by the Council.

**Discussion/Decision Notes: NPFMC Central Gulf of Alaska
Rockfish Pilot Program
February 2005**

This discussion memorandum presents a series of option choices associated with the Central Gulf of Alaska Rockfish Pilot Program to the Council. If the Council chooses to make decisions on any or all of the items presented below, this will help to simplify and focus the ongoing analyses of this amendment currently being addressed by the Council staff. The following section includes nine issues or options related to the CGOA rockfish pilot program. The issues and options identified are included are from the Council motion on the Rockfish Pilot Program, updated to December 11, 2004, which is attached to this document as Appendix 1. Where utilized, the language from the Council motion is placed in italics.

Council Motion - 3.3.1.2 Secondary Species

Secondary species allocations will be based on:

Option 1) Catch by sector of the secondary species caught while targeting rockfish divided by the catch of secondary species by all sectors over the qualifying period. The calculated percentage is multiplied by the secondary species quota for that fishery year and allocated to each sector in the pilot program (analyze total and retained catch) .

Option 2) Percentage of catch by sector of the secondary species within the rockfish target fisheries divided by the total number of years in the qualifying period. The calculated percentage is multiplied by the secondary species quota for that fishery year and allocated to each sector in the pilot program (analyze total and retained catch).

Discussion:

The Council must resolve two issues in selecting a provision for the allocation of secondary species. First, the Council must select between Option 1 (allocate based on the total percent of a secondary species caught by the sector during the qualifying years) and Option 2 (allocate based on the average annual percentage of the secondary species caught by the sector during the qualifying years). In addition, the Council must also decide whether allocations should be calculated using total or retained harvests. At the Council's December 2004 meeting, staff presented the Council estimated allocations under both options using retained harvests by each sector to determine the sector's historic catch (the numerators) and using total harvests (retained catch and discards) to determine the total catch of the species (the denominators).

At that time, the Council requested staff to present additional analysis including estimates of the allocations using retained catch for both the numerator and denominator and estimates of the allocations using total catch for both the numerator and the denominator. Those estimates, and the original estimates presented at the December 2004 meeting are shown below.

In assessing the different methods of estimating allocations, the Council should bear in mind a few factors concerning the estimates. First, any estimation of total catch of a species for catcher vessels targeting rockfish is likely to be unreliable because no reliable source exists for the estimate of at sea discards on a vessel basis during the qualifying years. Fish tickets often contain limited information concerning at sea discards. Total catch (including at sea discards) can be estimated for rockfish targeting catcher vessels based on blend data. In the blend data, targets are identified weekly by processor, so any estimates of total catch (including discards) based on the blend data is likely to be based, in part, on data from vessels that did not target rockfish, but that made deliveries to a rockfish targeting processor. In addition, some vessels that targeted rockfish may have made deliveries to processors that did not have rockfish as a target. These vessels' incidental catch will be omitted from the estimation of total catch. As a result, any estimate of discards for allocation purposes will contain bias of an unknown amount.

In general, the Council should consider the following factors in assessing the equity of the different allocation methods. Using retained catch for the numerator would exclude a sector's at sea discards from its allocation. If the Council perceives that at sea discard of secondary species should not be condoned or rewarded, retained catch might be the preferred numerator. On the other hand, using total catch for the numerator, a sector would receive an allocation based in part upon its discards. Under current management, participants in the rockfish fisheries are generally permitted to retain each of the secondary species up to a maximum retainable allowance (MRA). Discards that are required because of exceeding the MRA, in general, could be considered to be within the control of the participant. Using total catch in the numerator, however, might be preferred if participants are required to discard at sea by regulations, if those regulatory discards are not triggered by the acts of rockfish participants themselves. This might be the case if a species is on PSC status, under which participants would be required to discard catch of that species regardless of whether an MRA is exceeded. In a few of the qualifying years, secondary species were on PSC status for at least part of the rockfish season. In 1996, Pacific cod was on PSC status for the entire rockfish season and sablefish was on PSC status for the last five days of the northern rockfish and pelagic shelf rockfish seasons. In the most recent years, sablefish has been on PSC status for a portion of the northern rockfish and pelagic shelf rockfish fisheries (2 days in 2000, 7 days in the first season and 20 days of an October reopening in 2001, and 10 days in 2002). In 2001, shortraker/rougheye were also on PSC status for 8 days of the initial season and all 20 days of the October reopening. The extent to which the Council believes that these discards should be credited in determining allocations could affect whether it should choose to use total catch or retained catch in the numerator.

As noted above, the Council must not only decide whether to use retained catch or total catch in the numerator and denominator for determine individuals' shares of history, the Council must also decide whether the allocation will be based on 1) the sector's percent of catch during the qualifying years or 2) the sector's annual average percentage of catch during the qualifying years. These options are calculated in the following manner:

Option 1 calculation

The options shown above specify how the sector allocations for secondary species will be made under the program. The following equations define the method used for making those allocations.

$$\text{Option 1 sector allocation} = \left(\frac{\text{sum of secondary species by sector}^1}{\text{CGOA harvest of secondary species}^2} \right)$$

where,

(¹) the numerator in the equation is the sum the secondary species for each sector (CVs and CPs) during the period from 1996 through 2002 caught while targeting rockfish within the CGOA.

(²) the denominator in the equation is the entire harvest of the secondary species from the CGOA during the period 1996-2002 by all sectors.

$$\text{Option 2 sector allocation} = \left(\frac{\sum_{1996}^{2002} \text{annual percent harvest}}{\text{number of years in the 1996 - 2002 period}} \right)$$

where,

(¹) the numerator is the sum of the annual average percentage harvest of the secondary species for the period 1996-2002 taken while targeting rockfish within the CGOA.

(²) the denominator in the equation is the total number of years in the target period (7)

Using either method of calculation, the annual allocation to each sector would be determined by multiplying the resulting percentage by the TAC of the species. In selecting a preferred option, the Council should consider that the allocations of secondary species are hard caps under the current motion. So, participants that have fully harvested their allocation of a secondary species would be prohibited from catching any of their remaining allocation. The strict consequence of harvesting the allocation suggests that the allocation should be set in a manner that is not overly constraining.

As background, Table 1 shows the retained incidental catch of the four secondary species (Pacific cod, sablefish, shortraker/rougheye, and thornyhead) by vessels targeting rockfish in the CGOA and the applicable MRA for comparison.

Tables 2A, 2B and 2C show the allocations of the various secondary species using retained catch in the numerator and denominator, retained catch in the numerator and total catch in the denominator, and retained catch in the numerator and total catch in the denominator respectively. Each of these tables shows estimates using the two different methods, Option 1 and Option 2 described above.

Table 2A shows the estimated allocations of the secondary species using retained catch over total catch for the target period 1996-2002. The columns labeled 'Option 1 Allocation Proportion' and "Option 2 Allocation Proportion" show the respective allocation proportions that would result from the different calculation methods. The resulting percentages could be used to make the secondary species sector allocations on an annual basis. As an example, the column labeled 'Option 1 Allocation (mt)' and 'Option 2 Allocation (mt)' show the result of multiplying the respective allocation percentages by the 2005 TAC for Pacific cod, sablefish, shortraker/rougheye rockfish and thornyhead rockfish. For comparison purposes, the tables also include a column showing the average retained harvest of the applicable secondary species during the qualifying years by permanent LLP holders in the sector.

Table 2B shows the secondary allocations that would result from application of Option 1 and Option 2 methods of calculation, utilizing retained harvests over retained harvest in the calculation. As discussed previously, this calculation excludes any effect of secondary species discards in both the numerator and denominator in calculating the allocation proportion for

Pacific cod, sablefish, shortraker/rougheye rockfish and thornyhead rockfish. As might be expected, this calculation method results in higher allocation proportions than those presented in Table 2A (retained harvest over total harvest).

Table 2C shows the secondary allocations that would result from application of Option 1 and Option 2 methods of calculation, utilizing total harvests over total harvests. As noted previously, this method could be favored if the Council wished to utilize all removals of the respective species from the CGOA to allocate secondary species between the sectors. The estimates of discards, however, are not completely reliable.

In reviewing the tables a difference in the average catch and the estimated allocations can be noted. These differences result from two factors. In some years, the TAC of the secondary species (particularly shortraker/rougheye and thornyheads) was not fully harvested. In addition, fluctuation of TACs across the qualifying years and 2004 (the base year for the sample allocations) results in some difference between the estimated allocation using the 2004 basis and the average harvest by a sector over the qualifying years. To assist the Council, Table 3 shows the total allowable catch, total catch, the difference between them, and the percent of total allowable catch harvested for the years from 1996 to 2002.

In addition to the information presented here, the Council should also consider that estimated allocations for shortraker/rougheye may need to be revised in the analysis, regardless of the method identified for allocating those species because of the recent decision to manage those two species independently.

Lastly, staff will attempt to provide additional information concerning incidental catch of secondary species using observer data as requested by the Council for consideration at this meeting.

Table 1: Retained Catch by Vessels Targeting CGOA Rockfish 1996-2002

Sector	LLP license status	Target rockfish			Pacific cod			Sablefish		
		Number of vessels	Metric tons	Percent of total	Number of vessels	Metric tons	Percent of target rockfish	Number of vessels	Metric tons	Percent of target rockfish
Retainable percentage				-			20			7
Trawl catcher vessel	permanent	49	38,148.3	81.7	47	4,293.9	11.3	49	2,455.6	6.4
	interim	2	*	*	2	*	*	2	*	*
	none	1	*	*	1	*	*	1	*	*
Trawl catcher processor	permanent	17	35,501.0	84.8	15	510.2	1.4	17	1,679.2	4.7
	interim	2	*	*	0	0.0	*	2	*	*
	none	5	5,102.9	87.0	5	*	*	5	237.2	4.6
Total		76	79,481.7	83.3	70	5,012.9	6.3	76	4,427.6	5.6

Sector	LLP license status	Shortraker/rougheye			Thornyheads			Other		
		Number of vessels	Metric tons	Percent of target rockfish	Number of vessels	Metric tons	Percent of target rockfish	Number of vessels	Metric tons	Percent of target rockfish
Retainable percentage				15**			15**			-
Trawl catcher vessel	permanent	46	231.9	0.6	49	290.6	0.8	48	1,244.5	3.3
	interim	2	*	*	2	*	*	2	*	*
	none	1	*	*	1	*	*	1	*	*
Trawl catcher processor	permanent	16	2,295.4	6.5	17	584.9	1.6	17	1,288.5	3.6
	interim	1	*	*	2	*	*	2	*	*
	none	5	278.0	5.4	5	53.0	1.0	5	81.5	1.6
Total		71	2,807.4	3.5	76	943.2	1.2	75	2,692.7	3.4

* Withheld for confidentiality

** Retainable percentage is for combined retention of Shortraker/rougheye and thornyheads.

Source:NPFMC Rockfish Database 2004, Version 1

Table 2A - Rockfish Pilot Program: Secondary Species Allocation by Sector - Retained over Total retained harvest by species in targeted rockfish fishery divided by total CGOA harvest

Secondary Species/Sector (1)	2005 TAC (mt)	Option 1 Allocation Proportion	Option 1 Allocation (mt)	Option 2 Allocation Proportion	Option 2 Allocation (mt)	Average Harvest 1996- 2002
Pacific cod CV	25,086	1.64%	411.7	2.00%	500.8	613.4
Pacific cod CP	25,086	0.19%	48.9	0.20%	49.3	72.9
Sablefish CV	7,250	5.77%	418.4	5.74%	416.2	350.8
Sablefish CP	7,250	3.95%	286.1	3.94%	285.6	239.9
Shortraker/Rougheye CV (2)	881	3.97%	35.0	3.87%	34.1	33.1
Shortraker/Rougheye CP (2)	881	39.32%	346.4	39.42%	347.3	327.9
Thornyhead CV (3)	1,010	7.21%	72.8	7.26%	73.3	41.5
Thornyhead CP (3)	1,010	14.50%	146.5	14.86%	150.1	83.6

Source: The numerator is based upon the NPFMC Rockfish Database 2004, Version 1 and includes retained harvest only. The denominator is based upon 1996-2002 NMFS blend data and includes total catch, including discards.

Table 2B - Rockfish Pilot Program: Secondary Species Allocation by Sector - Retained over Retained retained harvest by species in targeted rockfish fishery divided by retained CGOA harvest

Secondary Species/Sector (1)	2005 TAC (mt)	Option 1 Allocation Proportion	Option 1 Allocation (mt)	Option 2 Allocation Proportion	Option 2 Allocation (mt)	Average Harvest 1996- 2002
Pacific cod CV	25,086	1.70%	426.2	2.09%	525.2	613.4
Pacific cod CP	25,086	0.20%	50.6	0.20%	50.9	72.9
Sablefish CV	7,250	6.30%	456.9	6.31%	457.5	350.8
Sablefish CP	7,250	4.31%	312.4	4.30%	311.9	239.9
Shortraker/Rougheye CV (2)	881	6.11%	53.8	5.91%	52.1	33.1
Shortraker/Rougheye CP (2)	881	60.47%	532.8	59.87%	527.4	327.9
Thornyhead CV	1,010	11.00%	111.1	10.85%	109.6	41.5
Thornyhead CP	1,010	22.14%	223.6	22.94%	231.7	83.6

Source: 1996-2002 NMFS WPR data for CP vessel harvests. 1996-2002 ADF&G Fish Tickets for CV vessel harvests.

Table 2C - Rockfish Pilot Program: Secondary Species Allocation by Sector - Total over Total total harvest (retained plus discards) by species in targeted rockfish fishery divided by total CGOA harvest

Secondary Species/Sector (1)	2005 TAC (mt)	Option 1 Allocation Proportion	Option 1 Allocation (mt)	Option 2 Allocation Proportion	Option 2 Allocation (mt)	Average Harvest 1996- 2002
Pacific cod CV	25,086	2.13%	534.7	2.54%	636.1	613.4
Pacific cod CP	25,086	0.40%	99.8	0.38%	95.1	72.9
Sablefish CV	7,250	7.71%	558.9	7.70%	558.4	350.8
Sablefish CP	7,250	7.19%	521.6	7.15%	518.6	239.9
Shortraker/Rougheye CV (2)	881	4.73%	41.7	4.87%	42.9	33.1
Shortraker/Rougheye CP (2)	881	57.25%	504.4	56.47%	497.5	327.9
Thornyhead CV	1,010	11.49%	116.1	11.65%	117.7	41.5
Thornyhead CP	1,010	23.73%	239.7	24.04%	242.8	83.6

Source: 1996-2002 NMFS blend data.

Footnotes to Table 2A

- (1) The harvests shown include only permanent LLP license holders.
- (2) The 2005 CGOA TACs for shortraker and roughey rockfish are 324 mt. and 557 mt., respectively.
- (3) Thornyhead rockfish harvests are post 1997.
- (4) The average harvest/year for the 1996-2002 period is from Table 2 and includes retained harvest by vessels with permanent LLP license status.

Footnotes to Table 2B

- (1) The average harvest/year for the 1996-2002 period includes retained harvest by vessels with permanent LLP license status.
- (2) The 2005 CGOA TACs for shortraker and roughey rockfish are 324 mt. and 557 mt., respectively.

Footnotes to Table 2C

- (1) The harvests shown include all historical participants, since these are included in the NMFS blend database.
- (2) The 2005 CGOA TACs for shortraker and roughey rockfish are 324 mt. and 557 mt., respectively
- (3) The average harvest/year for the 1996-2002 period is from Table 2 and includes retained harvest by vessels with permanent LLP license status.

Table 3. Total Allowable Catch and Total Catch in Central Gulf fisheries of secondary species (1996-2002)

		Pacific cod	Sablefish (trawl)	Shortraker/ roughey	Thornyheads
1996	TAC	42,900	1,380	1,210	--
	Total catch	47,564	1,650	941	--
	Difference	-4,664	-270	269	--
	Percent of TAC harvested	110.9	119.6	77.8	--
1997	TAC	43,690	1,282	970	--
	Total catch	43,677	1,302	931	--
	Difference	13	-20	39	--
	Percent of TAC harvested	100.0	101.6	96.0	--
1998	TAC	41,720	1,264	970	710
	Total catch	41,436	1,245	868	716
	Difference	284	19	102	-6
	Percent of TAC harvested	99.3	98.5	89.5	100.8
1999	TAC	42,935	1,118	970	700
	Total catch	44,547	1,316	580	583
	Difference	-1,612	-198	390	117
	Percent of TAC harvested	103.8	117.7	59.8	83.3
2000	TAC	34,080	1,146	930	990
	Total catch	32,185	1,386	887	551
	Difference	1,895	-240	43	439
	Percent of TAC harvested	94.4	120.9	95.4	55.7
2001	TAC	30,250	1,082	930	970
	Total catch	27,291	1,084	998	523
	Difference	2,959	-2	-68	447
	Percent of TAC harvested	90.2	100.2	107.3	53.9
2002	TAC	24,790	1,086	840	840
	Total catch	25,058	1,569	631	505
	Difference	-268	-483	209	335
	Percent of TAC harvested	101.1	144.5	75.1	60.1
Total	TAC	260,365	8,358	6,820	4,210
	Total catch	261,758	9,552	5,836	2,878
	Difference	-1,393	-1,194	984	1,332
	Percent of TAC harvested	100.5	114.3	85.6	68.4

Actions requested: The Council could consider either of the two following actions:

- 1) Selecting a preferred method for determining sector allocations of secondary species from Options 1 and 2.
- 2) Specify whether retained catch or total catch is to be used in the numerator and denominator.

Council Motion - 3.3.1.2 Secondary Species

Options for Pacific cod

Option 1. Allocations of Pacific cod as a secondary species will be at the following rate of harvest history.

- a. 100 percent
- b. 90 percent
- c. 80 percent
- d. 70 percent

Option 2. For the offshore sector, P. cod history will be managed by MRA using a range of 1.4 -7%.

