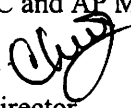


MEMORANDUM

TO: Council, SSC and AP Members
FROM: Chris Oliver 
Executive Director
DATE: March 26, 2010
SUBJECT: Central Gulf of Alaska Rockfish Program

ESTIMATED TIME 8 HOURS

ACTION REQUIRED

- (a) Initial review of the analysis

BACKGROUND

In June 2009, the Council adopted a suite of elements and options for developing a new management program for the Central Gulf of Alaska rockfish fishery to replace the existing pilot program, which is set to expire after the 2011 fishing season. At subsequent meetings, the Council has revised those alternatives to their current form. In February 2010, the Council reviewed a preliminary draft of the analysis and scheduled the item for initial review at this meeting. The analysis for this amendment was mailed out on March 25, 2010. An executive summary of that analysis is attached (Item C-4(1)).

In addition, staff has developed a revision to Table 2-45 in the analysis, which is attached (Item C-4(2)).

Executive Summary

In 2003, the U.S. Congress directed the Secretary of Commerce to establish, in consultation with the North Pacific Fishery Management Council (the Council), a pilot program (the rockfish pilot program) for management of the Pacific Ocean perch, northern rockfish, and pelagic shelf rockfish¹ fisheries (the target rockfish fisheries) in the Central Gulf of Alaska. Following this directive, in 2005, the Council adopted a share-based management program under which the total allowable catch is apportioned as exclusive shares to cooperatives based on the catch history of the members of those cooperatives. Although originally subject to a sunset after 2 years, the 2007 reauthorization of the Magnuson-Stevens Fishery Conservation and Management Act (the MSA) extended the term of the program to 5 years. Under this extension, the program is scheduled to sunset after the 2011 season. In the absence of Council action, management of the fisheries would revert to the License Limitation Program (the LLP). This action considers alternatives to allowing the fishery to return to LLP management, in order to maintain the benefits derived under the rockfish pilot program.

Problem Statement

The intent of this action is to retain the conservation, management, safety, and economic gains created by the Rockfish Pilot Program to the extent practicable, while also considering the goals and limitations of the Magnuson-Stevens Fisheries Conservation and Management Act Limited Access Privilege Program (LAPP) provisions.

The existing CGOA Rockfish Pilot Program (RPP) will sunset after 2011. Consequently, if the management, economic, safety and conservation gains enjoyed under the RPP are to be continued, the Council must act to create a long term CGOA rockfish LAPP. For both the onshore and offshore sectors, the RPP has improved safety at sea, controlled capacity of the fleets, improved NMFS' ability to conserve and manage the species in the program, increased vessel accountability, reduced sea floor contact, allowed full retention of allocated species and reduced halibut bycatch. In addition, the rockfish fishery dependent community in the CGOA and the shorebased processing sector have benefited from stabilization of the work force, more shoreside deliveries of rockfish, additional non-rockfish deliveries with the RPP halibut savings, and increased rockfish quality and diversity of rockfish products. Moreover, the CGOA fishermen, and the shorebased processing sector have benefited from the removal of processing conflicts with GOA salmon product. The Council needs to resolve identified issues in the management and viability of the entry level fishery.

The portion of the current catcher processor sector currently participating in the rockfish coop have also benefitted from the RPP. These benefits include greater spatial and temporal flexibility in prosecuting the fishery, which result in lower bycatch, a more rational distribution of effort and more stable markets. Certain provisions of the current RPP act as disincentives to some CP operators from joining the coop sector and

¹ Pelagic shelf rockfish comprises light dusky rockfish, yellowtail rockfish, and widow rockfish.

achieving these benefits. These disincentives should be eliminated to the extent practicable in the new RPP.

Alternatives

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

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

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

Four alternatives are defined for the **catcher vessel sector**. The first is the no action alternative, under which the fishery would revert to LLP management. The second alternative would establish a cooperative program for catcher vessel sector under which eligible catcher vessels could participate in the fishery only by joining a cooperative, which would receive an allocation of target rockfish, secondary species, and halibut PSC based on historic catches. The third alternative would divide harvest share allocations of target rockfish, secondary species, and halibut PSC between historic catcher vessel participants and historic processing participants, with allocations within each sector based relative historic participation within that sector. Under the final alternative, a harvester must join a cooperative in association with a processor. The harvester has full discretion in choosing a cooperative both initially and annually thereafter and may change cooperatives (and accompanying processor associations) without penalty or forfeiture of harvest quota.

Analysis of the Alternatives

Status Quo

Under status quo, the CGOA rockfish fishery would revert to LLP management. Reverting back to LLP management is likely to result in fishing practices and patterns similar to those prior to the pilot program. In that fishery, trawl vessels raced for catch of rockfish when the trawl season

opened in July. Typically, Pacific ocean perch was caught first, followed by northern rockfish and pelagic shelf rockfish. The quality of fish harvest would likely suffer from a return to the race for fish. In addition, catcher processors must also process the rockfish rapidly to maintain quality and accommodate additional catch. Modest increase in participation might be expected, if the fishery reverts to LLP management.

Processing participation and practices are likely to be similar to those seen under LLP management prior to implementation of the rockfish pilot program. Catcher processors in the rockfish fisheries prior to the rockfish pilot program produced mostly whole and headed and gutted products, therefore these vessels would likely continue to process catch in similar manner under status quo. Production efficiency for the catcher processors sector would likely be limited slightly by the race for fish under an LLP managed fishery. Although catcher processors process their catch quickly relative to catcher vessels, the quality of harvests could suffer to some extent as participants race to maximize their catch rates. Diminishing quality dissipates a portion of the resource rents that would otherwise be available.

Production efficiency of catcher vessels under status quo would also be limited by the short, race for fish that will result under status quo. Increasing catch in each tow and filling holds can damage rockfish that are difficult to handle. Status quo would also likely extend trip lengths to increase catch per trip which can result in a decline in the quality of rockfish. Returns to catcher vessels under status quo would likely be limited both by the quality of their landings and the compressed time period in which those landings must be made. Most processors would likely process deliveries quickly to keep pace with the landings. These conditions could dampen competition for landings among the participating processors to some extent. Quality would likely suffer because of the rapid rate of harvest and processing, which would likely lead to the production of relatively lower value and lower quality products. Efficiency, both technical and allocative, in the processing sector would suffer, as lower value products of lesser quality are likely to be produced in greater quantities. Technical efficiency would also be lost, as crews scale up for a short period of time to accommodate the rapid pace of landings during the brief season.

Consumers are likely to be supplied with products from the rockfish fishery similar to those supplied prior to pilot program. Catcher processors are likely to produce high quality frozen headed and gutted and whole fish. Production from catcher vessel catch is likely to suffer from poor handling.

