


MEMORANDUM

TO: Council, SSC and AP Members  
FROM: Chris Oliver   
Executive Director  
DATE: September 24, 2007  
SUBJECT: GOA Groundfish Issues

ESTIMATED TIME  
5 HOURS  
(all C-4 items)

**ACTION REQUIRED**

Initial review of the analysis.

**BACKGROUND**

(d) Post-delivery transfers in the Central Gulf of Alaska pilot program

At its June 2007 meeting, the Council adopted a draft purpose and need statement and alternatives to amend the Central Gulf of Alaska rockfish pilot program to permit the transfer of cooperative quota to cover overages after the time of landing. The provision would be intended to reduce the potential for enforcement actions related to unintended overages, in the event the fisherman can acquire shares to cover the overage within a reasonable time. In response to the Council's request, staff drafted an analysis of the alternatives for Council review. At this meeting the Council is requested to decide whether the analysis is sufficient to be released for public review. The executive summary of the analysis follows.

**Executive Summary**

In March of 2007, fishing in the Central Gulf of Alaska rockfish fisheries began under a new share-based management program. Under this program, cooperative receive a annual allocations of rockfish and other species (including halibut prohibited species catch) based on the qualified catch histories of their members. These annual allocations are binding without provision to cover any overage or compensate for any underage. This action considers allowing harvesters to engage in post-delivery transfer of their respective shares to cover overages.

**Purpose and need statement**

The Council has adopted the following the purpose and need statement for this action:

*Participants in the Central Gulf of Alaska rockfish fishery pilot program are permitted to join cooperatives, which receive annual allocations of cooperative quota, which provide exclusive privileges to catch specific numbers of pounds of Pacific ocean perch, northern rockfish, pelagic shelf rockfish, Pacific cod, sablefish, thornyhead rockfish, shortraker rockfish, rougheye rockfish, and halibut prohibited species catch. Any harvest in excess of a cooperative quota allocation is a regulatory violation punishable by confiscation of catch and other penalties. Since all catch is counted against cooperative quota, the uncertainty of catch quantities and composition creates potential for unintended overages. A provision allowing for post-delivery transfer of cooperative*

*quota to cover overages could reduce the number of inadvertent violations, allowing for more complete harvest of allocations, and reduce enforcement costs without increasing the risk of overharvest of allocations.*

### **Alternatives**

The Council has identified three alternatives for this action. Alternative 1 is the status quo, under which no post-delivery transfers are permitted. Any overage at the time of landing is considered a violation subject to a potential enforcement action. Under Alternative 2, post-delivery transfers are relatively unlimited. Post-delivery transfers of shares are permitted. The number of post-delivery transfers a person may receive and their size are not limited. Post-delivery transfers are limited to being used to cover overages. Two options for limiting the time period during which the transfer may be made are set out. Under the first, the transfer must take place within 30 days of the landing. Under the second, the transfer must take place within 30 days of the end of the rockfish season (December 31<sup>st</sup>). Under Alternative 3, moderate limits are placed on post-delivery transfers. Post-delivery transfers are allowed exclusively to cover overages. Transfers are limited to five transfers of each species allocated. Any post-delivery transfer of a species, except halibut PSC, is limited to 25 metric tons. A transfer of halibut PSC are limited to 5,000 pounds. Two options limiting the time to make transfers are under consideration. Under the first, transfers are required to be made within 15 days of the landing with the overage. Under the second, transfers must be made within 30 days of the end rockfish season (December 31<sup>st</sup>).

### **Effects of Alternative 1 (status quo)**

Under the status quo alternative, all overages are subject to an enforcement action and penalty. No provision for post-delivery transfers to cover overage is made. Enforcement actions and penalties are at the discretion of agency enforcement officers and attorneys.

Since the program is in its first year, it is difficult to predict the extent to which participants will commit violations by overharvest of allocations. As each cooperative approaches the end of its allocation, it is likely that some risk of overage will arise. End of year consolidation will be driven, in part, by the requirement that a vessel not begin a fishing trip without quota of all species. Allocations will likely be consolidated in one or two cooperatives with harvesters in those cooperatives making 'sweep up' trips to complete the season's harvests. Although consolidation of allocations in one or two cooperatives can be used to avoid overages, it is likely that a few overages could occur prior to the end of the season. Since each cooperative is limited by 7 or 8 species allocations (depending on the sector), it is possible that unexpected catches could put a cooperative over its allocation.