Discussion:

Options 1 and 2 above offer a choice for determining the sector allocations for the Pacific cod in the CGOA directed rockfish fishery. In recent years, Pacific cod harvests in the rockfish fisheries have been limited by MRA. The current rule provides an allowable proportion of 20 percent in the directed fisheries for Pacific Ocean Perch, Northern Rockfish and Pelagic rockfish.

Option 1 could be selected in conjunction with a provision for the allocation of secondary species above. Under Option 1, the Council could choose to reduce the allocation of Pacific cod from 100 percent of the historical incidental catch during the qualifying period to as low as 70 percent of the historical incidental catch. Reductions from 100 percent may be favored by other fleets that target Pacific cod that are concerned about potential impacts to their fisheries from the Pacific cod allocation to the rockfish fishery.

As noted above, Table 1 shows the incidental catch of Pacific cod in the CGOA rockfish fisheries from 1996 to 2002. The table shows that incidental catch during this period of approximately 11.3 percent, less than the 20 percent MRA. Tables 2A, 2B, and 2C show the allocation of Pacific cod to the different sectors using the different methods proposed, assuming 100 percent of historic incidental catch is allocated.

The Council could elect to reduce the allocations of Pacific cod to the sectors by allocating only a percentage of the historic catch under suboptions b, c, or d. The most direct impact of the reduction in the allocation of Pacific cod to the sectors under this option would be the proportional reduction in revenues from the reduction in the allocation.

Option 2 specifies continuation of MRA management of Pacific cod for catcher processors at a substantially lower rate than the current permitted rate of 20 percent. As shown in Table 1 above, for the period 1996 through 2002, the incidental catch rate for Pacific cod to the catcher processors in the CGOA rockfish fishery was 1.4 percent, the lowest proposed rate in Option 2. The highest rate under consideration is 7 percent, which is slightly greater than the fleet rate of

incidental catch for both sectors combined. In setting the rate, the Council should consider that setting the MRA low could not only limit topping off but also result in increased discards of Pacific cod that is caught incidentally or by boats that intentionally harvest Pacific cod to the MRA. On the other hand, since a vessel that reaches the MRA does not need to quit fishing (but only to discard) a reduced MRA might not constrain fishing for other species by the sector, as would the allocation of secondary species quota proposed in other options.

As additional background, Table 4 shows the history of Pacific cod harvests by permanent LLP holders targeting CGOA rockfish. For the years 1996 through 2002, the Pacific cod harvest by the rockfish vessels has increased as a percent of total harvest of Pacific cod by all gear types. In 1996, the Pacific cod was on PSC status during the rockfish fishery. As a result, harvest by permanent catcher vessel LLP holders was very small, 2.6 metric tons, which was less than 0.1 percent of the total harvest by all gear types in the CGOA.

Table 4: Pacific Cod Harvests by Permanent LLP Holders Targeting CGOA Rockfish (1996-2002).

Year	Sector	Retained catch (mt)	Percent of total catch of Pacific cod	Total catch of target rockfish	Percent of target rockfish (mt)
1996	Catcher vessel	2.6	0.0	3,406.0	0.1
	Catcher processor	3.6	0.0	4,467.2*	0.1
1997	Catcher vessel	112.1	0.3	3,216.0	3.5
	Catcher processor	41.4	0.1	5,497.3	0.8
1998	Catcher vessel	378.2	0.9	4,727.1	8.0
	Catcher processor	92.7	0.2	4,902.3*	1.9
1999	Catcher vessel	684.3	1.5	5,605.7	12.2
	Catcher processor	213.5	0.5	6,148.2	3.5
2000	Catcher vessel	1,014.0	3.2	7,933.9*	12.8
	Catcher processor	57.8	0.2	4,067.9	1.4
2001	Catcher vessel	856.6	3.1	6,124.5*	14.0
	Catcher processor	44.9	0.2	6,140.9	0.7
2002	Catcher vessel	1,245.9	5.0	7,788.0*	16.0
	Catcher processor	56.4	0.2	4,649.1	1.2
All years	Catcher vessel	4,293.9	1.6	38,801.4*	11.1
	Catcher processor	510.2	0.2	35,577.4*	1.4
	Both sectors	5,012.9	1.9	74,378.8*	6.7

Source: NPFMC Rockfish Database 2004, Version 1 and NMFS Catch Reports

* Includes catch from interim license holders or participants without licenses to protect confidentiality.

Action requested: Consider choosing between Option 1 and Option 2 in Alternative 3.3.1.2 Secondary Species, and if appropriate selecting a preferred choice among the 'ratchet down' incidental catch allocations listed under Option 1.

Council Motion - Alternative 4.2.1 Allocation from Sector to Vessel

Persons who have purchased an LLP, with a CGOA endorsement to remain in the fishery may obtain a distribution of harvest share on the history of either the vessel on which the LLP is based or on which the LLP is used, not both. License transfers for purposes of combining LLPs must have occurred by April 2, 2004.

Discussion:

This provision is intended to accommodate persons who have legally fished in the rockfish fisheries (but did not qualify for a CGOA LLP license) and subsequently purchased a license to remain in the CGOA groundfish fisheries. The rationale for the provision is that these persons may have legally developed substantial history and purchased a license to remain in the fishery, but would not receive credit under the program for any history developed prior to the license purchase. Under the provision, a person would have the choice of using one of two histories for harvests made prior to the license transfer. Either the history associated with the license or the history of the vessel on which the license was ultimately used could be credited for the time prior to the license transfer.

Analysis of this provision is limited because LLP license holders were not required to designate the vessel on which a license was used prior to 2000. Consequently, any calculation of the amount of history that is affected by this provision would be a bracketed estimate. Eight vessels –

seven catcher vessels and one catcher processor – with targeted rockfish landings currently are designated for use of transferred LLP licenses with CGOA endorsement, and therefore, may qualify for this provision. The amount of additional history that could be valued under the program, however, cannot be determined with any certainty. If Council believes that estimates of the amount of history could be helpful in considering this provision, staff could produce some estimates of the amount of history that may be at issue.

Action requested: Decide whether to allow a person using a transferred LLP license may choose to receive an allocation based on the entire history of the vessel on which the license is used.

Council Motion - Alternative 4.6 - Allocations of secondary species

Option 1) Must be fished in conjunction with the primary species allocations.

(Compliance monitored at offload)

Option 2) May be fished independently of the primary species allocations.

Discussion:

The Council has included two options for usage of allocations of secondary species (Pacific cod, sablefish, shortraker/rougheye rockfish and thornyhead rockfish). Under both options, the overall limit for secondary species harvests will be set at the same hard cap according to the option selected under Section 3.3.1.2. The differences between the two options in Section 4.6 relate to the fishing of secondary species allocations.

The two options are:

Option 1 states that secondary species must be fished in conjunction with the primary species allocations. This provision could be intended to maintain current practices of the harvest of secondary species in the rockfish fishery. Currently, the harvest of secondary species is permitted under MRA only in conjunction with the harvest of targeted rockfish. Despite this intention, the change in fishing practices in a rationalized fishery will require the Council to further develop its intent with respect to this provision, in the event it selects Option 1. Fishing sablefish (or Pacific cod) in conjunction with targeted rockfish could mean that the allowed level of harvest of secondary species could be limited only by the secondary species cap. Under this approach a vessel harvesting any of a portion of a target rockfish would be permitted to fish secondary species subject only to the limitation of the secondary species allocation. Alternatively, the provision could be interpreted as limiting the harvest of secondary species to a specific portion of a landing, similar to the current MRA limitations. Further definition will be necessary, if the Council intends to adopt this provision.

Option 2 states the secondary species allocations may be fished independently of the primary species allocations. Under this option, fishermen would be allowed to harvest their allocations of secondary species either during a target rockfish trip or on a trip devoted solely to the harvest of secondary species. Alternatively, and possibly more likely, fishermen could choose to focus first upon their allocations of target rockfish (retaining any incidentally caught secondary species as required) and fish the remaining portion of their secondary species allocations once the rockfish allocation has been taken. To comply with the MRA under current management, harvests of secondary species are at times added to target rockfish trips by shifting fishing effort from the areas of with high rockfish catch rates and relatively low catch rates of secondary species to areas with relatively higher catch rates of secondary species. Option 2 may introduce efficiencies in the harvest of secondary species allocations by reducing the number of times that fishermen must

shift their efforts between areas of low secondary species catch rates to areas of relatively higher secondary species catch rates (as compared to current fishing practices or practices potentially required under Option 1).

In addition to efficiency gains in harvesting activity, Option 2 may also provide managers with the opportunity to better focus its monitoring of the fishery with observers. Directed fishing for rockfish has relatively low incidental catch of other species of interest, particularly halibut. NOAA Fisheries is currently exploring the use of video monitoring (in place of observers) on some declared directed rockfish trips to ensure verification of catch.¹ Full retention of all species could be required on these trips (including prohibited species such as halibut).² A no discard rule might be verifiable with video monitoring, allowing complete verification of all catch on landing. Increased observer coverage could then be focused on the trips that include substantial harvest of secondary species, where bycatch is a greater issue of concern than on trips that are focused exclusively on the harvest of allocations of target rockfish. This method of observer coverage would require prior approval by the International Pacific Halibut Commission since incidental catch of halibut on directed rockfish trips would be retained. This approach to observer utilization in the rockfish pilot program could potentially result in reduced observer costs, while enhancing observer coverage in the fishing activities with greater risk of relatively higher incidental catch rates of species of interest.

An added advantage of this approach is that experimentation with novel observer and monitoring practices in the rockfish pilot program could provide evidence of the utility of this approach to the Council and NOAA Fisheries in the development of methods for implementing efficiencies in observer coverage and monitoring on a larger scale in the forthcoming management action, such as the comprehensive Gulf groundfish rationalization program. The development of observer and monitoring alternatives on a small scale could reduce the potential risks and provide useful lessons concerning their application in broader management settings.

Action requested: Consider choosing between Option 1 and Option 2 in Alternative 4.6. If the Council selects Option 1, additional clarification of Council intent concerning its implementation could be provided.

Council Motion - Alternative 5.3 - CP Sector

Allocations may be transferred between co-ops at of at least:

Option 1: two LLP's

Option 2: three LLP's

Discussion:

For the catcher processor sector, annual allocations would be tradable between cooperatives that meet a minimum size threshold. The two options shown above could establish a threshold of 2 or 3 LLP holders. The numbers of participants in the CP sector in the different fisheries are shown

¹ Observer coverage would still be required on some target rockfish trips for the collection of scientific data and monitoring of the fishery.

² If halibut retention is permitted, PSC usage would need to be modified to reflect increase halibut mortality of retained fish. This additional usage may be acceptable to participants interested in reducing observer costs.

in Table 5 for the different license eligibility options. Depending on whether interim license holders receive an allocation, between 13 and 15 catcher processor license holders are estimated to be eligible to receive an allocation.

The distribution of catcher processor share allocations in the different target fisheries are shown in Figure 1. Allocations are aggregated into groups of four to maintain confidentiality, with vessel groupings made in descending order from the largest estimated allocation to the smallest allocation. The last and smallest grouping contains between 4 and 7 estimated allocations, since at least 4 persons' activities must be included under confidentiality rules. The estimated allocation shown for each 4-vessel group is the average allocation to members of that group. Allocations are shown as shares of the total harvest allocation. Each legend shows the total number of vessels that would receive an allocation in each fishery. Because allocations are averages, it is possible, particularly in the grouping with the largest allocation, that the largest allocation to a single vessel is significantly different from the average of those four vessels. Table 5 provides additional information on the respective allocations among the catcher processors. It provides the percentage allocation by target species, showing the mean and median allocation and average of the highest four allocations. In addition, the table shows the aggregate allocation of all rockfish target species, using the 2002 rockfish TACs as a base for indexing the various species allocations.

Table 5: Simple Statistics concerning allocations of target rockfish

Species	Sector	Characteristics of allocations to permanent and interim license holders			Eligible permanent and interim license holders	Eligible permanent license holders
		Mean allocation	Median allocation	Average of four largest allocations		
Northern rockfish	Catcher vessels	2.1	1.4	7.1	48	46
	Catcher processors	7.7	4.5	15.6	13	12
Pacific Ocean perch	Catcher vessels	2.0	1.6	4.5	49	47
	Catcher processors	6.7	4.5	15.6	15	13
Pelagic shelf rockfish	Catcher vessels	2.1	1.5	6.5	48	46
	Catcher processors	7.7	5.6	16.7	13	12
All - 2002 base	Catcher vessels	2.0	1.4	6.5	49	47
	Catcher processors	6.7	4.8	14.1	15	13

Source: NPFMC Rockfish Database 2004, Version 1

In choosing between Option 1 and Option 2, the Council should consider both the benefits of the concentration of cooperative activity in the catcher processor sector and the ability of the different participants to use the threshold for their benefit in negotiations with others in the catcher processor sector. To assess the different thresholds, the Council should first consider the purpose and potential benefits of cooperatives and the relationship of the threshold to those benefits. The primary benefit of cooperative membership for participants in the fisheries is likely a reduction in transaction costs that arise from the cooperative agreement, which defines both the interaction of the members among themselves and how the cooperative will interact with others in the fisheries. In general larger cooperatives increase these benefits by reducing the transaction costs among more participants. Managers also gain a benefit in that harvest allocations are made to a cooperative reducing, to some extent, the costs of managing the transactions among members. A larger threshold for inter-cooperative trading is likely to encourage the establishment of relatively larger cooperatives to realize the benefits of that trading. The larger cooperatives, in turn, should yield added benefits from reduced cost to both members and management of intra-cooperative transactions. An excessively high threshold, however, could unfairly disadvantage some participants by limiting the benefits of inter-cooperative trading to participants that choose to join relatively larger cooperatives.

The potential benefits from cooperative activities should be balanced against the potential ability of members of a cooperative that exceed the membership threshold to assert leverage against those participants that have not joined a cooperative and who may not be able to form a separate cooperative because of the few participants in the sector. Although the two proposed thresholds are both very low, it is possible that a circumstance could arise in which a cooperative could assert some leverage against participants wishing to join the cooperative because of the threshold. The potential extent of this effect cannot be predicted.

Catcher processors (including those not in cooperatives and those under the threshold) could also transfer their annual allocations to catcher vessel cooperatives, reducing the potential of a cooperative to use the threshold requirement to exert influence over non-members. The extent of any transfers from catcher processors to catcher vessels cannot be predicted. Catcher processors, however, currently receive greater revenues for rockfish harvests than catcher vessels. Slowing of fishing should reduce that difference, but may not equalize revenues between the sectors since catcher processors will use onboard processing to process their harvests more quickly. Information on the costs of harvesting and processing for the different sectors are not available, so profits from the two sectors cannot be compared. If catcher processor harvests bring a greater return than catcher vessel shares, transfer of annual allocations from catcher processors to catcher vessels will likely be limited.

Action requested: Consider selecting a preferred option from Alternative 5.3 - CP Sector.

Catcher processor allocations (includes holders of permanent and interim LLP licenses)

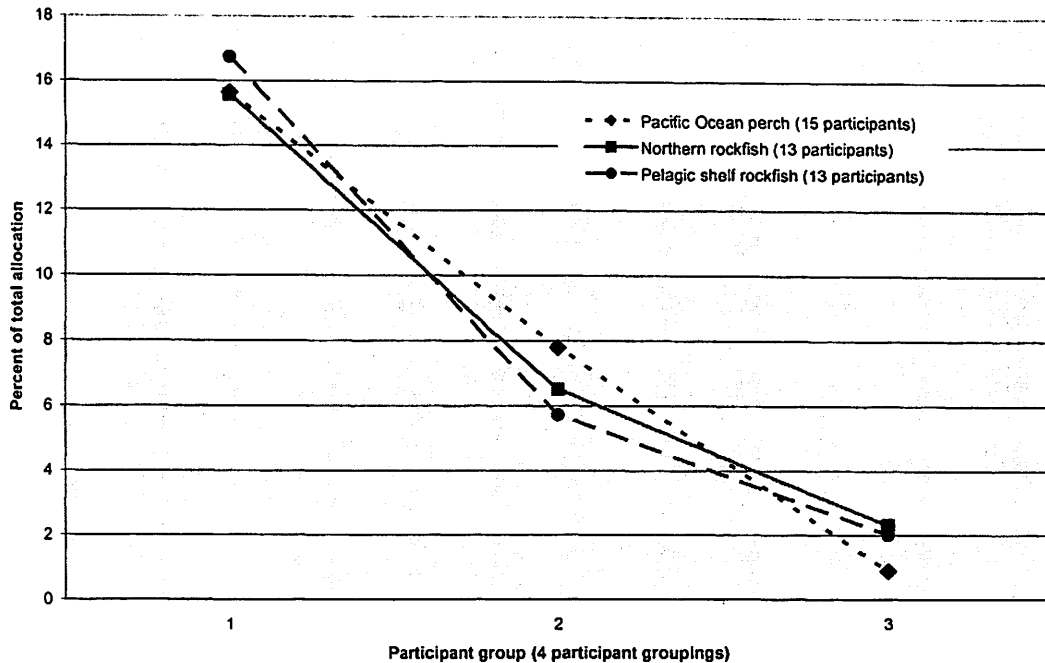


Figure 1

Council Motion - 5.4 CV sector – for Alternative 2 – third bullet and for Alternative 3 – fifth bullet

For Alternative 2:

- *Harvesters may elect not to join a co-op, and continue to fish in an LLP/Open Access fishery. Those LLPs that opt out of the cooperative portion of the pilot program will be penalized 0 to 20% of their historical share (annual allocation). The penalty share will be left with the CV cooperative portion of the rockfish fishery and will be prorated among CV cooperatives based on cooperative share holdings. The LLP's remaining share will be fished in a competitive fishery open to rockfish qualified vessels that are not members of a cooperative and must be delivered to one of the qualified processors.*

For Alternative 3:

- *Harvesters may elect not to join a co-op, and continue to fish in an LLP/Open Access fishery. Those LLPs that opt out of the cooperative portion of the pilot program will be penalized 0 to 20% of their historical share (annual allocation). The penalty share will be left with the LLP's associated cooperative. The LLP's remaining share will be fished in a competitive fishery open to rockfish qualified vessels that are not members of a cooperative and must be delivered to one of the qualified processors.*

The above provisions contain an option to penalize catcher vessel rockfish participants that choose not to fish in cooperatives by reducing the allocation to the limited access fishery for non-members of cooperatives. Under the motion, either no penalty would be imposed or a penalty of up to 20 percent of the limited access fishery allocation could be imposed. The penalty provision

would be intended to increase the incentive for rockfish participants to join cooperatives, which is likely to both increase efficiency in the fishery and decrease the costs of management. While these benefits are likely to be realized from increased cooperative membership, it is possible that a penalty provision could lead to some distributional changes, if cooperatives are able to leverage the penalty provision to extract additional concessions from persons that are eligible for a cooperative but reluctant to join. In assessing the appropriateness of a penalty, the Council should consider the extent to which a penalty is necessary to encourage cooperative membership and the extent to which the provision could be utilized by a cooperative to assert untoward leverage over non-members wishing to join.