Crew participation and compensation would likely revert to what it was before implementation of the rockfish pilot program. During that time, most crewmembers worked in several different fisheries on the vessel that they worked on during the rockfish season, while some moved to other vessels for particular fisheries. Crew members' compensation would likely revert to receiving a specific percent of the vessel's revenues.

For shore based processing crew, status quo would result in similar processing practices seen before implementation of the pilot program. During that period, most of the processing took place in Kodiak and was undertaken by resident crews. Crews were employed processing rockfish for a relatively short period of time. When rockfish was processed, relatively large crews were necessary to maintain a flow of fish through the plants. Because the fishery coincided with the pink salmon fishery, some plants employed substantially larger crews that were juggled between lines to process landings from both fisheries.

Catcher Processor Sector - Cooperative Only – CP-2

Under this alternative, eligible catcher processors could either join a cooperative or not participate in the Central Gulf rockfish fisheries. Within each cooperative, it is anticipated that each member would receive revenues based on the allocation that the person brings to the cooperative, with participants that fish shares of others receiving compensation for their fishing expenses. Persons eligible for the program that receive relatively small allocations could either choose to join a cooperative to allow other members of the cooperative to fish their allocations or choose to opt-out of the program for the year, forgoing the opportunity to fish CGOA rockfish. Other members of the sector could decide to consolidate their rockfish allocations to realize efficiencies in the rockfish fisheries and other fisheries. Whether some or all of these vessels would choose to remain out of cooperative cannot be predicted, and depends on their opportunity in other fisheries.

Allocations of secondary species should not constrain harvests of target rockfish, unless the rates of incidental catch of secondary species in the rockfish fishery change substantially. Cooperatives should prove useful for addressing any constraints arising from the secondary species allocations, given that cooperatives would allow for the redistribution of secondary species allocations among cooperative members. One factor some sector participants have sighted as creating an incentive for not joining cooperatives under the existing pilot program is the shortraker rockfish allocation. Included in the proposed action is an option to increase the allocation of shortraker to cooperatives from 30.03 percent to 50 percent or to manage shortraker and rougheye rockfish under a combined MRA of 2 percent for catcher processors fishing in a cooperative. It is possible that one of these suggested changes could eliminate any perceived constrain these species allocations have on the harvest of the primary species.

Processing by catcher processors under this alternative is likely to remain similar to the current (pilot program) processing by this sector. Most vessels in the sector are equipped for producing a few simple products (frozen whole and headed and gutted fish). Because of size limitations, it is unlikely that any of these vessels will change plant configurations to process higher-valued, more processed products. Although catcher processors product mix may not change from the status quo under this alternative, it is possible that some improvement in quality may be made by some participants. Generally, catcher processors produce a relatively high quality product, so the ability to make quality improvements may be limited. Any improvements in consumer benefits arising from improved quality are likely to be realized by Asian consumers, as most of the production from this sector is sold into that market.

The primary efficiency gains in the catcher processor sector under this alternative will result from improvements in technical efficiency. Allocative efficiency gains are unlikely to occur since vessels participating in this sector are equipped to produce only whole and headed and gutted products and are unlikely to reconfigure for different production outputs. Technical efficiency gains should occur as participants are able to slow the pace of fishing and processing. In the slower fishery, participants may be able to reduce expenditures on inputs to some degree (possible scaling down crews slightly) and increasing outputs slightly (with less loss due to diminished quality). Additional technical efficiencies could arise because of the cooperative structure of the alternative. In a cooperative, participants will be free to consolidate fishing up to the 60 percent harvest cap. Consolidating catch on fewer vessels in the fishery could also reduce aggregate harvest costs.

Specific sideboard provisions include a limit on West Yakutat pelagic shelf rockfish, Pacific ocean perch, and Western GOA pelagic shelf rockfish, Pacific ocean perch, and northern

rockfish. There would also be a limit halibut PSC to constrain harvest from fisheries that are typically halibut constrained. In addition, catcher processors that elect to fish in the limited access fishery (CP-3) that have in excess of 5 percent of the sector's qualified catch of Central GOA Pacific ocean perch are subject to additional limits from July 1 until 90 percent of the Central GOA Pacific ocean perch that is allocated to the catcher processor limited access fishery has been harvested. For qualified participants that choose to opt-out of the rockfish program, they would be prevented from participating in any directed fishery that the license holder did not participate in during the first week of July in at least two of seven qualifying periods.

Complicating the rockfish program sideboards for the catcher processor sector are Amendment 80 sideboards. Implemented in 2008, Amendment 80 program includes sideboards for pollock, Pacific cod, Pacific ocean perch, northern rockfish, pelagic shelf rockfish, and halibut PSC for the same catcher processor fleet that would likely be limited by sideboards in the new rockfish program. Amendment 80 GOA sideboards appear less restrictive relative to the proposed rockfish program sideboards, but rockfish program sideboards would apply only for the month of July, while the Amendment 80 sideboards apply all year. Given that both rockfish program sideboards and Amendment 80 sideboards are based on historical retained catch by the sector, it is likely that both sideboards are constraining of fishing effort in a similar fashion. Given that rockfish program and Amendment 80 sideboard limits would likely curtail the same catcher processor fleet from encroaching on other fisheries, it is likely that having both sets of sideboards would only duplicate management costs and increase the complexity of the sideboard fisheries with no added benefit.

Catcher Processor Sector - Cooperative or Limited Access – CP-3

This alternative differs from the cooperative only alternative only in that eligible catcher processors may choose to participate in a limited access fishery (instead of a cooperative). The catcher processor limited access fishery will be managed in a manner similar to the pilot program limited access fishery. Under the pilot program, several vessels have registered for the limited access fishery, with only a few vessels participating. As a result, no race for fish has developed. Instead participants have coordinated catch during allowing each to harvest an agreed share. Since most of the limited access vessels are members of a common cooperatives in the Bering Sea, it is possible that some vessels registered for the limited access that do no participate have chosen to register for the limited access to benefit their Bering Sea cooperative associates (rather than see their allocations redistributed among the rockfish cooperatives). As a result of these arrangements, the limited access fishery has functioned more like a cooperative than a limited access fishery. Limited access registered vessels, however, cannot begin harvests prior to the early July opening and, under sideboards, cannot fish in other fisheries in early July until a large portion of the rockfish harvests are made. These limitations are intended to prevent encroachment of vessels in those other fisheries.