Under the status quo, no post-delivery transfers are permitted. Cooperatives that have an overage at the time of landing cannot make a transfer to cover that overage. Processors are generally unaffected by this provision, since the overage charged to the harvester will not affect the processor's operations. Minor monitoring and enforcement burdens are expected under the status quo, as few overages are likely to occur.

### **Effects of Alternative 2 (unlimited post-delivery transfers)**

Alternative 2 would establish a system of almost unlimited post-delivery transfers to cover overages. Despite the absence of limits, the provision is likely to be used in a limited way. Participants are only likely to rely on the provision for unintended small overages. In most cases, these transfers could be to some extent prearranged through the inter-cooperative. The number of overages at the time of landing could be slightly higher than under the status quo, if participants gain confidence that they will be able to cover the overage with a prearranged transfer. Overages not covered with a transfer and subject to penalty should be fewer than under the status quo, since the provision will allow participants to address some overharvest with transfers.

Since the rockfish fishery has relatively few cooperatives that hold shares and the shore-based sector is well-organized through the inter-cooperative agreement, quotas are likely to be closely tracked throughout the season. The inter-cooperative is likely to contribute to more stable and predictable prices for post-delivery transfers.

Although punitive lease rates will likely apply to large overages, lease rates for minor, infrequent overages are likely to be at a reduced rate.

The Council motion includes two options defining the time during which post-delivery transfers must be completed. Under the first option, a post-delivery transfer must be made within 30 days of the overage. The second option would require the overage to be covered by the end of the rockfish season. Establishing a time limit based on the date of the overage might be supported to avoid harvesters believing that the extended season established by current management allows substantial time for finding shares to cover an overage. A lengthy period for covering an overage could lead the cooperative to unreasonably delay finding shares to cover the overage, which could result in more uncovered overages. On the other hand, the potential cost of overage penalties is likely to deter most cooperatives from delaying covering an overage. Delaying obtaining a post-delivery transfer needed to cover an overage until shares are unavailable for that transaction is unlikely to be a persistent problem.

Processors will be affected by this alternative in a few minor ways. Under the program, shore-based cooperatives are permitted to transfer allocations to other shore-based cooperatives. Any cooperative transfer requires the consent of the associated processor. This requirement, together with the requirement that cooperative formation requires consent of the associated processor, ensures the associated processor's involvement in inter-cooperative transfers (including those undertaken to cover overages).

Two factors should limit the effects of post-delivery transfers on processors. First, any unexpected transfers are likely to be for relatively small amounts of catch, limiting their effect on processors. Second, any larger post-delivery transfer is likely to be prearranged with the processor's involvement in the negotiation. Processors are unlikely to approve transfers that it views as relevant, in the absence of compensation. Although this processor involvement in transactions is likely to complicate transactions for harvesters, the need for processor consent will ensure that transfers are not detrimental to processors.

The increase in administrative and record keeping requirements to address post-delivery transfers is somewhat limited. Yet, changes in the timing of administrative decisions and processes will pose challenges. In general, NOAA Fisheries will oversee share accounts and share usage, maintaining a record of any overage. Instead of referring overages to NOAA Fisheries Office of Law Enforcement immediately, that notice would defer reporting until the time permitted to cover the overage with a post-delivery transfer has lapsed. Under the option that limits the time to cover overages from the date of landing (i.e., 30 days from the landing), overages would be reported on a rolling basis as overages become final (or the time to cover the overage lapses). Basing the limitation on the time from the landing could contribute to disputes. The burden of timing these notices is expected to be minor. Overall, allowing post-delivery transfers should reduce the number of enforcement actions prosecuting overages, since cooperative will have the opportunity to acquire shares to correct the pending violation.

### **Alternative 3 (moderately limited post-delivery transfers)**

Alternative 3 is similar to Alternative 2, but imposes a few additional restrictions on post-delivery transfers. The effects of the two alternatives are largely the same, except for differences arising from these additional restrictions. The limits are likely sufficient to cover an unintentional overage arising from a single tow. In some instances, it is possible (although unlikely) that an overage arising from a single tow could exceed a limit. The thresholds could be effective in deterring unreasonable reliance on the post-delivery transfer ability to cover an excessive overage. Yet, the possibility of unreasonable reliance on a speculative post-delivery transfer to cover an excessive overage is limited. Participants are likely to realize that the cost of covering an overage will rise with the magnitude of the overage. This alternative would also limit each cooperative to five post-delivery transfers per species. This limit would allow a vessel to make up to five independent trips with an overage of a species. Although it is possible that a cooperative could have multiple overages of a species, it is unlikely that the limit of five post-delivery transfers would be constraining. This alternative includes the same two options for defining the time for completing a post-delivery transfer as Alternative 2. Neither option is likely to

constrain effectiveness of the provision.