Under Alternative 2, the ability of a cooperative to use the penalty to exert leverage over non-members is likely to be limited since a person would be eligible to join one of many cooperatives, as that alternative has no provision for specific processor associations. Whether the penalty provision is needed to encourage cooperative membership, however, could be questioned because the benefits of cooperative fishing are likely to be substantially greater than a limited access, race-for-fish in which participants are more likely to sacrifice product quality to protect or increase their market share in the race. In addition, if few catcher vessels choose to participate in the limited entry fishery, it is possible that NOAA Fisheries will be unable to manage the relatively small allocation to that fishery forcing it to remain closed.³ The likelihood of such a closure could be increased slightly, if a substantial penalty is imposed on the allocation to the fishery. The inability of the agency to manage a limited access fishery could provide substantial leverage to a cooperative that wishes to exert influence over potential members.

Under Alternative 3, the production efficiency benefits from cooperative membership are likely to be similar to those under Alternative 2. Likewise, the effects of the penalty on the ability of the agency to manage the limited access fishery should be similar. Under Alternative 3, however, the ability of a cooperative to use the penalty to assert additional leverage over non-members may be increased, since most harvesters are eligible for only a single cooperative (the one associated with the processor that the harvester delivered the most pounds to). Under this cooperative structure, the participants in a cooperative could be provided additional negotiating leverage over eligible non-members by the penalty to the limited access allocation.

Action Requested:

Determine whether to penalize the allocation to the limited entry for non-members of cooperatives and the magnitude of any such penalty.

³ Although the current motion does not specify the management of the limited access fishery, staff assumes that the agency would manage that fishery as a target rockfish fishery. The secondary allocation to the fishery could be managed with an MRA similar to current management, but the level of the MRA would need to be lowered so that the allocations of secondary species to the limited access fishery would not be exceeded. The agency may need to further develop the management structure of the limited access fishery for the analysis of alternatives.

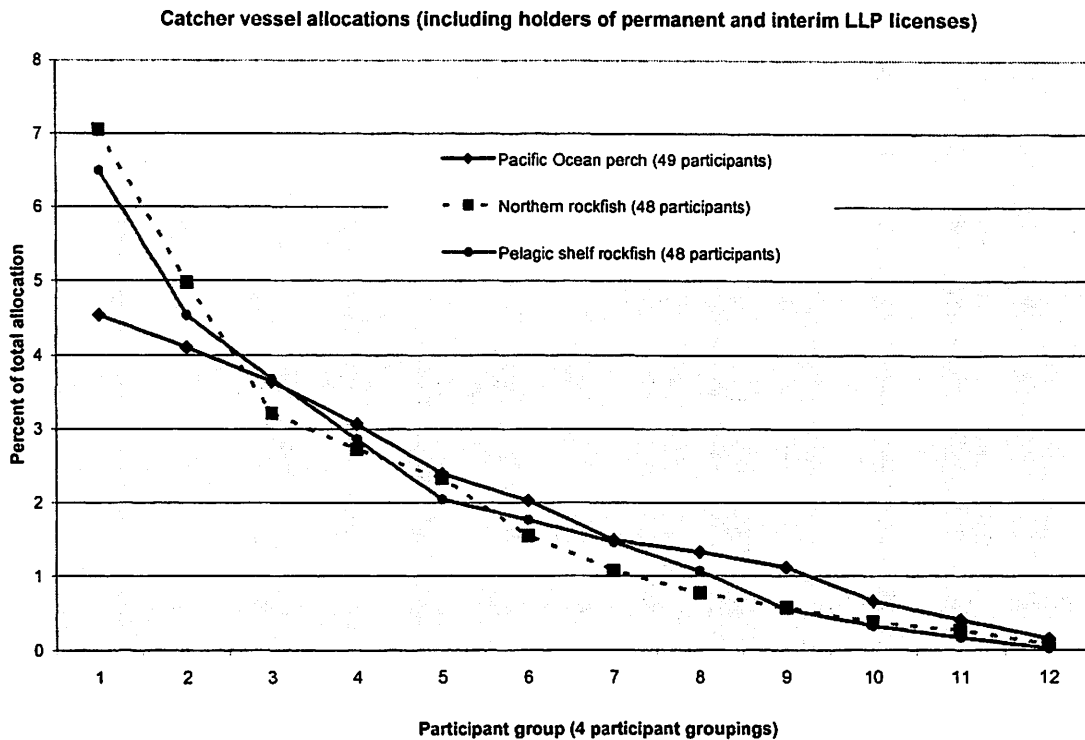


Figure 2

Council Motion - 5.4 CV sector – for Alternative 3

Catcher vessel cooperatives are required to have at least:

- a) *50-75 percent of the eligible historical shares for each co-op associated with its processor*
- b) *Any number of eligible harvesters (allows a single person co-op).*

Discussion:

Alternative 3 creates a cooperative program under which each catcher vessel participant is eligible to join a cooperative in association with the processor to which it delivered the most rockfish to during the qualifying period. The Council has proposed two membership thresholds for cooperative formation. Under option a), cooperative formation would require the holders of least 50 to 75 percent of the eligible historical shares associated with the processor. Option b) would allow any number of eligible harvesters to form a cooperative, including a single person co-op.

Rules that require a minimum percentage of eligible share holdings for cooperative formation, as in option a) above, could provide negotiating leverage to either those agreeing to join the cooperative or those that have yet to join, depending on the circumstances. Generally, the power will be with the non-members until the membership threshold is met and will shift to members once that threshold is reached. As should be apparent, the level of the threshold will determine whether the negotiating leverage lies with a majority of those eligible for the cooperative or a minority and the size of that majority or minority, as the case may be. If the limit is set high, for

example, one or two minority share holders could scuttle the formation of any cooperative unless their demands are met. These demands could relate to revenue distributions from cooperative harvests, which could redistribute benefits of share holdings under the program. Although the example is the extreme, any provision that severely limits the number of cooperatives a share holder might join by imposing thresholds for cooperative formation could have similar impacts. For example, a provision that requires 50 percent of eligible share holders to form a cooperative would create a system in which a simple majority of share holders would have the ability to structure a cooperative agreement unfavorable to other share holders. A relatively higher threshold, such as 75 percent, would require a greater majority for formation and could require the cooperative to give greater accord to minority interests. A higher threshold, however, could increase the potential for a minority to assert undue leverage over the majority. Under any system in which a person is eligible to join only one cooperative setting a threshold for cooperative formation requires balancing of the different majority and minority interests and may impacting the distribution benefits from the allocation of shares. Increasing the number of cooperatives that a person can join will reduce this effect.

Allowing any number of harvesters (including one) to form a cooperative could reduce the ability of participants to use cooperative rules to assert negotiating leverage over other participants, if multiple cooperatives are allowed to associate with each processor. Under the provisions defining Alternative 3, however, only one cooperative is permitted to associate with each processor. So, allowing a single harvester to form a cooperative defining the terms for all other participants eligible to associate with that processor could bias terms for all of these other participants. In the absence of the limitation on the number of cooperatives that may associate with a processor, allowing a single person cooperative could remove the negotiating leverage influence from the provisions governing cooperative formation. This more flexible approach, however, could lead to less coordination of fishing, increasing the costs to both participants and managers, if participants form smaller cooperatives. Whether cost savings are realized under a minimal threshold would be in the control of the participants in the fishery.

As additional background, the processor associations for the three rockfish species are described in Tables 6 and 7. Table 6 provides basic information concerning the number of participants estimated to be eligible for the various cooperatives under Alternative 3. Since some of the processors have fewer than 5 harvesters to associate with, it is possible that in some instances, even a 50 percent threshold could require membership of all eligible harvesters. This scenario, however, may be unavoidable under all options except one that allows a single harvester to establish the association with a processor and multiple cooperatives. The extent to which a processor or the different harvesters in these circumstances would be able to exert negotiating leverage over others is not predictable and would likely vary with the size of the individual allocations and the overall circumstances of the different participants (i.e., the relative importance of the rockfish fisheries to the participants).

At its December 2004 meeting, the Council added a provision under Alternative 3 that would allow participants that made to deliveries to a qualified processor to join any cooperative. The Council should also clarify whether these participants could be considered in determining whether a membership threshold has been reached for cooperative formation. The simplest approach would be to not consider these participants in determining whether a threshold is met. If the Council elects to follow this path, the last sentence in the bullet on eligibility could be revised to read: "If an LLP holder has no deliveries to a qualified processor, the LLP holder may join a coop with any one of the qualified processors, but their membership would not be considered in determining whether the threshold is met for co-op formation." If the Council chooses to consider

these participants in determining satisfaction of the threshold requirement, their interaction with the threshold requirement would need to be further specified.

Action requested:

- 1) Consider selecting a preferred option for cooperative formation under 5.4 - Alternative 3.
- 2) State whether LLP holders with no deliveries to a qualified processor would be considered for determining whether the membership threshold is met for cooperative formation under Alternative 3. If so, specify the interaction of these participants with the threshold requirement.

Table 6: Processor Associations Under Alternative 3

	Number of qualified processors with				Number of LLPs with no deliveries to a qualified processor	Allocation to LLPs without deliveries to a qualified processor
	no associated LLPs	5 or fewer associated LLPs	more than 5 and fewer than 10 associated LLPs	10 or more associated LLPs		
Pacific Ocean perch	0	3	1	2	6	3.0 percent
Northern rockfish	0	3	1	2	5	1.5 percent
Pelagic shelf rockfish	0	3	1	2	6	2.1 percent

Source: NPFMC Rockfish Database 2004, Version 1

Table 7: Processor associations under Alternative 3.

	Number of processors associated with LLPs holding more than		
	30 percent of all catcher vessel history	20 percent of all catcher vessel history	10 percent of all catcher vessel history
Pacific Ocean perch	0	*	4
Northern rockfish	0	*	5
Pelagic shelf rockfish	0	*	5
Total - 2002 index	0	*	5

* Withheld for confidentiality.

Source: NPFMC Rockfish Database 2004, Version 1

Council Motion - 6.1 – Use Caps

CV co-ops:

Control of harvest share by a CV co-op shall be capped at:

- Option 1. 30% of aggregate POP, Northern Rockfish and PSR for the CV sector*
- Option 2. 40% of aggregate POP, Northern Rockfish and PSR for the CV sector*
- Option 3. 50% of aggregate POP, Northern Rockfish and PSR for the CV sector*
- Option 4. No cap*

CPs:

Control of harvest share by a CP shall be capped at:

- Option 1: 50% of aggregate POP, Northern Rockfish and PSR for the CP sector*
- Option 2: 60% of aggregate POP, Northern Rockfish and PSR for the CP sector*
- Option 3: 75% of aggregate POP, Northern Rockfish and PSR for the CP sector*
- Option 4: No cap*

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:

- Option 1. 30% of aggregate POP, Northern Rockfish and PSR for the CV sector*
- Option 2. 40% of aggregate POP, Northern Rockfish and PSR for the CV sector*
- Option 3. 50% of aggregate POP, Northern Rockfish and PSR for the CV sector*
- Option 4. No cap*

Eligible Processors will be grandfathered.

Discussion:

The above options would identify use caps for catcher vessel cooperatives, catcher processors, and shoreside processors. Any catcher processors or processors that historically harvested in excess of the chosen cap would be grandfathered at its historic level of harvests.

In all cases, the administration of the caps would be simplified by the Council identifying a baseline for applying the caps because of the multispecies nature of the caps. Otherwise, changes in the TACs of the three species could result in a participant being pushed over the cap in a given year, if the cap is not indexed to a particular year. For example, a person may establish an interest in the fisheries that would be under a 30 percent aggregate cap with substantial portions of the northern rockfish and Pacific Ocean perch allocations. A substantial decline in the TAC for pelagic shelf rockfish, however, could result in these interests exceeding the cap. This problem can be avoided, if a baseline is used for defining the cap (such as one year or several years). If a baseline is identified, the agency would define the pool of allocations based on the TACs in the base year (or years). Caps would then be defined based on that pool, given the relative TACs of the different species in the base year (or years). Scaling the allocation pool using this method would allow participants to establish interests based on the cap in a manner so that they would remain under the cap despite changes in TACs. The base year could be the last qualifying year of the program or another base selected as appropriate by the Council.

In assessing the caps, the Council should consider the historic catch in the fisheries as shown in Figures 1 and 2 and the characteristics of the allocations under the program in Tables 5, 6, and 7. Table 5 shows characteristics of the estimated allocations to participants in the different sectors. These include the characteristics of the estimated aggregate allocation using 2002 as a baseline. The table shows that the average of the four highest allocations to catcher processors is approximately 15 percent using the 2002 baseline. The lowest proposed cap for harvest by a catcher processor is 50 percent of the aggregated catcher processor sector allocation. Similarly, Table 7 shows characteristics of processor associations based on the estimated allocations of the different species and the estimated aggregated allocations using 2002 as a baseline. That table shows that none of the eligible processors are estimated to be associated with participants that hold in excess of lowest proposed cap (30 percent) of the aggregated allocation using the 2002 baseline. Since catcher vessels are capped at the cooperative level, the allocations of participants eligible for a processor association under Alternative 3 provide relevant information concerning the groups of vessels eligible for the different cooperatives under that alternative. Alternative 2 does not limit catcher vessel participants' eligibility for cooperatives. The possibly strong assumption that a harvester would gravitate toward cooperatives that deliver to their historic processor would suggest that the 30 percent cap would not limit the activities of any cooperative.

Typically, the Council has considered the historic level of consolidation in setting caps. In any case, the respective harvest/processor share caps should be set high enough to allow participants to realize potential efficiencies. On the other hand, setting the cap too high could result in overconsolidation, under which a few participants gain control of the fishery and the market for interests in the fishery.

Action requested: 1) Consider selecting a harvest/processing cap as a preferred option for 6.1 CV co-ops, 6.2 CPs, and 7 Shoreside processor use caps. 2) Identify a baseline year or years for applying the caps on an aggregate of the three rockfish allocations.

Council Motion – Section 9 – Sideboards

9 Sideboards (note staff suggested changes in bold and strikeout)

9.1 General Provisions

There are no exemptions from sideboards, except for a **partial exemption for CP vessels which opt out of the pilot program or join cooperatives (if Option B is selected)**.

a. 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 total catch of those vessels 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.

b. 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.

c. 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

9.2 CP Specific Sideboard Provisions (Applies only if Alternative 2 (catcher processor cooperative alternative) is selected.)

Option A.

CP vessels may decide to opt out of the CGOA pilot 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 referenced in a and b of 9.1 above, but will not be subject to other sideboard restrictions within their sector in **either the GOA or BSAI**.

Option 1 -The history of CP vessels which opt out will remain with the sector.

Option 2 -The history of CP vessels which opt out will be distributed pro-rata between sectors.

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 pilot program fishery will start at the same time as the open access fisheries (in July). CPs which qualify for the CGOA rockfish pilot program, and which do not choose to opt out, are required to harvest 90% of their CGOA rockfish allocation, or to participate in the target rockfish fishery in the CGOA for two weeks (whichever is shorter) before participating in any other BSAI or GOA groundfish fishery. A vessel which has met this requirement can then move into the BSAI or GOA open access fisheries without limitation or restriction, except at the sector level in the GOA as referenced in the CV/CP inter-sector sideboards.

History may be consolidated between vessels, however each individual vessel that transfers its history to another CP or CV must still refrain from operating in any other BSAI or GOA groundfish fishery until 90% of all of the rockfish allocation on the stacked vessel is harvested in the CGOA, or for two weeks (whichever is shorter).

Option: three week stand-down (in place of two week stand-down)

Option B.

CP vessels may decide to opt out of the CGOA pilot 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 9.1, ~~but will not be subject to other sideboard restrictions within their sector, unless the vessel accounts for more than 5 percent of the allocated history in the rockfish fishery.~~ **Vessels that account for less than 5 percent of the allocated catcher processor history in the Pacific Ocean perch fishery will not be subject to any stand-down in either the BSAI or GOA groundfish fisheries. Vessels that account for 5 percent or more of the allocated catcher processor history in the Pacific Ocean perch fishery would not be subject to a stand-down in the BSAI but would be subject to a stand-down of two (or three weeks) beginning on the opening of the CGOA rockfish limited access fishery prior to entering in the GOA groundfish fisheries.**

Option 1 -The history of CP vessels which opt out will remain with the sector.

Option 2 -The history of CP vessels which opt out will be distributed pro-rata between sectors.

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 pilot program fishery participants must either:

- 1) start fishing in the target rockfish fisheries at the same time as the opening of the limited access **CGOA rockfish** fisheries (in July) and harvest 90% of their CGOA rockfish allocation prior to entering any other BSAI or GOA groundfish fishery, or

- 2) stand-down for
 - Option 1. two weeks
 - Option 2. three weeksfrom the opening of the **CGOA rockfish** limited access fishery prior to participating in any other BSAI or GOA groundfish fishery.