Processing by catcher processors under this alternative is likely to be the same as under the previous alternative where catcher processors will continue to produce a relatively high quality product, so the ability to make quality improvements may be limited. Catcher processors would likely to realize similar gains in production efficiency as the cooperative only alternative, with differences arising from the ability to participate in the limited access fishery. Catcher processors may receive a benefit under this alternative, if the MRA management in the limited access fishery removes a harvest constraint that would have affected vessels fishing in a cooperative. To date in the pilot program, no constraint appears to have arisen. Alternatively, periodic losses in efficiency could result under this alternative, if a race for fish develops in the limited access fishery.

Catcher Vessel Sector - Harvester Only Cooperative – CV-2

Under this alternative, eligible harvesters would receive exclusive allocations that can be accessed through cooperatives. These cooperatives will have the flexibility to make deliveries to any processor, which should ensure that harvester delivery preferences are recognized. It is possible that a harvester might make concessions to a processor in choosing delivery dates, but these concessions are likely to be compensated. Cooperatives will have the flexibility of delivering to multiple processors allowing the opportunity to choose fishing timing. Despite this flexibility, it is likely that established relationships will have an important influence on harvester delivery choices and cooperative membership (at least at the outset of the program). Over time, changes in delivery patterns may change as harvesters perceive better opportunities with other processors.

The structure of the market for landings would likely be competitive under this alternative, increasing the incentive for processors to aggressively pursue product improvements to attract additional landings. This competition should resolve delivery terms, including the timing of landings to accommodate processing schedules. This timing of landings could be critical to processors meeting some market demands, particularly if a fresh market were to develop.

Under this alternative, the ability to coordinate harvest activity and remove vessels from the fleet without loss of harvest share, together with a relative improvement in bargaining strength arising from no processor protection on processor entry should result in substantial improvements in harvest sector efficiency over the status quo. Fishing will be slowed, as cooperatives receive exclusive allocations. Technical efficiency in processing should improve as processors are better able to schedule crews to process landings. Allocative efficiency should also increase as processors improve product quality and produce higher quality products that cannot be produced under status quo management, because of the relatively low quality of landings and the need to process those landings rapidly. However, processors may experience little improvement in their overall efficiency under this alternative because of their relatively weak negotiating position in the market for landings.² Instead, cooperatives (and their catcher vessel fleets) should receive most of the benefits of these improvements through ex vessel price negotiations. Notwithstanding the relatively strong position fishermen may have under this alternative, processors should obtain normal profits from their processing, and in some cases may be able to use relationships in other fisheries to leverage their negotiating position.

All of the catcher vessel alternatives include an option for an individual use cap of between 3 and 5 percent of the catcher vessel shares. Under the various qualifying year options and proposed caps, a maximum of 14 license holders could be constrained by the individual use cap at the initial allocation. Given that between 42 and 50 license holders would be allocated primary rockfish depending on the qualifying years, between one-quarter and more than one-half of those license holders could leave the fishery before all owners reach the 3 percent cap. Another option considered in all of the catcher vessel alternatives would establish a cooperative use cap of 30 percent of the catcher vessel harvest share pool. The provision will prevent harvests from forming cooperatives beyond the cap of the threshold, which may prevent consolidation within cooperatives that could be detrimental to marginal processors in the fishery.

A vessel use cap of between 4 and 10 percent is also being considered for the catcher vessel alternatives. As many as 12 vessels in the catcher vessel sector have historically harvested more

² Although an option could require all landings to be made in Kodiak, since that community is home to several processors, it is unlikely that the limitation of landings to Kodiak would affect the degree of competition in the fishery.

than 4 percent of the sector's total catch in a given year. Few vessels have historically exceeded the proposed 8 percent cap and in only one year did any vessels exceed the 10 percent cap. Finally, a processing cap of 20, 25, 30, or 33 percent is being considered for the catcher vessel alternatives. A processing cap would ensure that no processor purchases over the specific share of the landings in the fishery. Overall, processing caps would reduce production efficiency to the extent that competition for landings is decreased. Harvesters in the fishery would receive a lower price for landings to the extent that competition is constrained. This reduction in competition could, in turn, reduce the incentive for processors to improve products and enhance marketing efforts to maintain their competitiveness in product markets. Processors could derive a benefit from this provision to the extent that ex vessel price reductions occur, but those benefits will not necessarily accrue to historic processors.

The Council motion contains an option add a port delivery requirement for allocations of the primary and secondary species to the catcher vessel sector. The port delivery requirement is intended to protect the community of Kodiak from changes in the location of shore based processing activities that could occur in the rockfish program. If adopted, this option would ensure that Kodiak remains the processing base for the fishery and that Kodiak processors and the community continue to benefit from the fishery.

As would be applied to catcher processors, a general sideboard would limit catcher vessel participants, in the aggregate, to their historic harvests in other fisheries during the month of July. Given that NOAA Fisheries would likely close the WGOA and WYAK rockfish fisheries and the deep water complex to directed fishing for the catcher vessel sector due to insufficient catch history, prohibiting eligible catcher vessel license holders from directed fishing in these fisheries would likely reduce management costs, observer costs to the sector, and simplify sideboard regulations for the rockfish program.

Catcher Vessel Sector – Allocation of Harvester Shares to Processors – CV-3

Under this alternative, eligible processors would receive allocations of harvest shares from the catcher vessel harvest share pool under alternative. Allocations of target rockfish would be divided between eligible harvesters and eligible processors, with eligible processors receiving 10, 20, or 30 percent of the sector's pool of all allocated species based on processing in the fisheries during the qualifying period. In general the processors receiving these allocations will receive the resource rents associated with that allocation.

Catcher vessel efficiency gains under this alternative are likely to be different, with resource rents divided between catcher vessels and processors based on the division of the harvest share allocation between these sectors (i.e., 90/10, 80/20, or 70/30). The returns to participants in the catcher vessel sector may vary slightly depending on the approach taken by holders of processor allocations in using their harvester shares. These different methods are likely to result in a similar distribution of resource rents, but may result in slightly different distributions of normal profits and operation levels of independent harvesters. If a processor elects to harvest its allocation on its own (or an affiliated vessel), the processor would receive resource rents and normal profits from the harvest annually.³ If a processor elects to sell its allocation (i.e., long term share), the processor would receive the resource rents embodied in the allocation at the time of the sale. The purchaser would assume the risk associated with the allocation and gain any normal profits from the harvest of the shares over the long term. If a processor enters an arm's length lease for its the allocation (or the annual allocation yielded by its allocation), it would receive the annual rents

³ These profits might be captured only after sale of finished products by the processors.

embodied in the allocation at the time of each lease, with the lessee gaining normal profits from the year's harvest. Lastly, a processor may use its shares as part of a broader negotiation with a cooperative (or vessels in a cooperative) to establish a relationship that extends to all (or a large segment of) the landings of the cooperative.