The effects of this alternative on processors and management and enforcement are likely to be the same as the effects of Alternative 2.

**Net benefits to the Nation**

A minor overall net benefit to the Nation is likely to arise from this action. The action is likely to reduce the number of overages by allowing participants to use post-delivery transfers. The risk of increasing the magnitude of any overage is also limited, since enforcement actions and the associated penalties are likely to deter careless overharvest of allocations. The action has the potential to reduce administrative and enforcement costs by reducing the number of enforcement actions for overages.

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North Pacific Fishery Management Council  
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Anchorage, Alaska

September 25, 2007

RECEIVED  
SEP 25 2007

N.P.F.M.C.

RE: C-4 Groundfish Issues

Dear Chair and Council members,

My name is Leonard Carpenter and together with my wife Anita and family, we own and operate a 36 foot vessel. We primarily jig P. cod, Black rockfish, pelagic rockfish, and also longline P. cod. I am submitting written testimony on behalf of my self, and other jig vessel operators who have been affected by the new Rockfish Pilot Program. The requirement that we can only deliver to entry-level processors is very restrictive and and has led to loss of fishing time for myself and others during the summer months when the fishing and weather is best, (please see problem statement).

To further compound the problem, when we target Black rockfish, (state managed fishery), we are allowed 100% retention of all rockfish species in the RPP, but any delivery in excess of 5% must go to an entry-level processor. This has created more complications for me, because my market for Black rockfish lies with a qualified rockfish processor, I will have to make a split delivery between two processors. I have space constraints on my vessel and cannot separate the Black rockfish from other species, so my catch will have to be off loaded, sorted and rockfish species destined for the entry-level processor will have to be loaded back onboard my vessel for delivery to their facility. This will lead to excessive handling and loss of product quality, and to ask a processor to offload, sort and reload product destined for another facility is unrealistic.

With these issues in mind, please consider the following proposals that we feel will solve these problems, yet still provide opportunities for the entry-level processors to participate in the RPP. I hope the Council can address these issues in C-4 (d), and if not please initiate a discussion so it can be added to the Council's December agenda.

Sincerely,



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#### Proposed regulation change to fixed gear RPP

##### Purpose and Need Statement:

*The implementation of the Rockfish Pilot Program has led to problems for the fixed gear entry-level harvesters because of the delivery restrictions contained in the program. Entry-level processors cannot guarantee deliveries will be accepted throughout the season, due in part to lack of markets, the inability to process multiple species due to a lack of space and processing capacity during the salmon season, and little or no interest when higher value species are available for processing. The summer months are important to the fixed gear sector because of a slow-down in other jig fisheries and better weather, if we cannot be guaranteed a market by the entry-level processors during the entire season, then we must be given a provision to deliver our catch to any processor or market of our choice. Please take the following proposals under consideration.*

**PROPOSAL 1:** Fixed gear harvesters that made at least one landing of primary rockfish species (northern rockfish, pelagic shelf rockfish, and Pacific ocean perch) during the 1996-2002 Central GOA rockfish fisheries, (including the parallel fishery), be exempted from all entry-level fishery requirements.

**PROPOSAL 2:** For fixed gear harvesters that did not make at least one landing of primary rockfish species (northern rockfish, pelagic shelf rockfish, and Pacific ocean perch) during the 1996-2002 Central GOA rockfish fisheries and are participating in the fixed gear entry-level fishery,(including the parallel fishery):

**OPTION 1:** Require entry-level processors to be identified on a yearly basis so a "right of first refusal" waiver could be utilized by entry-level harvesters to document that no markets were available in the entry-level processor sector at the time of harvest. Simply put, this would enable an entry-level harvester to contact the entry-level processors on the list before they begin their trip, and if no market exists the processors sign off on the waiver, freeing the harvester to deliver to any qualified rockfish processor or other legal market of their choice. This could easily be accomplished by requiring entry-level processors who are interested in processing rockfish in the upcoming year to register with NMFS by December 1.

**OPTION 2:** Remove all delivery restrictions for fixed gear entry-level harvesters.