A vessel which has met either stand-down requirement can then move into the BSAI or GOA open access fisheries subject to the sector level limitations in the GOA in 9.1.

To the extent permitted by the motion, history may be leased between vessels ~~that are not members of a cooperative~~. Each person ~~non-member of a cooperative~~ that transfers its history to another CP or CV must still refrain from operating in any other BSAI or 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 **CGOA rockfish** limited access fishery
- 2)
 - Option 1. two weeks
 - Option 2. three weeksfrom the opening of the **CGOA rockfish** limited access fishery prior to participating in any other BSAI or GOA groundfish fishery.

Members of a cooperative will be subject to all limitations and restrictions described in 9.1 and 9.2 except that cooperative members shall not be subject to any stand-down in the GOA groundfish fisheries. The stand-down provision in the BSAI groundfish fisheries will apply to cooperative members.

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

- a. 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
- b. 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.

9.3 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.
- Qualifying vessels in the trawl CV sector would be limited, in aggregate, in the month of July, to the historic average total catch of those vessels in the BSAI Pacific cod fishery in July during the qualification years 1996 to 2002.
- AFA 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.

Discussion

Definition of Sideboards

One of the consequences of any rationalization program is that participants in the program are able to redistribute their efforts to realize efficiencies. While this redistribution within the rationalized fishery is one of the intended benefits of such a program, participants are also able to redistribute efforts to increase activities in other fisheries. In this program, industry has developed a series of sideboard provisions intended to prevent this potential encroachment. The catcher vessel provisions are well-defined and contain no options. These provisions can be analyzed as a part of each of the catcher vessel alternatives without undue complication.

For catcher processors, the Council has included several different provisions for consideration, including two complete intra-sector options, each with internal options. If the Council were to elect to proceed with a single provision for intra-sector limitations, the analysis of sideboards would be greatly simplified. This section describes the different proposals and is intended to assist the Council in selecting an appropriate sideboard provision for the catcher processor sector.

At the Council meeting in December 2004, the catcher processor intra-sector sideboards were revised substantially. As a part of that revision, the Council requested staff to develop some revisions based on the flowchart, which is Appendix 2 to this discussion paper. The staff provided a draft of those changes, which appears in the Council's comprehensive rockfish motion, which is Appendix 1 to this discussion paper. In further assessing the suggested revision, staff has made clarifications in the language above, which the Council could consider adopting. These revisions are non-substantive, with a single exception, the application of the intra-sector sideboard under the sector allocation alternative.

Intra-sector sideboard under a sector allocation

In the introduction to 9.2, the suggestion that the catcher processor intra-sector sideboard does not apply under the catcher processor sector allocation alternative could be viewed as substantive by some readers. The rationale for this suggestion is two-fold. First, if a sector allocation is adopted the management of the fishery would be similar to the status quo, except that a race for fish would be conducted among catcher processors only for a sector allocation based on the catcher processor's historic harvests. If the current management is largely maintained, members of the sector have no need to be protected from changes in fishing practices under new management. So, the rationale for an intra-sector sideboard is no longer present. If the Council wishes to retain an intra-sector sideboard under the sector allocation alternative, a rationale for that provision should be articulated.

The second reason that the intra-sector sideboard may be inappropriate is that the sideboard as written operates by establishing stand-downs that are based on the harvest of individual allocations (with a maximum duration of either two or three weeks). The index for determining the length of the stand-down is lost, if no allocation is made. If the Council elects to retain the intra-sector sideboard, the provision will need to be revised to define the length of the stand-down (or simply require a stand-down of the maximum length). A stand-down of the maximum length, however, might not be justifiable, since participants in the rockfish fishery would not necessarily be deriving rationalization benefits from a sector allocation and will have no ability to use an exclusive allocation to adapt fishing behavior to increase activity in other fisheries.

Overview of Option A to 9.2

Section 9.2 of the motion defines two options for intra-sector sideboard that could be applied to the catcher processor sector. Under the first provision (Option A), participants in the catcher processor rockfish fishery would be required to stand-down from participation in other Gulf fisheries and fisheries in the Bering Sea and Aleutian Islands. The stand-down would start in the beginning of July (on the traditional opening of the rockfish fisheries) when the sector season would open and would end when a vessel harvested 90 percent of its rockfish allocation. If a participant chooses to stack history on another vessel, the stand-down would extend until 90 percent of all target rockfish allocations on the fishing vessel were caught. Any stand-down would be subject to a maximum term of two or three weeks. One shortcoming of this option is that, as written, all catcher processors would be required to begin fishing on or after the traditional July opening. This requirement could reduce the potential benefits that catcher processors are able to realize from the program.

Under Option A, a person eligible for the rockfish program may opt out of the program on an annual basis. Persons that opt out would be exempt from the stand-down of the intra-sector sideboard. The inter-sector sideboard of 9.1 would apply to persons that opt out. The history of persons that opt out could be redistributed either within the catcher processor sector or to both sectors. In either case, the redistribution would be based on qualifying history.

If Option A is selected, the Council would also need to decide

- 1) whether to apply a maximum stand-down of two or three weeks, and
- 2) whether to redistribute the allocation of persons that opt out within the catcher processor sector or to participants in both sectors.

Maximum stand-down

The maximum stand-down is intended to operate as an outside limit for the amount of time that a person would need to remain idle in fisheries other than the CGOA rockfish fisheries to prevent encroachment on those fisheries by historic rockfish participants. The maximum stand-down period is intended to allow rockfish participants the latitude to move to other fisheries prior to completing their rockfish harvests. One of the intended effects of the program is to slow rockfish harvesting to allow realization of efficiencies. The result of limiting the maximum stand-down time is that participants will have the opportunity to participate in these other fisheries to a limited extent without need to race to harvest their rockfish allocations. Setting the maximum stand-down should balance the interests of persons with no or limited rockfish participation in these other fisheries against the interests of persons with substantial rockfish participation that wish to realize efficiency gains in their rockfish harvests without sacrificing any historic interests that they have in other fisheries. To aid the Council in considering the maximum stand-down, Table 8 shows the openings and closings of the rockfish fisheries from 1996 to 2003. The table shows that the seasons for northern rockfish and pelagic shelf rockfish frequently last between two and three weeks, while the Pacific Ocean perch fishery frequently closes in less than two weeks.

Table 8. Central Gulf of Alaska rockfish seasons - 1996 to 2003.

<u>Closures</u>						
Year	Opening for species	Opening date	Pacific Ocean Perch	Northern Rockfish	Pelagic Shelf Rockfish	Reason
1996	all	July 1	July 11	July 20	none	TAC (POP, Nor)
1996 closure		---	July 15	---	---	PSC
1997	all (incl.PSR nearshore)	July 1	July 7	July 10	June 7	TAC
1997	PSR offshore	July 1	---	---	July 15	TAC
1997 closure	POP	---	July 19	---	---	PSC
1998	all	July 1	July 6	July 14	July 19	TAC
1998 reopen	POP	July 12	July 14	---	---	TAC
1998 closure	POP	---	July 27	---	---	PSC
1999	all	July 4	July 11	July 19	---	TAC(POP, Nor)
1999 reopen	POP, Nor	August 6	August 8	August 10	---	TAC(POP, Nor)
1999 closure		---	September 3	September 3	September 3	PSC
2000	all	July 4	July 15	July 26	July 26	TAC(POP, Nor)/HAL(PSR)
2001	all	July 1	July 12	July 23	July 23	TAC(POP)/HAL(Nor, PSR)
2001 reopen	Nor, PSR	October 1	n/a	October 21	October 21	HAL
2002	all	June 30	July 8	July 21	July 21	TAC
2002 closure		---	August 5	---	---	PSC
2003	all	June 29	July 8	July 31	July 29	TAC

TAC - Total Allowable Catch

PSC - Prohibited Species Catch

Nor - Northern rockfish

PSR - Pelagic Shelf rockfish

Source: NOAA fisheries status reports and groundfish closure summaries

Redistribution of allocation of persons that opt-out

The Council motion contains options to redistribute the allocations of persons that opt-out of the rockfish program to either the catcher processor sector or to both sectors. Persons supporting the redistribution to catcher processors believe that the history of the sector should remain with the sector, regardless of whether the individual responsible for that history chooses to remain in the

fishery. Persons supporting the reallocation to both sectors are likely to argue that any person remaining in the fishery (regardless of their sector) should receive an allocation based on their history relative to the history of others that choose to remain in the fishery. Redistribution to both sectors would recognize the history of all remaining participants equally.

Overview of Option B to 9.2

While similar to Option A, Option B contains several extensions intended to address specific circumstances that might arise in administering the rockfish fisheries and the intra-sector sideboards. The protection of Option B is established by the same stand-down provision used in Option A. Option B also includes several limitations and variations on the stand-down to accommodate specific circumstances.

First, eligible persons that choose to opt-out would be categorized based on the amount of rockfish history. Licenses with over 5 percent of the eligible catcher processor history in the Pacific Ocean perch fishery would be subject to the maximum stand-down in the Gulf of Alaska (but not the Bering Sea or Aleutian Islands). The rationale for requiring a stand-down of these participants is that a person that abandons substantial rockfish history is likely to be changing from their historic fishing patterns to enter other fisheries. Staff estimates that 7 vessels exceed the allocation level for this potential stand-down to apply. Licenses with less than 5 percent of the Pacific Ocean perch allocation that opt-out would be exempt from any stand-down. Rockfish allocations of vessels that opt-out could be reallocated to either participants in the catcher processor sector or to both sectors (as under Option A).

Persons that choose not to opt-out would be subject to stand-downs in both the Gulf and Bering Sea and Aleutian Islands. Option B also specifies that catcher processors may fish their allocation at any time, but that persons that start fishing at any time other than the traditional July opening would be subject to the maximum stand-down. A person that starts fishing at the traditional July opening would be subject to a stand-down beginning with the historic opening and ending when 90 percent of the allocation is fished. Persons aggregating allocations would be required to stand-down until 90 percent of the aggregated allocation was harvested. A maximum stand-down of 2 (or 3) weeks would apply in all cases.

An additional provision would establish a different sideboard for cooperative members in the Gulf of Alaska fisheries. Under this provision, cooperative members would not be subject to a stand-down, but would instead be sideboarded to the collective history of cooperative members in Gulf of Alaska groundfish fisheries during the month of July. Removing the stand-down for cooperative members and instead applying a cooperative specific sideboard is intended to allow cooperatives greater flexibility in harvesting their rockfish allocation without infringing on other participants in the Gulf groundfish fisheries. The provision would rely on a cooperative's ability to develop an agreement and harvest plan to ensure that the cooperative's sideboard is not exceeded. Cooperative members would remain subject to both the Bering Sea and Aleutian Islands stand-down and would be subject to the sector level sideboards of 9.1, which are intended to protect the catcher vessel sector.

Table 9 below identifies the differences between Option A and Option B.

If Option B is selected, the Council would also need to decide

- 3) whether to apply a maximum stand-down of two or three weeks, and
- 4) whether to redistribute the allocation of persons that opt out within the catcher processor sector or to participants in both sectors.

Maximum stand-down

The Council will need to identify the term of the maximum stand-down (i.e., two or three weeks). The discussion of the issue of the maximum sideboard term under Option A describes that issue and the competing interests in the two proposed terms.

Redistribution of allocation of persons that opt-out

The Council will need to decide whether the allocation of licenses that opt-out of the rockfish program would be redistributed to participants in the catcher processor sector or to participants from both sectors. This issue is also described under Option A above.

Table 9. Differences between the catcher processor intra-sector sideboard options.

	Option A	Option B
Opt-out	Eligible licenses that opt out are not subject to stand-downs	Eligible licenses with substantial Pacific Ocean perch history that opt-out stand-down in the GOA
Co-op sideboards	No specific cooperative sideboard	Co-op members are exempt from GOA stand-down, but are sideboarded to historic GOA harvests
Season opening	Season opens in July at traditional opening	Season could open earlier than July (not starting on traditional opening subject to maximum stand-down)

Action requested:

- 1) Select Option A or Option B as the catcher processor intra-sector sideboard.
- 2) Identify the maximum stand-down period.
- 3) Determine whether history of catcher processor participants that opt-out will be reallocated within the catcher processor sector or to participants in both sectors.

APPENDIX 1 TO ROCKFISH DISCUSSION/DECISION NOTES

**NORTH PACIFIC FISHERY MANAGEMENT COUNCIL
CENTRAL GULF OF ALASKA ROCKFISH PILOT PROGRAM**

Council Motion

Updated to December 11, 2004

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.

Alternatives, Elements and Options

The Council recommends the following elements and options for the CGOA Rockfish Pilot program be included for analysis:

Catcher Vessel Alternatives

- 1) Status Quo
 - 2) Cooperative program with license limitation program for processors
 - 3) Cooperative program with cooperative/processor associations
- Catcher Processor Alternatives
- 1) Status Quo
 - 2) Cooperative Program
 - 3) Sector Allocation

Alternatives 2 and 3 are defined by the following elements and options. Differences in the elements and options between the two alternatives and across the two sectors are noted.

1 Set-asides

Prior to allocation of catch history to the sectors, NMFS shall set aside:

- 1.1 ICA: An Incidental Catch Allocation (ICA) of POP, Northern rockfish and pelagic shelf rockfish to meet the incidental catch needs of fisheries not included in the pilot program
- 1.2 Entry Level Fishery: A percentage of POP, Northern rockfish and pelagic shelf rockfish for catcher vessels not eligible to participate in the program, as mandated in the Congressional language. For the duration of this program, the annual set aside will be 5% of each of these target rockfish species.
 - o Allocations shall be apportioned between trawl and non-trawl gear:
 - Option 1. 50/50
 - Option 2. proportional to the number of applications received
 - o The Council will develop a method for rolling over an allocation to the other entry level sector, in the event a sector is unable to harvest its allocation.
 - Suboption: The rollover from non-trawl to trawl will occur at the end of the third quarter.
 - o Prosecution of the entry level fishery will be supported by general allocations of PSC to the gear type not allocated under 3.3.1.3 and the general allocations of secondary species not allocated under 3.3.1.2

2 Entry-Level Fishery

2.1 Catcher Vessel Participation:

Vessels that can participate in the Entry Level fishery are those vessels that did not qualify for the CGOA rockfish pilot program.

2.2 Processor Participation:

Processors who purchase and process the entry level rockfish quota must be non-qualified processors.

2.3 Fishery participation:

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.

2.4 NMFS will determine:

- Whether limits need to be imposed on vessel participation
- If limits need to be imposed, determine the appropriate number of vessel that would be allowed to fish in the entry level fishery
 - Suboption: Equal shares distributions to the vessel applicants by sector
 - Suboption: Limited access competitive fishery by sector
- Entry permits are non-transferable and must be fished by the named vessel

3 Sector Allocations

3.1 Sector Definitions

Trawl catcher vessel

Trawl catcher processor

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

3.2 Rationalized Areas

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

3.3 Sector Allocations

- Catch history is determined by the sector qualified catch in pounds as a proportion of the total qualified catch in pounds.
- Sector allocation is based on individual qualified vessel histories with the drop-2 provision at the vessel level.
- The eligibility for entry into the program is one targeted landing of POP, Northern rockfish or PSR caught in CGOA during the qualifying period.
- The CP catch history will be based on WPR data.

3.3.1 Each sector is allocated catch history based on:

The sum of all catch history of vessels in that sector for which it earned a valid, permanent, fully transferable CGOA LLP endorsement, for the years 1996-2002 drop two.

Suboption: include history of vessels which hold a valid interim endorsement on implementation of the program

3.3.1.1 Target species:

- Qualified target species history is allocated based on retained catch (excluding meal)
- History will be allocated to each sector for POP, Northern rockfish and PSR caught in CGOA based on retained catch during the open season
- Different years may be used for determining the history of each of the three rockfish species.
- Full retention of the target rockfish species required

3.3.1.2 Secondary species:

- Secondary species history is allocated based on
 - a) total catch
 - b) retained catchwhile targeting the primary rockfish species listed above.
- History will be allocated to each sector for sablefish, shortraker/rougheye rockfish, thornyheads and Pacific cod.

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

Options for Pacific cod.

Option 1. Allocations of Pacific cod as a secondary species will be at the following rate of harvest history:

- a. 100 percent
- b. 90 percent

c. 80 percent

d. 70 percent

Option 2. For the offshore sector, Pacific cod history will be managed by MRA using a range of 1.4 -7%.

- All non-allocated secondary 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.
- Secondary species allocations will be based on:
 - Option 1) Catch by sector of the secondary species caught while targeting rockfish divided by the catch of secondary species by all sectors over the qualifying period. The calculated percentage is multiplied by the secondary species quota for that fishery year and allocated to each sector in the pilot program. (analyze total and retained catch)
 - Option 2) Percentage of catch by sector of the secondary species within the rockfish target fisheries divided by the total number of years in the qualifying period. The calculated percentage is multiplied by the secondary species quota for that fishery year and allocated to each sector in the pilot program. (analyze total and retained catch)

3.3.1.3 Prohibited species (halibut mortality):

- Allocation to the pilot 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 years '96-'02 by the number of years (7). This allocation will be divided between sectors based on:
 - Option 1) The actual usage of each sector
 - Option 2) The relative amount of target rockfish species allocated to each sector.

4 Allocation from Sector to Vessel

- 4.1 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.
- 4.2 Basis for the distribution 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 distribution 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.)
- 4.2.1 Persons who have purchased an LLP, with a CGOA endorsement to remain in the fishery may obtain a distribution of harvest share on the history of either the vessel on which the LLP is based or on which the LLP is used, not both. License transfers for purposes of combining LLPs must have occurred by April 2, 2004.