Under this alternative, processors that receive an allocation of harvest shares are likely to realize substantially greater benefits from the fishery, than under the other catcher vessel alternatives. This benefit would be derived from the share allocation, as opposed to operational efficiencies, as this alternative is likely result in similar operational efficiencies as other cooperative alternatives. Processors will have several choices for using their shares, including selling their long term shares, leasing annual allocations, and (in some cases) harvesting annual allocations on affiliated vessels. In most cases, it is likely that these processors will use their allocations. While each of these will bring the share holder the resource rent arising from the shares, it is likely that most processors holding harvest shares will negotiate the harvest of their allocations with cooperatives to gain additional landings and coordinate its processing activity in the fishery.

In addition to the many different caps included in the catcher vessel alternatives, this alternative would include an additional limit on processor holdings of harvest shares. Under one option, the general harvest share limits could be applied to all holdings, effectively constraining harvest share holdings. It is possible under this option that all processors initially allocated harvest shares could exceed the cap. A grandfather provision could allow these processors to maintain holdings on the allocation. A second option would establish a 10 percent use cap on processor holdings. If processors receive only 10 percent of the harvest share pool in the initial allocation, it would be possible for a single processor to acquire all of those shares, if the use cap is set at 10 percent. With the exception of a limit on processor holding of harvest shares, the effects of excessive share limits and sideboards noted in CV-2 would also apply to this alternative.

The specific effects of the processor allocations will also depend, in part, on the rules governing their use and transfer. A holder of quota shares originally allocated to a processor would be permitted to divide those quota shares on transfer. In addition, three options defining persons eligible to acquire shares have been proposed. The first option would qualify processors that meet a minimum processing threshold in the fishery to acquire these shares. The second option would allow processors receiving an initial allocation of shares to acquire additional shares. In general, opportunities for processor acquisition of shares are likely to be few. The third option would allow any qualified license holder to acquire shares initially allocated to a processor. Unless a processor is exiting the fishery, it is unlikely that a processor would wish to sell its shares to a possible processing competitor (or harvester). It is also likely that, if a processor were to exit, it would attempt to sell its entire operation, including any shares. This type of a transfer is unlikely to change the processing market, except when a plant is bought by a competitor who is consolidating processing. Depending on the excessive share cap, processors may not be permitted to consolidate in this manner.

Catcher Vessel Sector – Cooperative with Severable Processor Association (no forfeiture) – CV-4

Under this alternative, a cooperative would be required to annually associate with a processor to access its allocation. Harvester will have full discretion to choose a cooperative initially and may freely move among cooperatives annually thereafter. In addition, cooperatives are free to associate with any processor in the community in any year without forfeiture or penalty. The terms of the cooperative agreement, and consequently, the cooperative/processor association are subject to negotiation between the cooperative members and the processor. Given the flexibility of the harvesters to move among cooperatives and cooperatives to change associations, it is likely that any limitation established under the terms of an association (such as delivery requirements or

terms) will be fully voluntary and harvesters will receive compensation for any concessions. Long term relationships and relationships in other fisheries are likely to be important factors that affect cooperative and processor association choices.

While some cooperatives may use the processor association to establish delivery relationships, it is possible that some cooperatives may minimally comply with the requirement by establishing a relationship on paper, but maintaining no operating relationship. With unlimited choice in processor associations, such an arrangement is plausible. In this case, the cooperative would be free to deliver to any processor and negotiate delivery arrangements independent of the processor association requirement.

It is expected that processors will pursue markets and production opportunities, to establish and maintain annual associations and to attract deliveries. Historic relationships will likely influence the formation of cooperative/processor associations, but these relationships are likely to be tested, if a processor fails to compete in product markets (or fails to match others' ex vessel prices).

Overall, the ability to coordinate harvest activity, together with a relative improvement in bargaining strength arising from no direct processor allocation, should result in substantial improvements in harvest sector efficiency over the status quo.

The effects of excessive share limits and sideboards noted in CV-2 and CV-3 would also apply to this alternative.

Entry Level Trawl/Fixed Gear Fisheries – EL-2

Under this alternative, 5 percent of each of the target rockfish species is set aside for the entry level fisheries. This set aside is divided between the trawl and fixed gear sectors. With fixed gear vessels taking less than one percent of the TAC of any rockfish species historically, it is unlikely that the fixed gear allocation will constrain that fleet. To reduce the potential for the fixed gear allocation to go unharvested, that TAC is available for harvest by entry level trawl vessels late in the year.

The trawl allocation would be available for harvest by all applicants for the entry level program. Despite the large number of persons eligible for the fishery, the trawl fishery could draw few applicants as the allocation is relatively small and few potential participants have experience in the fishery. Given the potential for relatively small allocations to the fishery (approximately 350 tons of Pacific ocean perch), the ability of NOAA Fisheries to effectively manage the trawl portion of the entry level fishery could be limited, if a substantial number of applicants for the entry level trawl fishery are received. If several vessels enter the fishery, it is likely that managers would have to close the fishery or use short openings of 24 hours or less. Management of the small allocation to trawl vessels in the entry level fishery is likely to be problematic under this alternative.

Entry Level Fixed Gear Only Fishery – EL-3

Under this alternative, only fixed gear sector would receive an entry level allocation of the primary rockfish species. The starting entry level set aside under this alternative would be between 1 and 10 metric tons of Pacific ocean perch, between 1 and 10 metric tons of northern rockfish, and between 10 and 30 metric tons of pelagic shelf rockfish.

Limiting the entry level fishery to non-trawl only and reducing the set aside for the non-trawl fishery would resolve complications associated with the entry level trawl fishery. Not including trawl participants in the entry level fishery eliminates the potential for that trawl effort to result in the TAC being exceeded. Reducing the set aside for the non-trawl CGOA rockfish could also reduce stranded CGOA rockfish TAC. Historically, non-trawl vessels have very minimal participation in the CGOA target rockfish fisheries. However, allocations less than 5 metric tons for Pacific ocean perch and northern rockfish could be very difficult to manage, so NOAA Fisheries would likely close those entry level fisheries. To avoid closures in the entry level program prior to the season opening, the Council would have to select Pacific ocean perch and northern rockfish allocations greater than or equal to 5 metric tons.

Included in the alternative is ability to expand the fixed gear entry level allocation as harvests increase. If the fixed gear entry level participants harvest 90 percent or more of their allocation of a rockfish species in a year, the set-aside would be increased by the amount of the initial allocation of the species. Allocation increases would be capped at a maximum of between 1 and 5 percent of Pacific ocean perch TAC, between 2 and 5 percent of northern rockfish TAC, and between 2.5 and 5 percent of pelagic shelf rockfish TAC. Overall, the use of a relatively small starting fixed gear allocation (more in line with historic catches) and a mechanism for increasing the allocations with growth in the sector could help prevent stranding a portion of the TAC, which would occur, if the allocation to the fixed gear sector was disproportionate to their catches.

Effects on Net Benefits to the Nation

The net benefits to the Nation arising out of the change in management can accrue from several sources. First, production efficiencies in harvesting and processing could occur as a direct result of management changes. These production changes may affect the benefits realized by U.S. consumers, through changes in product quality, availability, variety, and price. Further, the changes in conduct of the fisheries and management could result in changes in the environment, which yield benefit changes to the Nation through ecosystem productivity changes and welfare changes attributable to non use/passive use values. These various contributing effects of the alternatives to the net benefits to the Nation are summarized in the sections above. This section summarizes the different effects to allow comparison of the different alternatives and conclusions concerning the overall effects of the alternatives on net benefits to the Nation.

Status Quo

If the status quo management of the rockfish fisheries is selected, net benefits to the Nation are likely to be similar to those levels seen prior to the implementation of the rockfish pilot program in 2007. For catcher processors, quality of the whole and headed and gutted production during that period was relatively high. Few consumer benefits from this production would be realized in the U.S., as most fish is sold into foreign markets. For the shore-based sector, quality of landings and value of processed products may suffer decreased production efficiency. Consumer benefits of these harvests would be diminished by the quality and product value. In addition, a substantial portion of any consumer benefit is not realized by U.S. consumers, as much of the production is sold into foreign markets. Costs of monitoring and management are relatively low, as catch is monitored at the fleet level. Non-use benefits to the public would decrease to some extent by waste and bycatch.

Catcher processor cooperative alternatives

Net benefits to the Nation will be affected by a few different factors under the catcher processor sector cooperative alternatives. Production efficiency should increase slightly, as some participants realize moderate improvements in quality of production. Few, if any, benefits of production improvements will be realized by U.S. consumers, as this fleet is likely to continue to serve international markets. Costs of management, monitoring, and enforcement will increase to administer and oversee the cooperative allocations. Some additional benefits to the Nation could arise through reduction in bycatch, since the program requires full retention of several species. Since discard rates of these species are relatively low in the current fishery, these benefits are likely not substantial.

Catcher vessel cooperative alternatives

A few different factors will affect net benefits to the Nation under the catcher vessel cooperatives alternatives. Slowing the rate for fishing and extending the season should lead to substantial increases in production efficiency, as participants in both sectors improve quality and higher value products are produced. Some production benefit could flow to foreign-owned processing entities, but since increases in processor net benefits under this alternative are relatively minor, almost all of the gain in production efficiency should be realized by U.S. entities and citizens. Production improvements should lead to benefits for U.S. consumers, as this fleet is likely to maintain, or even increase production for domestic markets. In addition, greater production is likely to occur domestically, as fewer primary products are shipped abroad for reprocessing. Increased administration and oversight necessary for cooperative allocations and an extended season will result in an increase in costs of management, monitoring, and enforcement. Participants may also require additional observer coverage. Some additional benefits to the Nation could arise through reduction in bycatch (particularly halibut PSC).

Errata to April 2010 Initial Review Draft Analysis of the Central Gulf Rockfish Program

Provided below is an update of Table 2-45 from page 99 of the March 23, 2010 rockfish analysis. The revised table reflects updated vessel assignments to licenses which credits additional catch history. Overall, the updated catch history shifts the sector allocations of the primary rockfish in favor of the catcher processor sector of between 1 percent and 2 percent depending on the qualifying year option and species. The assignments also result in changes to the allocations within the sectors, but those changes are almost imperceptible (given the aggregation of estimated allocations needed to protect confidentiality). All affected tables and figures will be revised in the next draft of the analysis.

Table 2-45. Sector participation, qualified landings, allocation percent, and estimated allocation based on 2009 TAC of Central Gulf of Alaska rockfish

Qualifying year	Species	Sector	License count	Total qualifying landings (mt)	Allocation percent	Allocation using 2009 TAC* (mt)
1996-2002 (drop 2)	All	CP	14	34,113	49.3	6,689
		CV	49	36,256	50.7	6,869
	Northern rockfish	CP	13	6,040	38.2	843
		CV	48	9,771	61.8	1,365
	Pacific ocean perch	CP	13	19,686	50.2	4,038
		CV	49	19,544	49.8	4,008
	Pelagic shelf rockfish	CP	14	8,387	54.7	1,808
		CV	48	6,941	45.3	1,496
1998-2006 (drop 2)	All	CP	14	44,325	42.9	5,810
		CV	53	60,329	57.1	7,748
	Northern rockfish	CP	14	10,193	38.5	851
		CV	52	16,263	61.5	1,357
	Pacific ocean perch	CP	14	25,358	43.4	3,489
		CV	53	33,113	56.6	4,557
	Pelagic shelf rockfish	CP	14	8,774	44.5	1,470
		CV	52	10,953	55.5	1,834
1998-2006 (drop 4)	All	CP	14	37,540	42.2	5,718
		CV	53	52,310	57.8	7,840
	Northern rockfish	CP	14	9,290	39.3	868
		CV	52	14,335	60.7	1,340
	Pacific ocean perch	CP	14	20,563	42.0	3,383
		CV	53	28,339	58.0	4,663
	Pelagic shelf rockfish	CP	14	7,688	44.4	1,466
		CV	52	9,637	55.6	1,838
2000-2006 (drop 2)	All	CP	12	31,885	39.9	5,412
		CV	44	47,714	60.1	8,146
	Northern rockfish	CP	12	8,369	40.3	890
		CV	43	12,387	59.7	1,318
	Pacific ocean perch	CP	11	18,145	40.5	3,260
		CV	43	26,637	59.5	4,786
	Pelagic shelf rockfish	CP	12	5,370	38.2	1,262
		CV	44	8,691	61.8	2,042

Source: Alaska Department of Fish and Game for CV data and WPR for CP data

* Note that a 100 mt ICA was deducted for northern rockfish, and pelagic shelf rockfish TAC, while 200 mt ICA was deducted from Pacific ocean perch TAC

** Used for determining sector allocations for secondary species and halibut PSC

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Global Seafoods North America

North Pacific Fishery Management Council (NPFMC)
197th Plenary Session — For the Record by Fax to 907-271-2817
April 8-13, 2010 Hilton Hotel Anchorage, Alaska
Public Comment from: Global Seafoods North America, LLC ("GSNA")

**Re C-4 GOA Rockfish Program -- Initial Review
of Analysis for CGOA Limited Access (8 hours)**

Discontinuing an Anticompetitive 'Catch Shares' Program Designed in Restraint of Trade