4.3 Target species:

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

4.4 Secondary species:

Each LLP holder will receive an allocation of sector history proportional to their allocation of target rockfish history

4.5 PSC (halibut mortality)

- Each LLP holder will receive an allocation of halibut mortality equivalent to their proportion of the sector rockfish history

4.6 Allocations of secondary species:

Option 1) Must be fished in conjunction with the primary species allocations.
(Compliance monitored at offload)

Option 2) May be fished independently of the primary species allocations.

5 Co-op provisions

5.1 Duration of cooperative agreements is 2 years.

5.2 For all sectors

- The co-op membership agreement and the Contract will be filed with the RAM Division. The Contract must contain a fishing plan for the harvest of all co-op fish.
- Co-op members shall internally allocate and manage the co-op's allocation per the Contract.
- Subject to any harvesting caps that may be adopted, allocated history may be transferred and consolidated within the co-op to the extent permitted under the Contract.
- The Contract must have a monitoring program. Co-op members are jointly and severally responsible for co-op vessels harvesting in the aggregate no more than their co-op's allocation of rockfish species, secondary species and PSC mortality, as may be adjusted by inter-co-op transfers.
- Co-ops may adopt and enforce fishing practice codes of conduct as part of their membership agreement.
- Co-op membership agreements shall allow for the entry of other eligible harvesters into the co-op under the same terms and conditions as agreed to by the original agreement.
- Co-ops will report annually to the Council as per AFA.

5.3 CP sector:

History is allocated to the current owner of the LLP of the vessel that earned the history.

- Owners may fish their allocation independently if the LLP has a CGOA endorsement, or may enter into a cooperative arrangement with other owners.
- More than one co-op may form within the sector
- Any number of eligible LLPs may form a co-op
- Allocations may be transferred between co-ops of at least:
Option 1: two LLPs
Option 2: three LLPs

5.4 CV sector:

For Alternative 2:

- Voluntary co-ops may form between eligible harvesters.
- All cooperative harvests under this program must be delivered to eligible processors.
- Harvesters may elect not to join a co-op, and continue to fish in an LLP/Open Access fishery. Those LLPs that opt out of the cooperative portion of the pilot program will be penalized 0 to 20% of their historical share (annual allocation). The penalty share will be left with the CV cooperative portion of the rockfish fishery and will be prorated among CV cooperatives based on

cooperative share holdings. The LLP's remaining share will be fished in a competitive fishery open to rockfish qualified vessels who are not members of a cooperative and must be delivered to one of the qualified processors.

- An eligible processor is a processing facility that has purchased 250 MT of aggregate Pacific Ocean Perch, Northern Rockfish, and Pelagic Shelf rockfish harvest per year, for 4 years, from 1996 to 2000. Eligible processors will be issued a license under this program. Licenses are not transferable.
- If a processing facility has closed down and another processing facility has acquired that processing history through purchase, for the purpose of determining processor eligibility the history belongs to the facility that purchased that history. That history can only be credited to another facility in the community that it was generated in for purposes of establishing eligibility under this program.
- The harvesters that enter into a co-op membership agreement shall be the members of the co-op.
- A pre-season Contract between eligible, willing harvesters is a pre-requisite to a cooperative receiving an annual allocation.
- Co-op membership agreements will specify that processor affiliated harvesters cannot participate in price setting negotiations except as permitted by general antitrust law.
- Catcher vessel cooperatives are required to have at least 4 eligible LLPs
- Co-ops may engage in inter-cooperative transfers of annual allocations to other cooperatives.
- No processor associations required by co-ops.

For Alternative 3:

- Voluntary co-ops may form between eligible harvesters in association with processors.
- Catcher vessel co-ops must be associated with an eligible processor.
- An eligible processor is a processing facility that has purchased 250 MT of aggregate Pacific Ocean Perch, Northern Rockfish, and Pelagic Shelf rockfish harvest per year, for 4 years, from 1996 to 2000.
- A harvester is eligible to join a cooperative in association with the processing facility to which the harvester delivered the most pounds of the three rockfish species combined during the year's 1996 – 2000 drop 1 year (processor chooses the year to drop, same year for all LLPs). If an LLP holder has no deliveries to a qualified processor, the LLP holder may join a coop with any one of the qualified processors.
- Harvesters may elect not to join a co-op, and continue to fish in an LLP/Open Access fishery. Those LLPs that opt out of the cooperative portion of the pilot program will be penalized 0 to 20% of their historical share (annual allocation). The penalty share will be left with the LLP's associated cooperative. The LLP's remaining share will be fished in a competitive fishery open to rockfish qualified vessels who are not members of a cooperative and must be delivered to one of the qualified processors.
- If a processing facility has closed down and another processing facility has acquired that processing history through purchase, the history belongs to the facility that purchased that history. That history must remain in the community that it was generated in.
- The harvesters that enter into a co-op membership agreement shall be the members of the co-op. The processor will be an associate of the cooperative but will not be a cooperative member.
- A pre-season Contract between eligible, willing harvesters in association with a processor is a pre-requisite to a cooperative receiving an annual allocation.
- Co-op membership agreements will specify that processor affiliated harvesters cannot participate in price setting negotiations except as permitted by general antitrust law.
- Processors are limited to 1 co-op per plant.
- Catcher vessel cooperatives are required to have at least:
 - a) 50-75 percent of the eligible historical shares for each co-op associated with its processor
 - b) Any number of eligible harvesters (allows single person co-op)
- Co-ops may engage in inter-cooperative transfers of annual allocations to other cooperatives with agreement of the associated qualified processor.

5.5 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.

6 Co-op harvest use caps

6.1 CV co-ops:

Control of harvest share by a CV co-op shall be capped at:

- Option 1. 30% of aggregate POP, Northern Rockfish and PSR for the CV sector
- Option 2. 40% of aggregate POP, Northern Rockfish and PSR for the CV sector
- Option 3. 50% of aggregate POP, Northern Rockfish and PSR for the CV sector
- Option 4. No cap

6.2 CPs:

Control of harvest share by a CP shall be capped at:

- Option 1: 50% of aggregate POP, Northern Rockfish and PSR for the CP sector
- Option 2: 60% of aggregate POP, Northern Rockfish and PSR for the CP sector
- Option 3: 75% of aggregate POP, Northern Rockfish and PSR for the CP sector
- Option 4: No cap

Eligible CPs will be grandfathered at the current level

7 Shoreside processor use caps

Shoreside processors shall be capped at the entity level.

No processor shall process more than:

- Option 1. 30% of aggregate POP, Northern Rockfish and PSR for the CV sector
- Option 2. 40% of aggregate POP, Northern Rockfish and PSR for the CV sector
- Option 3. 50% of aggregate POP, Northern Rockfish and PSR for the CV sector
- Option 4. No cap

Eligible Processors will be grandfathered.

8 Program Review

Program review the first and second year after implementation to objectively measure the success of the program, including benefits and impacts to harvesters, processors and communities. Conservation benefits of the program would also be accessed.

9 Sideboards

9.1 General Provisions

There are no exemptions from sideboards, except for CP vessels which opt out of the pilot program.

a. 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 total catch of those

vessels 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.

b. 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.

c. 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

9.2 CP Specific Sideboard Provisions

Option A.

CP vessels may decide to opt out of the CGOA pilot 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 referenced in a and b above, but will not be subject to other sideboard restrictions within their sector.

Option 1 -The history of CP vessels which opt out will remain with the sector.

Option 2 -The history of CP vessels which opt out will be distributed pro-rata between sectors.

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 pilot program fishery will start at the same time as the open access fisheries (in July). CPs which qualify for the CGOA rockfish pilot program, and which do not choose to opt out, are required to harvest 90% of their CGOA rockfish allocation, or to participate in the target rockfish fishery in the CGOA for two weeks (whichever is shorter) before participating in any other BSAI or GOA groundfish fishery. A vessel which has met this requirement can then move into the BSAI or GOA open access fisheries without limitation or restriction, except at the sector level in the GOA as referenced in the CV/CP inter-sector sideboards.

History may be consolidated between vessels, however each individual vessel that transfers its history to another CP or CV must still refrain from operating in any other BSAI or GOA groundfish fishery until 90% of all of the rockfish allocation on the stacked vessel is harvested in the CGOA, or for two weeks (whichever is shorter).

Option: three week stand-down (in place of two week stand-down)

Option B.

CP vessels may decide to opt out of the CGOA pilot 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 9.1, but will not be subject to other sideboard restrictions within their sector, unless the vessel accounts for more than 5 percent of the allocated history in the rockfish fishery.

Option 1 -The history of CP vessels which opt out will remain with the sector.

Option 2 -The history of CP vessels which opt out will be distributed pro-rata between sectors.

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 pilot program fishery participants must either:

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

A vessel which has met either standdown requirement can then move into the BSAI or GOA open access fisheries subject to the sector level limitations in the GOA in 9.1.

To the extent permitted by the motion, history may be leased between vessels that are not members of a cooperative. Each non-member of a cooperative that transfers its history to another CP or CV must still refrain from operating in any other BSAI or 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)
 - Option 1. two weeks
 - Option 2. three weeksfrom the opening of the limited access fishery prior to participating in any other BSAI or GOA groundfish fishery.

Members of a cooperative will be subject to all limitations and restrictions described in 9.1 and 9.2 except that cooperative members shall not be subject to any standdown in the GOA groundfish fisheries. The standdown provision in the BSAI groundfish fisheries will apply to cooperative members.

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

- a. 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
- b. 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.

9.3 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.
- Qualifying vessels in the trawl CV sector would be limited, in aggregate, in the month of July, to the historic average total catch of those vessels in the BSAI Pacific cod fishery in July during the qualification years 1996 to 2002.
- AFA 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.

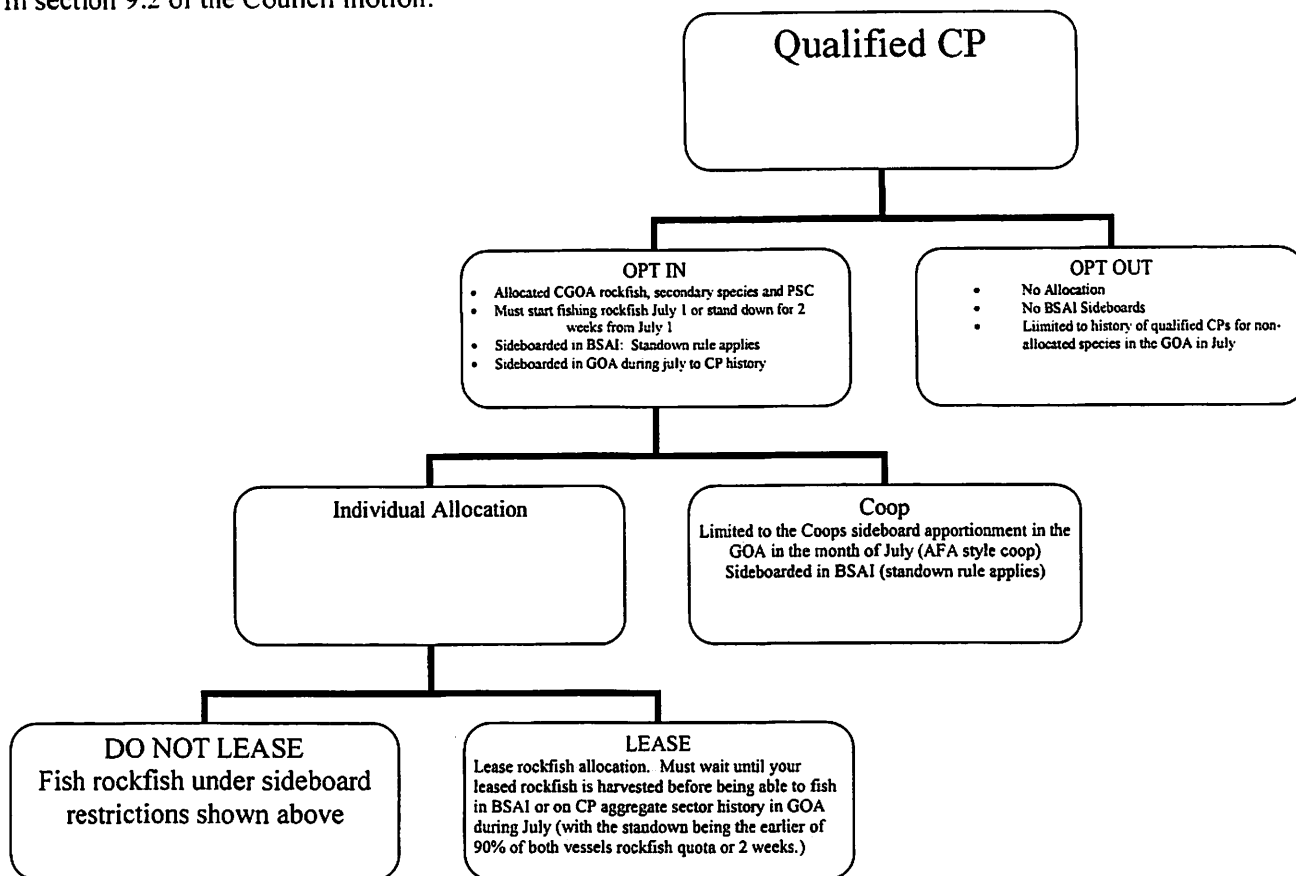
In the event this program has a duration of more than 2 years, the Council will reconsider the issue of use/ownership caps for companies and vessels.

Alternative 3 for the CP Sector

As a separate alternative, the CP sector could choose to fish its sector allocation under the current management regime, with the rockfish fishery starting on July 1st.

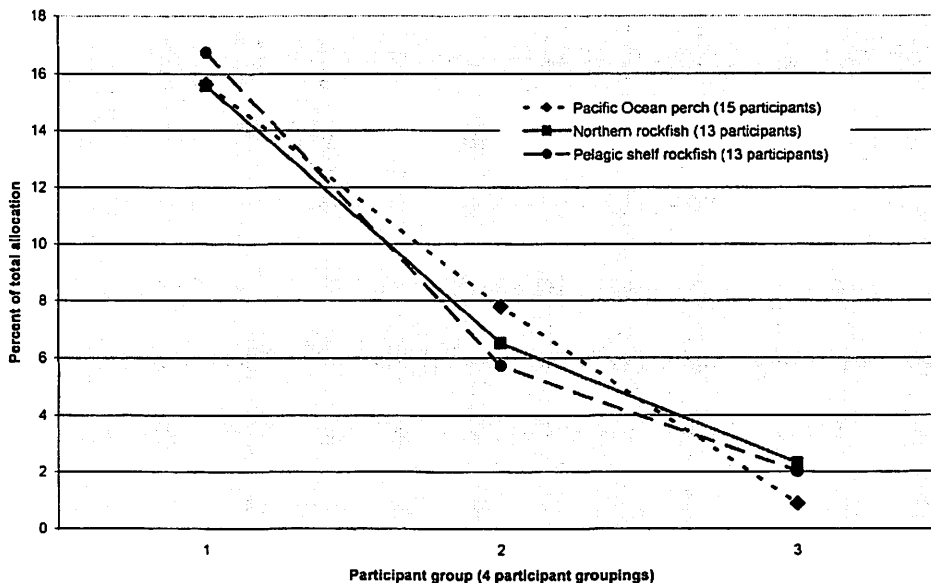
*Appendix 2 to Rockfish Discussion/Decision Notes
February 2005*

In section 9.2 of the Council motion:



Staff is directed to incorporate the above flowchart regarding CP sideboards into a new option in 9.2 with suboptions under the opt-out provisions that if a “serious rockfish boat” opts out they remain subject to a 2 week standstill in the GOA. “Not serious” defined based on figure 1 from the rockfish decision notes: The “serious” rockfish boats are represented by the top seven vessels in Figure 1, comprising the top “tri-tile” harvest of POP. The “non-serious” rockfish vessels are included in all vessels represented by the distribution points in the center and right hand side of the graph. In addition, options 1 and 2 for the reallocation of history of opt-out vessels should be retained.

Catcher processor allocations (includes holders of permanent and interim LLP licenses)



Management of the entry level fishery

The legislation directing the development of the rockfish pilot program requires that up to 5 percent of the TAC for each of the target rockfish be set aside to support an entry level fishery to be harvested by fishermen not eligible for the main program for delivery to processors not eligible for the main program. The Council has developed the following elements and options to establish the entry level fishery (options are in bold):

1 Set-asides

Prior to allocation of catch history to the sectors, NMFS shall set aside:

- 1.2 Entry Level Fishery: A percentage of POP, Northern rockfish and pelagic shelf rockfish for catcher vessels not eligible to participate in the program, as mandated in the Congressional language. For the duration of this program, the annual set aside will be 5% of each of these target rockfish species.
 - o **Allocations shall be apportioned between trawl and non-trawl gear:**
 - Option 1. 50/50**
 - Option 2. proportional to the number of applications received**
 - o **The Council will develop a method for rolling over an allocation to the other entry level sector, in the event a sector is unable to harvest its allocation.**
 - Suboption: The rollover from non-trawl to trawl will occur at the end of the third quarter.**
 - o Prosecution of the entry level fishery will be supported by general allocations of PSC to the gear type not allocated under 3.3.1.3 and the general allocations of secondary species not allocated under 3.3.1.2

2 Entry-Level Fishery

2.1 Catcher Vessel Participation:

Vessels that can participate in the Entry Level fishery are those vessels that did not qualify for the CGOA rockfish pilot program.

2.2 Processor Participation:

Processors who purchase and process the entry level rockfish quota must be non-qualified processors.

2.3 Fishery participation:

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.

2.4 NMFS will determine:

- Whether limits need to be imposed on vessel participation
 - If limits need to be imposed, determine the appropriate number of vessel that would be allowed to fish in the entry level fishery
 - Suboption: Equal shares distributions to the vessel applicants by sector**
 - Suboption: Limited access competitive fishery by sector**
 - Entry permits are non-transferable and must be fished by the named vessel
-

Although the Council has developed provisions defining much of the entry level fishery, a few options are contained in the provisions defining that program. This discussion paper summarizes issues arising under each of the remaining options defining the entry level fishery to assist the Council in determining which options to select.

Division of the allocation between the trawl and non-trawl sectors

Under Section 1.2, five percent of the TAC in each of the different target rockfish fisheries would be allocated to the entry level fishery. Based on the 2004 specifications, these allocations would be approximately 422 metric tons of Pacific Ocean perch, 185 metric tons of northern rockfish, and 108 metric tons of pelagic shelf rockfish. The entry level allocations would be divided between the trawl and non-trawl entry level fisheries either 50 percent to each sector or based on the number of applicants for each sector. Under the first approach, each sector would receive the same amount of fish each season. Under the second approach, each sector would receive the same amount of fish for each applicant in each season. Since the number of applicants for the entry level fishery cannot be predicted, the effect of determining allocations based on the number of applications cannot be predicted with any accuracy. Since all persons with any target rockfish history using trawl gear between 1996 and 2002 are eligible for the main program, most trawl fishermen with any rockfish experience in the Central Gulf of Alaska (CGOA) are ineligible for the entry level program.

Since catch by non-trawl participants in the CGOA rockfish fisheries has been very small in the qualifying years specified in the legislation, the Council chose to include non-trawl participants only in the entry level program, where historic participants would have greater access to the target rockfish. Participation in the rockfish fisheries by non-trawl participants has grown in recent years. Most of the new participation is in the pelagic shelf rockfish fishery, where two vessels participated each year from 1996 to 2000, six participated in 2001, and eight participated in 2002. A total of 21 different non-trawl catcher vessels (only one of which held an LLP) participated in the pelagic shelf rockfish fishery between 1996 and 2002. One non-trawl catcher vessel has participated in the northern rockfish fishery in this time period.

Given the low level of participation by non-trawl vessels some participants question whether that fleet will be able to catch a substantial portion of the 5 percent entry level allocation. To accommodate any possible underharvest of the non-trawl allocation, a suboption that would create rollover at the end of the third quarter to the trawl sector is included in the Council motion. The rollover is intended to allow the entry level trawl fleet to catch any unharvested portion of the non-trawl allocation late in the year. The late rollover is intended to allow the non-trawl fleet to maximize landings in the summer months when the weather is best for the relatively small boat fleet that is likely to participate in the non-trawl entry level fishery. The post-third quarter rollover could allow the entry level trawl participants to harvest any remaining portion of the allocation during the later part of the year when fewer non-trawl vessels are likely to wish to participate in these fisheries.

Allocation and management within each sector

Section 2.4 provides that these allocations would be managed either in a limited access competitive fishery or by allocating shares within each sector equally to the members of the sector. Direct allocations would not be transferable and must be fished by the recipient of the allocation. To fully specify the entry level fishery, the Council must decide whether the entry level fishery will be prosecuted as a competitive limited access fishery or as individual allocations. Because of the differences between the operations of the different sectors and the impacts of those operations on the ability of NOAA Fisheries to manage the allocations to the different fleets this discussion is separated by gear type.

Whether the agency could manage a limited access, competitive fishery for the trawl sector is questionable given the small size of the allocations that are likely to be made to the fleet. Approximately 179 catcher vessel LLP licenses carry the CGOA endorsement. Less than 50 of

these licenses are eligible for the main rockfish pilot program leaving in excess of 100 license holders that would be eligible for the entry level fishery. The current Pacific Ocean perch limited access fishery is prosecuted by approximately 30 trawl catcher vessel, which have harvested approximately 4,000 metric tons in approximately 10 days. The agency may be able to manage a limited access fishery, depending on the number of vessels that apply for the entry level program. If only a few people apply the fishery would be managed in a manner similar to its current management. Managers would monitor harvests inseason announcing a closing when the TAC is estimated to be fully harvested. A larger number of applicants could be managed by limiting fishing to a prescribed amount of time, such as a 24 hour opening. If an excessive number of applications are received, the fishery may not be manageable.

For the non-trawl sector, limited access, competitive management is likely to be less complicated because of the relatively slower expected harvest rates. The non-trawl fishery could be opened early in the year and would be fished throughout the year or until a rollover is implemented.

Individual allocations could also be managed for either the trawl or non-trawl sectors. Under these allocations, target rockfish individual allocations would be managed based on retained landings monitored at the plant. Incidental catch of non-target groundfish and PSC would be managed based on NMFS standard catch accounting methods. Non-trawl harvests in the fishery are likely to be similar under either limited entry, competitive management or individual allocations. Trawl participants, however, could realize greater benefits through management of individual allocations, if that fleet is able to improve quality through better handling of catch and improve cost efficiency when not subject to a race for fish. Avoiding a race for fish in the entry level fishery could also improve return to processors participating in the trawl sector fishery, if processors are better able to schedule landings.

In developing the entry level fishery alternative, the Council should consider the interaction of the different provisions for allocating catch between the two sectors (including the possible rollover) and the management of the allocation of each sector. Although the number of applications cannot be predicted, the Council should consider the potential for an allocation to be so small relative to the catching power of the applicant fleet that applicants can reasonably conclude that under the management structure it is uneconomical to fish. In structuring the allocation and management provisions, the Council should attempt to develop a program that provides its participants reasonable economic opportunities to harvest the entire entry level allocation.

Analysis of Incidental Bycatch in CGOA Fisheries

As part of the evaluation of options and alternatives for the Rockfish Pilot Program, the Council asked staff to develop an analysis of incidental catch in the CGOA targeted rockfish fishery and the CGOA halibut, sablefish and Pacific cod longline fisheries. This analysis is the response to that request. The information presented should facilitate consideration of alternatives in the rockfish pilot program in making secondary allocations of Pacific cod, sablefish, shortraker/rougheye rockfish and thornyhead rockfish.

Groundfish observer program data were analyzed for the period from 1996 -2003. The observer data analyzed included: 1) hook & line gear targeting Pacific cod and 2) hook & line gear targeting sablefish and 3) hauls in the CGOA by trawl gear targeting rockfish. Trawl data are limited to hauls targeting rockfish within the July rockfish period for each year, 1996-2003. Targeted 'rockfish' is defined as the sum of Pacific Ocean perch (POP), northern rockfish and pelagic shelf rockfish harvests combined. Sablefish targeted fishing trawls and sets were limited to the period from March 15 through November, but there are no records of observed hauls/sets outside this period. Pacific cod targeted data was for the entire year.

The Council also requested an analysis of bycatch in the halibut longline fishery. This analysis was not completed as part of the analysis of observer data since directed fishing for halibut is not covered under the NMFS groundfish observer program. The staff is in the process of completing an analysis of bycatch in the directed halibut fishery using survey data from the International Pacific Halibut Fishery, but that analysis is not yet complete.

The results of the analysis of bycatch using the groundfish survey data are summarized in Tables 1, 2 and 3. The incidental bycatch for each species is calculated as a ratio by haul (or set in the case of longline fishing). The ratio is based on the number of individual hauls/sets observed, and is calculated from the measured kilograms of each secondary species in the haul/set divided by the measured kilograms of targeted rockfish.

Incidental Bycatch in CGOA Rockfish Trawls

A quick evaluation of the incidence of bycatch by species in the CGOA longline fishery targeting Pacific cod is shown by comparing the fourth and fifth columns in Table 1. Column 3 in the table, labeled 'CGOA sets with P. cod targets' shows the total number of hauls observed over the 1996-2003 period. Column 4 labeled 'sets with bycatch species' shows the number of sets where the bycatch species listed in the respective rows of the table was found to be part of the harvest. For example, looking at the column in Table 1 for hook & line sets targeting Pacific cod, there were 507 sets observed over the 1996-2003 period. Of this total, 70 sets showed some harvest of sablefish. On these 70 sets where some level of sablefish was observed, the harvest included 15,097 kilograms of sablefish (the bycatch species) and 155,146 kilograms of Pacific cod (the target species). Similarly, 7 sets showed some harvest of thornyhead, 8 sets showed some harvest of shortraker and 3 sets showed some harvest of rougheye. This quick initial comparison shows that most sets do not show any presence of the bycatch species.

The columns on the right side of Tables 1, 2 and 3 show the respective levels of bycatch harvest by percentile intervals (25th, 50th, 75th, 85th and 95th) of the total number of sets or hauls analyzed. The intervals show the ratio of kilograms of the bycatch species divided by the kilograms of the targeted species. In Table 1, the first row shows a ratio of 1.0000 Pacific cod, since that is the target species. Table 1 shows no level of bycatch up to the 95 percentile in the number of sets,

except for sablefish. The sablefish bycatch shows a ratio of 0.13863 at the 95th percentile. This means that all of the sets below the 85th percentile had zero bycatch of sablefish. The set at the 95th percentile had a ratio of sablefish bycatch over the directed species harvest of 0.14369 (i.e. 14.3 percent of the set was sablefish by weight).

Similar information is shown in Table 2 for CGOA hook & line bycatch in the sablefish target fishery. Table 3 shows the bycatch in the CGOA targeted trawl rockfish fishery. In the CGOA trawl fishery for targeted rockfish, both Pacific cod and sablefish show up at the 50th percentile level, but at relatively low proportions. However, at the 95th percentile level, sablefish comprised 26.1 percent, by weight (ratio of 0.2611933) of the targeted rockfish harvest.

Table 1: Percentiles of Set Specific Ratios of Bycatch Species/Target Species for CGOA Hook & Line Sets
with Pacific Cod as the Targeted Species: 1996-2003 (combined)

By Catch Species	CGOA sets with P. cod targets	sets with bycatch species	weight of bycatch species	weight of CGOA P. cod	25th Percentile	50th Percentile	75th Percentile	85th Percentile	95th Percentile
Pacific Cod	507	507	1,984,614	1,984,614	1.00000	1.00000	1.00000	1.00000	1.00000
Sablefish	507	70	15,097	155,146	0.00000	0.00000	0.00000	0.00000	0.13863
Thornyhead	507	7	207	11,552	0.00000	0.00000	0.00000	0.00000	0.00000
Shortraker	507	8	341	48,141	0.00000	0.00000	0.00000	0.00000	0.00000
Rougeye	507	3	28	2,493	0.00000	0.00000	0.00000	0.00000	0.00000
Shortraker/Rougeye ⁽¹⁾	507	1	*	*	0.00000	0.00000	0.00000	0.00000	0.00000

Source: 1996-2003 GOA Observer data, with data calculations by NPFMC.

⁽¹⁾ where shortraker rockfish and rougeye rockfish were combined in the observer data

* not included due to confidentiality concerns

Table2: Percentiles of Set Specific Ratios of Bycatch Species/Target Species for CGOA Hook & Line Sets
with Sablefish as the Targeted Species: 1996-2003 (*combined*)

By Catch Species	CGOA sets with sablefish targets	sets with bycatch species	weight of bycatch species	weight of CGOA sablefish	25th Percentile	50th Percentile	75th Percentile	85th Percentile	95th Percentile
Pacific Cod	2344	139	12,541	206,801	0.00000	0.00000	0.00000	0.00000	0.00838
Sablefish	2344	2344	4,391,754	4,391,754	1.00000	1.00000	1.00000	1.00000	1.00000
Thornyhead	2344	2197	167,750	4,249,189	0.01262	0.03073	0.06096	0.08328	0.14369
Shortraker	2344	531	48,788	1,058,878	0.00000	0.00000	0.00000	0.00947	0.06963
Rougheye	2344	190	4,449	341,433	0.00000	0.00000	0.00000	0.00000	0.00399
<u>Shortraker/Rougheye ⁽¹⁾</u>	2344	185	36,974	382,572	0.00000	0.00000	0.00000	0.00000	0.02482

Source: 1996-2003 GOA Observer data, with data calculations by NPFMC.

⁽¹⁾ where shortraker rockfish and rougheye rockfish were combined in the observer data

Table3: Percentiles of Haul Specific Ratios of Bycatch Species/Target Species for CGOA Trawl Hauls
with Rockfish as the Targeted Species: 1996-2003 (*combined*)

By Catch Species	CG Trawl Hauls w/Pcod targets	Hauls with bycatch species	Weight of bycatch Species	Weight of CG rockfish	25th Percentile	50th Percentile	75th Percentile	85th Percentile	95th Percentile
Pacific Cod	2846	1389	760,898	19,227,273	0.00000	0.00000	0.02950	0.05895	0.16590
Sablefish	2846	1149	1,254,453	16,649,387	0.00000	0.00000	0.02854	0.08095	0.26119
Thornyhead	2846	700	364,015	14,843,165	0.00000	0.00000	0.00000	0.00811	0.05825
Shorthead	2846	91	450,182	2,286,774	0.00000	0.00000	0.00000	0.00000	0.00000
Rougheye	2846	32	38,494	945,896	0.00000	0.00000	0.00000	0.00000	0.00000
Shorthead/Rougheye ⁽¹⁾	2846	13	50,960	517,809	0.00000	0.00000	0.00000	0.00000	0.00000

Source: 1996-2003 GOA Observer data, with data calculations by NPFMC. Central Gulf rockfish is a combination of Pacific Ocean

Perch, Northern Rockfish and Pelagic Shelf Rockfish.

⁽¹⁾ where shorthead rockfish and rougheye rockfish were combined in the observer data



UNITED STATES DEPARTMENT OF COMMERCE
National Oceanic and Atmospheric Administration
Office of General Counsel
P.O. Box 21109
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February 3, 2005

MEMORANDUM FOR: Stephanie Madsen, Chair
North Pacific Fishery Management Council

Chris Oliver, Executive Director
North Pacific Fishery Management Council

FROM: Lisa L. Lindeman
Alaska Regional Counsel

SUBJECT: Rockfish Demonstration Program

This memorandum responds to the request of the North Pacific Fishery Management Council (Council), including requests from Council staff,¹ for guidance from NOAA General Counsel on the appropriate construction of section 802 of the Departments of Commerce, Justice, and State, the Judiciary, and Related Appropriations, 2004 (CAA-2004).²

The specific questions include:

- (1) What is the scope of section 802?
- (2) Whether the Council has authority to change the years specified in section 802 for recognizing the historic participation of fishing vessels and processors? Whether a processor must have processed in each of the years 1996 to 2000 to be eligible for the Central Gulf of Alaska (CGOA) Rockfish Demonstration Program (Rockfish Program)?
- (3) Whether the Rockfish Program includes West Yakutat?
- (4) Whether a person who is eligible under the Rockfish Program has authority to exercise an option not to participate in the Rockfish Program and instead participate in the five percent set-aside?
- (5) Whether the Council has authority to reduce limited access rockfish allocations to eligible applicants who choose not to join cooperatives?

¹ Letters from Chris Oliver, Executive Director, North Pacific Fishery Management Council, to Lisa Lindeman, NOAA-GC, dated February 25, 2004, and December 29, 2004.

² Pub. L. No. 108-199, 118 Stat. 110.



(6) What management programs for shoreside processors are authorized by section 802 (e.g., processor shares, "AFA-style" cooperatives³, or limited licenses for shoreside processors)?

We have reviewed the statutory language, legislative history and relevant case law, and a summary of our responses to these six questions follows.

Summary Conclusions:

(1) Section 802 requires the Secretary of Commerce (Secretary) and the Council to recognize the historic participation of fishing vessels and fish processors for specific time periods, geographical areas, and rockfish species when establishing the Rockfish Program.

(2) Section 802 does not authorize recognition of the historic participation of fishing vessels or processors in years other than those specified in section 802. Further, Section 802 defines the range of years, but does not specify that a processor must have actually processed in each of those years in order to be eligible to participate in the Rockfish Program.

(3) Section 802 does not authorize the inclusion of West Yakutat in the Rockfish Program. Section 802 specifically uses the phrase "Central Gulf of Alaska" as the geographical area for the Rockfish Program. The CGOA as defined in the Fishery Management Plan for the Groundfish of the Gulf of Alaska and in regulations at 50 CFR part 679 does not include West Yakutat. The use of catch history from the CGOA and West Yakutat to qualify a person for a Central Gulf endorsement under the License Limitation Program for Groundfish has no impact on the Rockfish Program authorized under section 802.

(4) Section 802 does not authorize any person who is eligible to participate in the Rockfish Program to exercise an option not to participate in the program and participate in the five percent set-aside. Section 802 explicitly states that the five percent set-aside is for "catcher vessels *not eligible* to participate in the [Rockfish Program]," and not for an eligible person who chooses not to participate (emphasis added).

³ The phrase "AFA-style cooperatives" is not further defined in the letter. We interpret the phrase to mean cooperatives authorized by and formed under provisions of the American Fisheries Act (AFA), Div. C, Title II, Pub. L. No. 105-277, 112 Stat. 2681 (1998), 16 U.S.C. 1851nt. Under the AFA, NOAA Fisheries allocates individual quotas of the inshore Bering Sea (BS) pollock total allowable catch (TAC) to inshore catcher vessel cooperatives that form around a specific inshore processor and agree to deliver at least 90 percent of their pollock catch to that processor. This interpretation is consistent with the common understanding of the phrase as used by the Council, which is to allow the formation of harvesting cooperatives that are allocated a percentage of the TAC and are formed around a particular processor. The cooperatives engage only in harvesting activities and may include processor-owned catcher vessels. The Council has not interpreted the phrase, and we do not interpret the phrase, to mean cooperatives that automatically enjoy antitrust immunity under the Fishermen's Collective Marketing Act, 15 U.S.C. 521 (FCMA).

(5) The Council has authority to reduce limited access rockfish allocations for eligible applicants who choose not to join cooperatives. Section 802 does not distinguish between fishing vessels that choose to participate in cooperatives under the pilot program and those that choose not to participate in cooperatives. However, under the Magnuson-Stevens Fishery Conservation and Management Act (MSA), the Council and the Secretary are authorized to make such a distinction as long as the administrative record includes support demonstrating why such a distinction would be fair and equitable to all eligible applicants and reasonably calculated to promote conservation.