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

GSNA is a U.S. owned company. We have long stated the reasons for return to Status Quo, and other relevant testimony. We continue to believe that:

- **The NPFMC should let the Rockfish Pilot Program expire— it is a failed demonstration.**
- **The Problem Statement remains critically flawed and inadequate as a basis of an FMP.**
- **Accordingly, the current convoluted Motion is biased and irreparably flawed, and all stakeholders are not fairly represented, especially small processors, crewmembers, and local businesses; accordingly,**
- **The EA/RIR-IRFA, its Alternatives, Options and Elements, is highly incomplete.**
- **The CGOA Rockfish program is an attempt to convert privileges to fish public resources to private rights, for a select few winners (certainly not GSNA) and ignores other means and management tools to resolve problems.**
- **We believe it is largely based on biased bycatch information in violation of the Information Quality Act (P.L. 106-544) by the very entities pushing for these allocations.**
- **Anticompetitive review — considering both exploitative and exclusionary offenses — especially regarding Restraint of Trade (against GSNA and others) is long overdue, and must occur before proceeding.**
- **Any new CGOA Amendment should fully comply with MSA and other law.**
- **The need is highly questionable, as NMFS Assistant Administrator Penelope Dalton pointed out on January 28, 2000, "none of the 36 groundfish species ... covered by [the GOA FMP] is at or below a level of abundance that is considered to be overfished." And today?**
- **NMFS' Dalton also stressed to the Senate Subcommittee on Oceans and Fisheries, "One of NOAA Fisheries' highest priorities is to improve our social and economic analyses." This**

mandate is not being fulfilled by rolling over the RPP demonstration based on a flawed legislative foundation.

- The CGOA Rockfish LAP process should never proceed until the Steller Sea Lion Biological Opinion is publicly released, and fully reviewed. As Asst. Admin. Dalton stated, *"Ensuring that our fisheries do not negatively affect species protected under the Marine Mammal Protection Act and the Endangered Species Act (ESA) is a high priority for NOAA Fisheries."* The public needs to know how all groundfish species figure in to the SSL problem, and elements and options adjusted accordingly.
- NMFS' Dalton also said, *"Existing prohibited species catch limits and closed areas in the groundfish fisheries, however, effectively move fisheries out of areas of high bycatch of non-groundfish species."* How does this square with the "Allocated PSC" practices, and concept of 'secondary species' (that is simply a side-step of normal definitions of incidental catch)?

Our 'small processor' shoreside facility in Kodiak suffered severe economic losses due to the illegitimate Rockfish Pilot Program (RPP) since 2007.

- If new options were chosen that would force us to buy quotas for primary species (e.g. pollock) from the closed-class who already 'politically obtained' those rights by taking GSNA's historical share, it could effectively drive us into bankruptcy by government order, enacted on an agency level rather than by Congressional intent.

This is no small consequence, both to the NPFMC arena and to all RFMC arenas across the Nation and its insular territories. At this time, without a cogent EIS and EA/RIR, we can't even begin to assess the slate of options that would or would not best serve the Nation. It is useless to even try at this point to digest the now 321 page document, released March 24, mere days before the April session.

- **It is imperative that any attempts to cut short a full calendar of required days for Initial Review, Public Comment, adaptations, additional Public Comment on proposed rules, etc. not be allowed.** The temptation to do this, by the NPFMC and NOAA (in its "push to Catch Shares") and the special interests involved in drafting the limited document and options is enormous. Will the Council staunchly protect the Public, or give in to special interests?

We have already provided you before with the evidence of the "fleet boycott" — in Restraint of Trade — that was enacted against us by the 'closed-class processors' and their affiliated (and illegal) linked cooperatives of trawler fleets. Together, they take over 90% of the GOA groundfish under the RPP.

Under Antitrust or competition law, the anticompetitive effect "is said to be comprised of two types of offenses — exploitative and exclusionary" (Eleanor M. Fox, professor of Trade Regulation, NYU School of Law). *"The paradigmatic exclusionary offense is a boycott to enforce a cartel. The cartel members must keep at bay outsiders who would destroy their enterprise. This means that such a boycott is also exploitative — a use of exclusion to achieve exploitation."*

In the case of the RPP, Senator Ted Stevens used an end-run of Congressional authorizing and jurisdictional committees to statutorily establish a Demonstration (the RPP) by including a Rider in the Consolidated Appropriations Act of 2004, P.L. No. 108-199, section 802. In specifying the qualifying years for processors as the best 4 of 5 years from 1996 to 2000, GSNA was cut out altogether. This statutorily defined ineligibility immediately contrasted with our competitive market investments prior to

the RPP's start, which were in excess of \$8 million. It also flies in the face of our demonstrated successes in 2005 and 2006. This is an invasive level of government control and planning in the marketplace which is a key distinguishing feature of creating a nonmarket sub-economy, in the national seafood industry segment, and in direct conflict with maximizing economic benefits of trade globally, too.

Our processing of key rockfish species for those two years, on average, greatly exceeds the current level of TAC computed in accordance with Section 802 provision to *"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 Council needs to consider the following facts.

The Council's 2008 recommendation for Pacific ocean perch for the entry level was 345 MT trawl and 54 MT for fixed gear. GSNA's purchases alone averaged 646 MT in 2005-06. The Council's Northern rockfish recommendation was 115 MT, while GSNA alone purchased an average (2005-06) of 270 MT.

Considering other firms and vessels in the entry level arena, how was this "fair and equitable" as a distribution? Obviously for any new FMP (replacing RPP), the 'reccency' issue (qualifying years and other factors) needs to be revisited to comply with National Standards and MSA requirements to maximize net national benefits.

The NPFMC must seriously consider this shortfall and its anticompetitive effects to date, and the need to do full analysis of future expectations based on the 5%, and what it means to all entrants and existing small processors (and their fleets and local stakeholders), especially in regard to allocated PSC.

Another key point regarding the CAA2004 Rider was made with regards to the Section 801 provisions on Crab and the Voluntary (*sic*) Three-pie Cooperative Program. In a June 2, 2004 to then NPFMC Chair, Stephanie Madsen. The letter by Dr. James Balsiger, Administrator of the Alaska Region, discussed whether or not Council action should be defined *"to identify the Program as the preferred alternative for the Final EIS because the Program has already been legislated."*

There is a similar concern here for the RPP and attempts to roll it over into an FMP without going back through the proper public process, examining the facts and especially updating the 'reccency' aspects in the years of eligibility, and what that meant to limiting the design of a demonstration program, and limiting who could participate on what level, in which alternatives under the inadequate Program. We believe that Dr. Balsiger's cautions regarding the Crab program and EIS apply today to the C-4 CGOA Rockfish action, its motion and Alternatives and Options and elements design – which we find wholly lacking in fairness and equity. Balsiger stated:

"Any amendments, however, must be consistent with the MSA, as amended by the Consolidated Appropriations Act, and other applicable law. Notwithstanding the broad authority to amend the Program granted by the legislation, the authority to manage the crab fisheries [think rockfish, too!] is defined substantively by the MSA. As a result, any amendments to the Program must be limited to management measures authorized under the MSA."

Only a complete review, in public, of that substantive need and applicable MSA measures will assure proceeding correctly. A rollover from a demonstration program to a full-on FMP will not. That, among other reasons outlined in our earlier testimonies to the Council (and elsewhere), is why GSNA believes that a complete stand down and return to Status Quo is required before proceeding on any CGOA

Rockfish amendment. Otherwise, GSNA's approximate \$3 million losses to date under the RPP will simply grow.

And it pays to remember that a boycott of GSNA, along with the product contract arrangements of the closed-class processors, is also an anticompetitive harm under the Clayton Act as it substantially and improperly excludes suppliers from access to marketable products that might otherwise be available through GSNA given a free market to compete for vessel catches, especially by establishing a competitive price – which especially on the margin is a rational price. The cartel price is not.

As Fox assesses, *"Debate over the concept of competitive harm can be disguised as debate over proof."* Council debate is highly skewed because of a Motion and alternatives written primarily under the undue influence of the closed-class processors and their affiliated fleet cooperatives. GSNA is subjected to policy-framework coercion by the firms with power.

To date, at no time has anyone on the Council analytical staff or membership shown even enough concern about our prior testimonies and evidence to so much as give us a call or in any other way include our concerns into the policy-making process. If you believe you have, we'd certainly like to see the proof of it. The continued absence of any respectable options and elements and an alternative that would break up the plenary powers of the closed-class processors (cartel) demonstrates Council complicity as deliberately constructing 'artificial market obstructions'.

These NPFMC policy effects and output limitation on small competitors and their creativity are a callous position considering requirements of Sec. 600.325 National Standard 4 on "fair and equitable" distributions, and no excessive share provisions, and given the effects on Communities (Sec. 600.345 NS#8 provisions). Structure implies strategy – and the boycotting practices carry obvious illegal intent.

Should the Council and its staff fail to stand down, revisit the full facts, call for assistance by Justice Antitrust Division, and correctly analyze the situation, it will guarantee ongoing anti-competitiveness through its ill-designed policy mechanism of the CGOA Rockfish Amendment. Especially because of the flawed options and lack of competitive options in the current motion under analysis.

As Eleanor Fox's discussion on *"What is Harm to Competition?"* reminds us, *"on a larger canvas... the analyst looks at the market structure and dynamics, and asks whether the practice interferes with and degrades the market mechanism. Freedom of trade (and competition and innovation) without artificial market obstruction is presumed to be in the public interest, especially the public's economic interest. Barriers must be justified. By this metric, significant unjustified exclusionary practices are anticompetitive and should be prohibited."*

Again, GSNA had a clear record of historical deliveries that quantifies our severe losses under the RPP. Let us remind you of the table and conclusions that we presented in February 2008 for the first-year review, in evidence of the effects of that restraint of trade against GSNA. It also indicated that prices dropped for Headed & Gutted Rockfish as processors tried to force it on the market, and GSNA was removed from offering comparable uncontrolled prices at the docks, as well. See APPENDIX A – TABLE 1.

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

The recommendations of the GAO against special interests using legislative end-runs, and for more public involvement in proper due process for all stakeholders, have yet to be followed. NOAA Fisheries' recently demonstrated national push for more "Catch Share" regimes foretells more of the "full speed ahead" economic crash paradigm to serve only special interests. NOAA is accordingly desperate to rollover the RPP, regardless of all of its severe flaws, regardless of due process, and regardless of its anticompetitive design.

The State of Alaska's November 2006 Goals for GOA Groundfish Fisheries are still worthy of consideration and modification. Especially, *"To the degree possible, absentee ownership should be discouraged."* And *"... increased product utilization that enables value-added production and optimum infrastructure utilization. There should also be clear entry opportunities for those who can enhance the market potential and economic value of the GOA fishery resources."* GSNA and its \$8 million investments was well on the way to serving those goals when we were illegitimately pushed out by the RPP.

Given Section 802's genesis, fairness and equitable distributions, and containment of excessive shares cannot be attained by rolling over the RPP into an equally flawed FMP for GOA Rockfish. Furthermore, the NP Council should seriously consider areas east of the 140 degrees longitude line, so that other Alaskan regions are covered. As excluded competitors in the CGOA, firms like ours may be forced to seek groundfish elsewhere, and we need to know the foundations of our investments are protected and will not again be subjected to fickle carryover effects of a flawed CGOA program.

The Scoping Process needs to be restarted, from ground zero. The old one was based on a statutorily imposed "two-Pie" management scheme. It has little to do with actual fisheries management and everything to do with driving forward the conversion of public resources for a select few to own in perpetuity as if private property. This selective enrichment deliberately targeted and left out GSNA and its investments, our employees, and suppliers and buyers.

The Problem Statement is highly flawed, and at least 7 years outdated. Reduced product value and utilization was a stated concern, yet little to no true value-added processing has repaired that concern. It does not fit in with the goals of the foreign-owned firms in the closed-class of processors, who desire extracting the resources from the USA with limited (not maximized) economic benefit to Alaska and the Nation. Their idea of economic viability and stability is that of having a cartel-like set of coercive monopolies and excluding all who would establish more value-added products and demonstrate a comparable uncontrolled price, raising dock prices as well. Again, the fleet cooperatives were illegal.

Please revisit our prior Public Comment, especially from the 196th Plenary Session held in February 2010 in Portland. It contains many important additional legal concerns you must still consider. We are gravely concerned that the current convoluted Motion and its options may also preclude GSNA from utilizing the post-RPP implementation adaptations it has taken to remain competitive.

Sincerely,

Oleg Nikitenko, President

Appendix A follows.

APPENDIX A – TABLE 1

GLOBAL SEAFOOD NORTH AMERICA – KODIAK PLANT

Production (Lbs) of Rockfish major species: 2007 drop due to the RPP!