(6) Section 802 authorizes the Council and Secretary to develop a program that would establish "AFA-style" cooperatives or a program that would establish limited entry licenses for processors in the CGOA rockfish fishery. However, section 802 does not authorize the establishment of processor shares since they are prohibited under section 804 of the CAA. The legislative history supports the position that the Council is authorized to consider a broad range of "appropriate" management schemes, including "AFA-style" cooperatives, which are specifically mentioned in the legislative history. Appropriate management tools would be those that meet applicable legal standards (i.e., decisions cannot be arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with law) and that are not specifically prohibited. Antitrust concerns also must be taken into consideration in creating a program under section 802.

Discussion and Analysis:

(1) What is the scope of section 802?

Section 802 provides:

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 the 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 the 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; and (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 historic 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 the date of implementation, whichever is earlier.

What this language authorizes is discussed in detail in our response to question 6. This response

deals only with the scope of the provision.

First, section 802 requires the Council and the Secretary to establish a Rockfish Program for CGOA rockfish with specific provisions. Other than for management of the rockfish fisheries specified in section 802 (i.e., pacific ocean perch, northern rockfish, and pelagic shelf rockfish harvested in the Central Gulf of Alaska), section 802 does not affect the existing authorities of the Council and the Secretary under the MSA relative to management of fisheries under their jurisdiction.

Second, section 802 provides very specific instructions about the Rockfish Program, including what years to recognize for historic participation of fishing vessels and processors, what fish to include, a set-aside for persons not eligible to participate in the program, and a time limit on the program. It does not provide any other authority beyond what can be read or reasonably construed from its plain language.

Third, section 802 and the MSA must be read to give effect to both, to the maximum extent possible. Erlenbaugh v. United States, 409 U.S. 239, 243 (1972) (quoting United States v. Freeman, 3 How. 556, 564 (1845)). However, giving effect to both also “‘assumes that the implications of a statute may be altered by the implications of a later statute.’” This is particularly so where the scope of the earlier statute is broad but the subsequent statutes more specifically address the topic at hand.” FDA v. Brown & Williamson Tobacco Corp., 529 U.S. 120, 143 (2000) (quoting United States v. Fausto, 484 U.S. 439, 453 (1987)). Thus, the Secretary and the Council must comply with both section 802 and the MSA, but where section 802 makes specific provisions for the CGOA rockfish fishery, the more specific provisions govern.

(2) Does the Council have authority to recognize the historic participation of fishing vessels and processors in years other than those specified in section 802? Must a processor have processed in each of the years 1996 to 2000 to be eligible for the Rockfish Program?

Section 802 does not merely authorize the Secretary of Commerce, in consultation with the Council, to manage the CGOA rockfish fishery in accordance with its terms, it requires the Secretary to manage that fishery in accordance with its terms. This specific requirement overrides any other options that might have otherwise been available under the MSA.

Section 802 specifies what years the Council must use to recognize the historic participation of processors (i.e., 1996 to 2000, best 4 of 5 years). To recognize other years would be inconsistent with the plain language of section 802, which clearly sets out the years Congress requires the Council to use when recognizing historic participation of processors for the Rockfish Program. Further, Congress specified a range of years, but did not specify that a processor must have actually processed fish in each of the years. Therefore, a processor that processed in some but not all of the years 1996 to 2000 would be eligible for the Rockfish Program. However, being determined as eligible under the Rockfish Program under criteria developed by the Council precludes the possibility of participating in the five percent set-aside (see discussion and analysis

under question 4).

(3) Does the Rockfish Program includes West Yakutat?

The language in section 802 requires that the Rockfish Program established by the Secretary in consultation with the Council recognize the historic participation for "pacific ocean perch, northern rockfish, and pelagic shelf rockfish harvested in the *Central Gulf of Alaska*" (emphasis added). The Central Gulf of Alaska, as defined in the Fishery Management Plan for the Groundfish of the Gulf of Alaska and regulations at 50 CFR part 679, does not include West Yakutat. Therefore, the Rockfish Program does not include West Yakutat.

(4) Does a person who is eligible under the Rockfish Program have authority to exercise an option not to participate in the Rockfish Program and instead participate in the five percent set-aside?

Pursuant to section 802, the Rockfish Program must "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 . . ." The language of section 802 clearly provides that the set-aside is for catcher vessels and shore-based processors not eligible to participate in the Rockfish Program. Although it could be argued that under the Council's and Secretary's MSA authority to manage *catcher vessels*,⁴ they could develop a program that would allow an eligible catcher vessel to exercise an option not to participate, such an argument would conflict with the specific provision of section 802 that provides: "[s]uch 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." Therefore, if a person is eligible under the Rockfish Program developed by the Council and the Secretary, that person cannot opt out and participate in the set-aside.

(5) Does the Council have authority to reduce limited access rockfish allocations to eligible applicants who choose not to join cooperatives?

Section 802 provides that the Secretary and Council "shall establish a pilot program that recognizes the historic participation of fishing vessels (1996 to 2002, best 5 of 7 years) . . . for pacific ocean perch, northern rockfish, and pelagic shelf rockfish harvested in the Central Gulf of Alaska." The language in section 802 does not distinguish between fishing vessels that choose to participate, and those that choose not to participate, in cooperatives. This, in and of itself, does not mean that the Secretary and Council could not distinguish between those two group of vessels, it only means that section 802 does not require the Secretary and Council to distinguish between

⁴ This would not apply to shoreside processors, since the MSA does not authorize such action. Memorandum for the North Pacific Fishery Management Council from Lisa L. Lindeman, NOAA General Counsel-Alaska Region, on Magnuson Act authority to allocate fishing and processing privileges to processors, September 20, 1993.

those two groups. Limited access programs, by their very nature, exclude or limit certain groups. Alliance Against IFQs v. Brown, 84 F.3d 343 (9th Cir. 1996). However, if the Council and Secretary choose to make such a distinction, they would still be required to abide by the national standards of the MSA, including the requirements of national standard 4, which provides that “[i]f it becomes necessary to allocate or assign fishing privileges among various United States fishermen, such allocation shall be (A) fair and equitable to all such fishermen; (B) reasonably calculated to promote conservation; and (C) carried out in such a manner that no particular individual, corporation, or other entity acquires an excessive share of such privileges.” Therefore, if eligible applicants were penalized for not choosing to join cooperatives, the Council would need to articulate for the record a rational reason why such action was fair and equitable to all eligible applicants, and why it is reasonably calculated to promote conservation.

(6) What management programs for shoreside processors are authorized by section 802 (e.g., processor shares, “AFA-style” cooperatives⁵, or limited licenses for shoreside processors)?

Legislative Intent

The legislative history of section 802 shows that Congress’ primary purpose was to provide the Council and the Secretary limited discretion to develop a pilot program for management of CGOA rockfish. Congress chose to do so by requiring in the statute that the Council recognize the historic participation of fishing vessels and fish processors. Congress also chose to specify in the statute the range of years for eligibility. Congress did not, however, define specifically what it meant by “historic participation.” However, as Senator Stevens explained during Senate debate on CAA-2004,⁶ “the ‘historic participation of fish processors’ under this pilot program should be considered pursuant to the cooperative model under the American Fisheries Act, or any other manner the North Pacific Council determines is appropriate” as long as the Council does not include processor quotas.⁷ As a statement of one of the legislation’s sponsors, Senator Stevens’

⁵ The phrase “AFA-style cooperatives” is not further defined in the letter. We interpret the phrase to mean cooperatives authorized by and formed under provisions of the American Fisheries Act (AFA), Div. C, Title II, Pub. L. No. 105-277, 112 Stat. 2681 (1998), 16 U.S.C. 1851nt. Under the AFA, NOAA Fisheries allocates individual quotas of the inshore Bering Sea (BS) pollock total allowable catch (TAC) to inshore catcher vessel cooperatives that form around a specific inshore processor and agree to deliver at least 90 percent of their pollock catch to that processor. This interpretation is consistent with the common understanding of the phrase as used by the Council, which is to allow the formation of harvesting cooperatives that are allocated a percentage of the TAC and are formed around a particular processor. The cooperatives engage only in harvesting activities and may include processor-owned catcher vessels. The Council has not interpreted the phrase, and we do not interpret the phrase, to mean cooperatives that automatically enjoy antitrust immunity under the Fishermen’s Collective Marketing Act, 15 U.S.C. 521 (FCMA).

⁶ Congressional Record Online, January 22, 2004 (Senate) [Page S152].

⁷ Section 804 of CAA-2004 specifically prohibits processor quota shares in any fishery other than the BSAI crab fishery.

statement “deserves to be accorded substantial weight in interpreting the statute.”⁸ The legislative history does not further define an AFA-style cooperative or indicate whether Congress intended a cooperative that requires a catcher vessel to deliver to a particular processor or a cooperative that also enjoys antitrust immunity under the FCMA.⁹ It also does not further define what other manner of management would be appropriate.

It can be reasonably assumed that in crafting section 802, Congress was familiar with the circumstances surrounding the CGOA rockfish fishery and management tools that could be used to better conserve and manage the rockfish in the Central GOA. The Council’s discretion to choose a management system is bounded by the authorities granted by section 802 and the MSA. Hence, based upon section 802 and the legislative history, the Council may develop a management program that includes AFA-style cooperatives (authorized by section 802’s legislative history—“cooperative model under the American Fisheries Act”) and harvester quota issued to onshore processors (authorized by section 802 or the MSA). The Council also could develop other appropriate management systems, which could include limited licenses for processors (authorized by section 802’s legislative history—“any other manner the North Pacific Council determines is appropriate”¹⁰), but not processor quota (processor quota is specifically prohibited, as explained below). Although the cooperative model under the AFA was the management program that was specifically mentioned in the legislative history, the Council should analyze other programs that would be based on processors’ historic participation as reasonable alternatives to cooperatives.

Individual processor quotas are not authorized for CGOA rockfish, as there is no authority to issue processor quota under the MSA except for BSAI crab fisheries, and in his floor statement, Senator Stevens specifically stated that “[t]he Gulf of Alaska rockfish pilot program does not authorize individual processing quota share for processors in this fishery.”¹¹ Section 802 was passed concurrently as part of the same appropriations legislation as section 804. Section 804 provides:

⁸ Federal Energy Administration v. Algonquin SNG, Inc., 426 U.S. 548, 564 (1975).

⁹ Cf footnote 3, supra. We interpret “cooperative model under the American Fisheries Act” consistent with our interpretation of “AFA-style cooperatives.”

¹⁰ The Council and Secretary have recognized the historic participation of fishing vessels under the MSA through license programs, such as the North Pacific License Limitation Program (LLP) for groundfish (50 CFR 679.4(k)). Under the LLP, the Council recognized historic participation by requiring, among other things, that a vessel must have fished during certain years and in certain areas and had a minimum number of landings to show some sustained level of participation. Under section 802, we believe the Council could recognize the historic participation of shoreside processors by similarly requiring that they must have processed a minimum level of fish during 1996 to 2000 to show a sustained level of participation in the processing sector. For example, the Council could require that a processor have processed one pound of rockfish during the specified years if the administrative record demonstrates that was a reasonable level of historic participation, or they could require that a processor have processed 10,000 tons of rockfish during each of those years to show historic participation.

¹¹ Congressional Record Online, January 22, 2004 (Senate) [Page S152].

"A Council or the Secretary may not consider or establish any program to allocate or issue an individual processing quota or processor share in any fishery of the United States other than the crab fisheries of the Bering Sea and Aleutian Islands."¹² Individual sections of a statute should be construed together. Erlenbaugh, at 244. If Congress had intended to allow processing quota or shares in the Rockfish Program, Congress could have specifically exempted it along with the BSAI crab fisheries from the prohibition on processing quota or shares.

Antitrust Concerns

We are concerned about potential antitrust implications if the Council recommends a program that allows catcher vessels owned or affiliated with shoreside processors to join "AFA-style cooperatives" in the CGOA rockfish fishery. A similar question arose in connection with processor-affiliated vessels participating in cooperatives in the BSAI pollock fishery. At the request of the Department of Commerce General Counsel, in 1999, DOJ reviewed the question of whether under the AFA, catcher vessels owned by shoreside processors could participate in inshore fishery cooperatives in the BSAI pollock fishery and enjoy the antitrust immunity specifically provided to fishery cooperatives under the FCMA and the Capper-Volstead Act, 7 U.S.C. 291.¹³ Section 210 of the AFA established a framework for the formation of fishery cooperatives in the BSAI pollock fishery. Section 210(b) set out the precise criteria for the formation of inshore catcher vessel cooperatives. Section 210(a) referred to fishery cooperatives implemented under the FCMA. DOJ looked at whether the reference to the FCMA in section 210(a) effectively incorporated into the AFA the limits of the FCMA so as to preclude the participation of processor-owned catcher vessels in the AFA cooperatives. DOJ analyzed the existing case law interpreting the scope of the FCMA and the Capper-Volstead Act exemptions, which it found had not dispositively resolved the question. However, taking into account the specific language of the statute and the legislative history, DOJ determined that given the structure of the BSAI pollock fishery, Congress must have intended to allow participation by processor-affiliated catcher vessels, because the specific requirements for co-op eligibility could not be met without including such vessels. Interpreting the AFA to exclude processor-owned catcher vessels would have defeated the primary purpose of the Act. Because the participation of integrated catcher vessels in such cooperatives was critical to achieving Congress' purposes, DOJ concluded Congress must have intended that such vessels could be included in cooperatives that would enjoy antitrust immunity under the FCMA.

¹² Although the prohibition in section 804 expires at the end of the 2004 fiscal year because it is part of an appropriation act that expires at the end of the fiscal year (unless Congress passes a continuing resolution for that appropriation) and because it does not amend a permanent statute or have any words of futurity (e.g., hereafter, or for 2 years), it still provides legislative intent, along with the legislative history of section 802, that the authority granted in section 802 does not include the authority to issue individual processing quota or processor shares.

¹³ Memorandum for Andrew Pincus, General Counsel, Department of Commerce, from Randolph D. Moss, Acting Assistant Attorney General, Office of Legal Counsel, Department of Justice, December 10, 1999 (DOJ Memo).

Here, unlike the AFA, the statute does not include statutory language establishing a specific structure for fishery cooperatives and does not refer to the FCMA. Neither the statute nor the legislative history clearly indicates that Congress' intent can only be achieved with AFA-style cooperatives. In fact, the floor statement indicates Congress' intent to provide broad discretion to the Council to recognize the historic participation of fish processors pursuant to the AFA co-op model or any other manner the Council deems appropriate. Based solely on the legislative history, we believe an argument can be made to support the Council's developing a program under which catcher vessels form cooperatives to receive a guaranteed allocation of rockfish TAC and deliver their catch to a particular shoreside processor. However, unlike DOJ's determination with respect to the AFA cooperatives, we do not believe a credible argument can be made that FCMA antitrust immunity would extend to such cooperatives in the CGOA rockfish fishery. After reviewing DOJ's AFA opinion, we believe section 802 does not provide a solid basis upon which to conclude that FCMA immunity could extend to cooperatives in the rockfish fishery that include processor-owned catcher vessels. The factors DOJ relied upon to determine that AFA cooperatives that include processor-affiliated catcher vessels could enjoy antitrust immunity under the FCMA are not present in this case.

Notwithstanding the lack of antitrust immunity, harvesting cooperatives established pursuant to section 802 that include processor-owned or affiliated vessels may be able to avoid antitrust problems to the extent they operate consistent with the "Antitrust Guidelines for Collaboration Among Competitors," issued by DOJ and the Federal Trade Commission (FTC) in August 2000. The Guidelines state DOJ's and FTC's antitrust enforcement policy with respect to competitor collaborations. As NOAA-GC has explained with respect to harvesting cooperatives under the crab rationalization program,¹⁴ generally, if the activity of the cooperative does not have an anticompetitive effect and promotes efficiency, it is unlikely DOJ would determine the activity violates the antitrust laws. However, some activities by members could, under certain circumstances, violate the antitrust laws.

We stress that while this memorandum provides a credible basis for the Council to develop AFA-style cooperatives, it does not provide a basis for arguing such cooperatives would have antitrust immunity. As with crab harvesting cooperatives, we strongly recommend that counsel for non-FCMA cooperatives consider seeking a business review letter from DOJ before commencing any activity if they are uncertain about the legality of their clients' proposed conduct under the antitrust laws.

cc: Jane Chalmers
Sam Rauch
John Lepore
Jim Balsiger

¹⁴ Memorandum for James W. Balsiger, Administrator, Alaska Region, from Lisa L. Lindeman, Alaska Regional Counsel, "Harvesting Cooperatives under the Crab Rationalization Program," December 4, 2004.

Groundfish Forum

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February 1, 2005

Ms. Stephanie Madsen, Chairman
North Pacific Fishery Management Council
605 West 4th Ave.
Anchorage, AK 99501
FAX: 907-271-2817

Re: Agenda Item C-3, CGOA Rockfish Pilot Program

Dear Madam Chair,

Groundfish Forum is a trade organization representing 19 'head-and-gut' trawl catcher processors which target non-pollock species in the Bering Sea, Aleutian Islands and Gulf of Alaska. We represent 90% of the capacity of the non-AFA trawl catcher-processor sector. Our members are pioneers of and long-time participants in the Gulf of Alaska rockfish fisheries, and many of them qualify for the Rockfish Pilot Program which is being developed. Groundfish Forum worked closely with members of the shoreside sector to develop this program, and we remain committed to implementing a fair and efficient program as quickly as possible.

The Council staff has suggested several areas where the Council could choose to streamline options. We would like to comment specifically on secondary species allocations (3.3.1.2) and Catcher-Processor sideboards (9.2).

Secondary Species

'Secondary species' are Pacific cod, sablefish, shortraker/rougheye rockfish and thornyhead rockfish. These species are incidental catch (only retainable up the MRA amounts) and represent a large part of the value of the rockfish fisheries. In other words, vessels targeting the allocated rockfish (POP, Northern rockfish and pelagic shelf rockfish) depend on these secondary species to make the fishery economically viable. Shoreside and offshore sectors rely on different secondary species: shoreside vessels, because they transit shallow water on their way into port, rely on Pacific cod; offshore vessels, in contrast, rely on shortraker/rougheye and thornyhead rockfish.

If secondary species are allocated based on retained catch, each of the sectors may wind up with very small allocations of the secondary species they do NOT traditionally focus on. As the staff analysis shows, catcher vessels are likely to be allocated very little shortraker/rougheye, while catcher processors will receive very little Pacific cod. It is possible that these very small allocations could actually wind up being a limiting factor in the target rockfish fishery. This is a very serious problem which must be fixed. One

option would be to allocate secondary species with a 'soft cap' which allows fishing for primary species to continue when the secondary cap is reached. Another would be to manage the limiting species with an MRA set to allow the vessels to achieve their total historic catch during the rockfish fishery. This could provide some cushion to prevent the target rockfish fishery from closing prematurely.

Catcher-Processor sideboards

It is important to recognize that these sideboard alternatives *only impact the CP sector*. There is a hard line drawn between the CP and CV sectors which cannot be crossed, so under *any* scenario the shoreside sector is protected from the qualified CPs. It is also important to recognize that the H&G sector is very diverse, and while we are working very hard to achieve full consensus on sideboards it may simply not be possible to do.

In the Council system, 100% agreement is seldom if ever achieved in any sector decision-making. In this case, Groundfish Forum represents the full diversity of the CP sector and its complex and complicated fishing patterns.

In December of last year, we brought to the Council a CP sideboard proposal, based on our vessel history allocation scheme, which had been approved for analysis by the vast majority of the H&G sector, including some of the vessels not in Groundfish Forum. At that meeting, the Council added a provision (defining 'serious rockfish participants') which was not a part of the industry-wide proposal and which we do not agree with. This provision would trap vessels which have history in the Central Gulf but which, in more recent years, have chosen to fish Western Gulf and BSAI rockfish instead: if they opt in (to access the Western Gulf history) they cannot go into the BSAI fishery, and if they opt out (to access the BSAI) they cannot fish the Western Gulf history.

Further, the provision was added to address a concern which has no realistic basis. The expressed concern was that 'serious' rockfish vessels could opt out of the program (forfeiting their rockfish history) and fish instead on flatfish in the CGOA. Under the pilot program, since qualified CPs are limited to their aggregate July history, a vessel which entered the flatfish fishery without prior history could, theoretically, cause the sector-wide sideboards to be reached early. However, in all of the history of this fishery, we cannot find ANY example of a 'serious' rockfish participant choosing to fish flatfish in place of rockfish. It is simply not a credible threat. The proposed 'fix,' in contrast, presents a very real and serious harm to vessels and prevents them from continuing to fish as they have been doing. We ask the Council to recognize that this provision is not only unnecessary, it is extremely harmful and should be removed.

About 10 days ago, a slightly different history allocation scheme was proposed by one of the non-Groundfish Forum H&G vessel owners. This plan would mirror the catcher-vessel allocation system. We have not yet been able to thoroughly vet the proposal, and in fact learned today that the proponent is now considering other alternatives as well. We cannot provide comments on these last-minute ideas, which seem to be constantly evolving. It is unfortunate that after all of the time and effort that has been put into the

sideboards by all members of the sector there is still what could be construed as last-minute opportunistic manipulation of the alternatives.

To be clear, we continue to support our original proposal (brought forward at the December Council meeting) for catcher-processor sideboards. This plan represented months of work, and reflected broad consensus among a widely diverse fleet. We ask that this plan, as originally presented, be retained for analysis. We will provide the Council a copy of this plan during testimony. We may also support analysis of newly presented ideas, but cannot yet comment on these rapidly changing proposals.

There are two sub-options in the catcher-processor sideboard proposals which we ask the Council to remove at this meeting. The first of these is the sub-option which would split catcher processor 'opt out' history between shoreside and offshore sectors. This option is not necessary to address any issues in the CP sideboard proposal. It is simply a 'grab for fish' which would move some CP history shoreside. Since the CV proposal does not allow vessels to opt out, no CV history would ever be shared with the CP sector. It is in violation of both the Congressional language and the premise of rationalization, and has no place in this program.

The second sub-option we ask to have removed is the three-week stand-down provision. Virtually all of the industry participants have agreed that two weeks is sufficient, given the nature and duration of the rockfish fishery in the CGOA and the duration of other fisheries which might be affected by the program.

Thank you for the opportunity to comment. We remain committed to developing a fair, efficient and workable pilot program in the shortest possible time to allow all participants in the Central Gulf rockfish fisheries to realize the benefits of rationalization.

Sincerely,



T. Edward Luttrell
Executive Director

Analysis of Incidental Bycatch in CGOA Halibut Hook & Line Fishery

The Council requested that staff complete an analysis of bycatch in the hook & line fishery in the CGOA as part of the review of the rockfish pilot program. This analysis is in response to that request.

Bycatch in the trawl fishery targeting rockfish; the hook & line fishery targeting Pacific cod; and the hook & line fishery targeting sablefish was previously analyzed using data from the groundfish observer program. However, this approach was not possible for the directed halibut fishery, since that fishery does not participate in the groundfish observer program.

To address the bycatch in the directed halibut fishery in the CGOA, data from the International Pacific Halibut Commission (IPHC) stock assessment surveys were utilized. The period included for the IPHC survey data is 1998 through 2004. This period is not an exact match for the data analyzed for the species/fisheries discussed above; however these were the only data available for this analysis. In earlier years, the IPHC survey utilized methodology and sampling sites that are not compatible with those used from 1998 to the present.

The IPHC stock survey data included all sets taken within (IPHC) management areas 3A and 3B. It was necessary to select subset of the area 3A and 3B survey data corresponding to management areas 620 and 630 that comprise the CGOA. This subset was selected utilizing the latitude and longitude positions of the each survey set to include or exclude it. The resulting data include only those survey points within the CGOA.

The IPHC survey data is primarily focused on the number of fish harvested, whereas the analysis of bycatch also needs weights for fish harvested. The IPHC makes an estimation of the weight of halibut landed in the survey samples, based on length/weight tables. The weight estimate for halibut was translated into kilograms, since the IPHC estimates weight in pounds. For the other species (Pacific cod, sablefish, thornyhead rockfish, shortraker rockfish and roughey rockfish), harvest weights were calculated using average weights based on the 2003 groundfish observer data. The average weight factors for the bycatch species are:

Pacific cod	3.12785 kilograms
sablefish	2.97366 kilograms
thornyhead rockfish	0.91827 kilograms
shortraker rockfish	3.47705 kilograms
roughey rockfish	1.84118 kilograms

The results of the analysis of bycatch in the directed longline halibut fishery in the CGOA are summarized in Table 1. The incidental bycatch for each species is calculated as an individual ratio for each set over the entire 1998-2004 period. The ratio is based on the number of estimated kilograms of each secondary species divided by the estimated kilograms of targeted halibut on the hooks sampled in the IPHC survey. The methodology employed by the IPHC is to set eight skates of gear at a time with 100 hooks/skate. When the longline is pulled, the survey enumerates the catch on the first 20 hooks of each skate.

A quick evaluation of the incidence of bycatch by species in the CGOA halibut longline fishery can be obtained by comparing the second and third columns and also the fourth and fifth columns in Table 1. Column 3 in the table, labeled 'CGOA sets with halibut observed' shows the total number of sets observed over the 1998-2004 period. Column 4 labeled 'sets with bycatch

species' shows the number of sets where the bycatch species listed in the respective rows of the table was found to be present in the sample. For example, looking at the columns two and three in Table 1, there were 1,836 sets where Pacific cod was observed to be part of the catch, out of a total of 3,994 sets. Similarly, 1,241 sets showed the presence of sablefish, 39 sets the presence of thornyhead rockfish, 81 sets showed the presence of shortraker rockfish and 53 sets showed some presence of rougheye rockfish.

Columns four and five of Table 1 show the respective total catch (in kilograms) for halibut and the respective bycatch species, over the entire 1998-2004 period. This comparison shows extremely low levels of thornyhead, shortraker and rougheye rockfish harvested.

The columns on the right side of Table 1 show the bycatch ratios (kilograms of bycatch species/kilograms of halibut) for each set, presented by percentile intervals (25th, 50th, 75th, 85th and 95th). Only Pacific cod and sablefish show any bycatch at less than the 75th percentile level. The Pacific cod harvest at the 75th percentile was a ratio of 0.020910, or 2.0910 percent of the halibut harvest by weight. The same results are shown for the bycatch species - sablefish, thornyhead rockfish, shortraker rockfish and rougheye rockfish.

Table 1: Percentiles of Set Specific Ratios of Bycatch Species/Target Species for CGOA Hook & Line Sets
with Halibut as the Targeted Species: 1998-2004 (*combined*)

By Catch Species	CGOA sets with halibut observed	sets with bycatch species	weight of targeted halibut(kg)	weight of bycatch species (kg)	25th Percentile	50th Percentile	75th Percentile	85th Percentile	95th Percentile
Pacific Cod	3,994	1,836	3,540,160	49,673	0.00000	0.00000	.020910	.045126	.106397
Sablefish	3,994	1,241	3,540,160	34,497	0.00000	0.00000	0.008062	0.03249	0.12443
Thornyhead	3,994	39	3,540,160	50	0.00000	0.00000	0.00000	0.00000	0.00000
Shorthead	3,994	81	3,540,160	619	0.00000	0.00000	0.00000	0.00000	0.00000
Rougheye	3,994	53	3,540,160	192	0.00000	0.00000	0.00000	0.00000	0.00000

Source: International Pacific Halibut Commission, Stock Assessment Survey, 1998-2004 for IPHC areas 3A and 3B.
Data analysis by NPFMC staff.

C-3 Staff handout
2-11-05 310p

Supplementary Table AP-1: Rockfish Pilot Program - CGOA Total Sector Harvests by Species by Year for the Catcher-Processor Sector, 1996-2002 (harvest in metric tons)

Species	Year	Sector	Sector Sum (mt.)	Total CGOA Harvest (mt.)
Pacific cod	1996	CP	108.68	47,564.79
Pacific cod	1997	CP	175.87	43,668.89
Pacific cod	1998	CP	214.52	41,424.46
Pacific cod	1999	CP	338.49	44,442.30
Pacific cod	2000	CP	57.39	32,180.10
Pacific cod	2001	CP	49.81	27,313.66
Pacific cod	2002	CP	95.92	25,057.27
total 1996-2002			1,040.67	261,651.47

Species	Year	Sector	Sector Sum (mt.)	Total CGOA Harvest (mt.)
sablefish	1996	CP	483.90	6,772.28
sablefish	1997	CP	538.24	6,233.63
sablefish	1998	CP	446.30	5,876.70
sablefish	1999	CP	293.21	5,874.07
sablefish	2000	CP	298.01	6,168.32
sablefish	2001	CP	303.74	5,443.70
sablefish	2002	CP	697.84	6,179.71
total 1996-2002			3,061.23	42,548.41

Species	Year	Sector	Sector Sum (mt.)	Total CGOA Harvest (mt.)
shortraker/rougheye	1996	CP	581.29	941.27
shortraker/rougheye	1997	CP	540.66	932.66
shortraker/rougheye	1998	CP	522.00	869.85
shortraker/rougheye	1999	CP	239.10	579.89
shortraker/rougheye	2000	CP	615.00	883.70
shortraker/rougheye	2001	CP	496.36	998.16
shortraker/rougheye	2002	CP	347.55	631.61
total 1996-2002			3,341.95	5,837.13

Species	Year	Sector	Sector Sum (mt.)	Total CGOA Harvest (mt.)
thornyheads	1996	CP	101.95	595.35
thornyheads	1997	CP	153.75	716.30
thornyheads	1998	CP	137.95	571.63
thornyheads	1999	CP	110.36	579.86
thornyheads	2000	CP	163.16	548.44
thornyheads	2001	CP	147.23	516.24
thornyheads	2002	CP	142.62	505.05
total 1996-2002			957.01	4,032.87

Source: 1996-2002 NMFS blend data

Supplementary Table AP-2: Rockfish Pilot Program - CGOA Total Sector Harvests by Species by Year for the Catcher Vessel Sector, 1996-2002 (harvest in metric tons)

Species	Year	Sector	Sector Sum (mt.)	Total CGOA Harvest (mt.)
Pacific cod	1996	CV	225.77	47,564.79
Pacific cod	1997	CV	156.86	43,668.89
Pacific cod	1998	CV	432.76	41,424.46
Pacific cod	1999	CV	926.74	44,442.30
Pacific cod	2000	CV	1,332.90	32,180.10
Pacific cod	2001	CV	1,035.54	27,313.66
Pacific cod	2002	CV	1,466.77	25,057.27
total 1996-2002			5,577.34	261,651.47

Species	Year	Sector	Sector Sum (mt.)	Total CGOA Harvest (mt.)
sablefish	1996	CV	607.77	6,772.28
sablefish	1997	CV	293.96	6,233.63
sablefish	1998	CV	309.40	5,876.70
sablefish	1999	CV	544.43	5,874.07
sablefish	2000	CV	555.54	6,168.32
sablefish	2001	CV	457.97	5,443.70
sablefish	2002	CV	511.16	6,179.71
total 1996-2002			3,280.22	42,548.41

Species	Year	Sector	Sector Sum (mt.)	Total CGOA Harvest (mt.)
shortraker/rougheye	1996	CV	88.08	941.27
shortraker/rougheye	1997	CV	17.48	932.66
shortraker/rougheye	1998	CV	42.08	869.85
shortraker/rougheye	1999	CV	45.99	579.89
shortraker/rougheye	2000	CV	41.06	883.70
shortraker/rougheye	2001	CV	18.38	998.16
shortraker/rougheye	2002	CV	22.94	631.61
total 1996-2002			276.00	5,837.13

Species	Year	Sector	Sector Sum (mt.)	Total CGOA Harvest (mt.)
thornyheads	1996	CV	82.65	595.35
thornyheads	1997	CV	41.78	716.30
thornyheads	1998	CV	67.12	571.63
thornyheads	1999	CV	84.17	579.86
thornyheads	2000	CV	89.00	548.44
thornyheads	2001	CV	52.75	516.24
thornyheads	2002	CV	46.08	505.05
total 1996-2002			463.54	4,032.87

Source: 1996-2002 NMFS blend data

Public Testimony Sign-Up Sheet

and

**Handouts Received During the
Meeting on this Agenda Item**

Public Testimony Sign Up Sheet

Agenda Item G-3 GOA ROCKFISH

Demonstration
Prot
Program

	NAME (PLEASE PRINT)	AFFILIATION
1	Mark Chandler	Alaska Seafoods
2	Mark Chandler	Fu Topaz left yesterday
3	Teressa Kandianis	Kodiak Fish Co
4	Dave Wood	US Seafoods
5	Heather McLarty	Island Seafoods
6	Keith Bruton	F.O. Hava
7	Julie Benning	AGDB
8	Lore Swanson / Ed Lurrell	GFF
9	Susan Robinson	Fishermen's First
10	Bob Krueger ^{not} present	Fisherman
11	Jeff Stephon ^{PASS}	UFMA
12	Donna Jones	Alaska Seafoods North America
13	Al Bunch	AGDB
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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.

C-3 Julie Bonney
 Pub. Test handout
 2-12-05 840 am

CP cod total catch in the rockfish fishery over qualifying period

rockfish Cod catch	total cod catch	% of total
108.68	47564.79	0.23%
175.87	43668.89	0.40%
214.52	41424.46	0.52%
338.49	44442.3	0.76%
57.39	32180.1	0.18%
49.81	27313.66	0.18%
95.92	25057.27	0.38%
1040.68	261651.47	0.40%

CV shortraker total catch in the rockfish fishery over qualifying period

rockfish S/rkr catch	total S/rkr catch	% of total
88.08	941.27	9.36%
17.48	932.66	1.87%
42.08	869.85	4.84%
45.99	579.89	7.93%
41.06	883.7	4.65%
18.38	998.16	1.84%
22.94	631.61	3.63%
276.01	5837.14	4.73%

Squid Box species

take highest percentage over the qualifying time frame for total over total catch

Sector	Species	05 quota	New allocation Method		Option 2 - retain/retain	
			Percent	Allocation	Percent	Allocation
CV	Shtraker/rheye	881	9.36%	82.44	5.91%	52.1
CP	P cod	25086	0.76%	191.06	0.20%	50.9

AP motion - using a 4% MRA for Pacific cod example catch

Using MRA for P cod for the offshore fleet - assumes catches do not exceed 4% and thus no discards at sea

	rockfish target catch	cod MRA @ 4.0%
catch MT	8000	320

For the squid box species, Pacific cod for the CP fleet and Shortraker/Rougheye for the CV fleet use total catch over total catch which yields the highest percentage point during the qualifying years

Madam Chair and Council Members

AP Panel sub option-Alternative two-5.4 CV Sector-Bullet 4-page 10.

The AP Panel voted 12 yes/2 no (of the 2 no votes-1 came from that of a soon to be licensed processor) Please consider changing the sub-option that was submitted by the AP Panel. This request is based upon the best interest of the industry.

To state:

- 1) As an exemption also include as an eligible processor a processing facility with a substantial investment of \$5,000,000 or more during the qualifying years,**

And
- 2) Has purchased at least 250 metric tons of aggregate Rockfish- Pacific Ocean Perch, Northern Rockfish and Pelagic Shelf Rockfish in any one of the qualifying years,**

And
- 3) Has purchased at least 500 metric tons of aggregate Rockfish- Pacific Ocean Perch, Northern Rockfish and Pelagic Shelf Rockfish during the year of 2004.**

A Special Request to all Supportive Council Members

AP Panel sub option-Alternative two-5.4 CV Sector-Bullet 3-page 10.

Please motion to-Allow LLPs that are within the eligible list to deliver to any licensed processor they choose-without 20% lose of allocation.