<u>Species</u>	<u>2005</u>	<u>2006</u>	<u>2007</u>
Dusky Rockfish	311,000	229,000	26,000
Northern Rockfish	506,000	692,000	47,000
Pacific Ocean Perch	1,354,000	1,497,000	3,000
<u>Bycatch</u>			
Black cod	85,000	84,000	0
Pacific Cod	438,000	201,000	[20,000# from different fisheries]
Pollock	55,000	77,000	0

Conclusion:

- A serious downturn in GSNA's traditional landings occurred after the implementation of the RPP.
- Losses in Year 1 amount to between US\$750,000 and \$1 million, for GSNA.
- GSNA not only doesn't get the rockfish, now it can't get the "bycatch" or secondary species that come in with loads from other fishing.
- The Headed and Guttled (H&G) rockfish market, especially destined for China, crashed this past year; yet some processors produced H&G and tried to force it on the market. Fresh Rockfish (US market) was traditionally weak; the Biggest market for Rockfish fillets is the West Coast (East Coast does not eat much if any). The H&G prices crashed from a range of 20% to 35% or more at the higher end of the range, from 2006 to 2007. This explains why "fillet production tripled" ... "while production of lower priced whole fish was cut in half"
- The 1999-2000 promised "fleet boycott" has occurred, and low percentages of rockfish available to non-affiliated processors have harmed GSNA and its Kodiak plant workers.
- Without GSNA in the program, there is no competitor offering 'comparable, uncontrolled prices' by which to compare the harms of transfer pricing abuses from larger Kodiak processors to their foreign parent firms.

The Rockfish Pilot Program eliminated some processors and used GSNA's share (10-15% of the total rockfish fisheries) to split between all of the larger, closed-class processors. One must remember that before GSNA entered the Kodiak arena, the prices for groundfish were flat and stable. Global's entry resulted in an increase in fish ticket prices, until it did not buy in 2001 and 2002. At this time the large processors again laid flat and stable prices, until 2003 when Global again bought fish and again raised prices.

[end of Appendix]

Re: C-4 GOA Rockfish Program – Initial Review

North Pacific Fishery Management Council (NPFMC)
197th Plenary Session — April 8-13, 2010 Hilton Hotel Anchorage, Alaska

Public Comment of Stephen R. Taufen, Groundswell Fisheries Movement

March 30, 2010 — For the Record via Fax to (907) 271-2817

Mr. Secretary, Chairman Olson & Council Members:

The Council should stop the Rockfish privatization LAP program, and consider a new process that is fully compliant with the MSA and other laws. The SSL BiOp should be released first, as well, because of its potential effects on the groundfisheries. It is also time to ask Congress to cease the Rockfish Demonstration Program so that a completely new review of its performance to date occurs before proceeding, if at all.

The CAA2004 legislative language is being used as an excuse not to fully adhere to the MSA and other relevant law, and to avoid a proper process that could lead to a reasonable preferred alternative. Like for BSAI Crab Rationalization, its statutory beginning will be used to excuse normal due process. This is also one mechanism to deny crewmembers their 30% to 40% historical participation rights – and their disposable income losses will harm communities.

That will give “demonstration programs” the force of pre-selecting the course of all future action, regardless of the pilot design and its shortcomings and regardless of its findings. It would mean those with the political power to circumvent Congressional debate at the pilot program’s inception – in order to select themselves as eventual winners in the economic allocation of public rights by giveaways without compensation to the USA – primarily predetermine the eventual FMP, like this one now under consideration. This clearly was not the intent of Congress.

The qualifying years (for processors, the best 4 of 5 years, 1996-2000) are a decade out of date, and initial demonstration program design is also outmoded and flawed. Accordingly, the Motion and its Options do not reflect the current realities of the fishery. This is even more offensive to the pre-selected losers when one considers the flaws in the Problem Statement that continue to carry forward despite any proof of their credibility, especially for such concepts as value-added, safety concerns, economic instability among the closed-class processors, etc.

One of the most offensive excuses in the Problem Statement is that there was allegedly a “limited ability to adapt to MSA requirements to minimize bycatch and protect habitat.” This is ludicrous in light of the targeting of what are now renamed ‘secondary species’ and the facts about destruction to halibut, king and tanner crab, and other species by the trawl cooperatives who often fish in the wrong habitat. This negates achievement of National Standard 9’s goals.

In short, the Council has been negligent in doing its job of managing the multispecies complex of biological resources while it concentrates instead on creating particular winners and creating coercive buying monopolies, and unlawfully linking the two together. Meanwhile, it ignores the economic losses to the community, crew, small businesses and regional economy, and the fact of a nationally tragic giveaway of public commonwealth.

The EIS is flawed, in large part because the Motion and its alternatives, options and elements are biased and proceeding based on the wrongfully designed (deeply flawed) pilot program. More importantly, it is common knowledge that the bycatch reporting and data are wholly inaccurate. The fact that bycatch reporting is done in large part by the biased Alaska Groundfish Data Bank and related trawlers with no ability to independently verify it, and without adequate observer coverage, means that the objectivity and other requirements of the Data Quality Act (also known as the Information Quality Act) are not being met. Third-party duplication of the data is impossible, and NOAA fights for more money for Catch Shares instead of for better observer coverage, simply adding insult to injury in the CGOA groundfisheries.

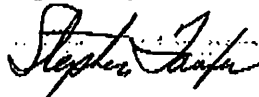
The Council is also failing to ask for a Department of Justice Antitrust and Federal Trade Commission review of the "artificial market obstructions" and fleet boycotting barriers inherent in the RPP to date. No clearer example of a firm harmed through these exclusionary and thus exploitative violations may be found than with Global Seafoods NA's groundfish processing plant in Kodiak. The flawed structural economics of the pilot program cut them out and has already harmed them by nearly \$3 million, as they have repeatedly testified to the NPFMC.

The lack of promised value-added production, the flattening of ex-vessel groundfish prices and other failures under the RPP seem to be of no noticeable concern to the Council, and most certainly are not taken into consideration in this program design or by any corrective measures. Why? The answer lies in the clear conflicts of interest among some Council members, and in how the staff engages with certain industry players to the exclusion of crew and others. The Council is, again, protecting certain competitors at the expense of competition itself.

There is much more to say, but let's just cut to the chase. A few people want a one-time get rich quick bailout for themselves, and a few companies want to own public resources in perpetuity. Nowhere else can one find such a remarkable and harmful giveaway of the public's natural resources. To abet them, I am fairly certain that just as was underhandedly done for Crab, the Council will treat the CAA2004 legislation (Ted Stevens' end-run of normal congressional process) as a legitimate reason to swiftly drive a predetermined preferred alternative forward to enact these harms and public larceny. This will be a due process mistake.

If you are finally intent on doing your proscribed duties, and willing to actually protect the net national benefits to the USA, you will stop this now. If not, history will record you as the ushers who dressed it all up, and walked them down the aisle, to give a select few a front row seat at 'the fishery giveaway Oscars'. Uprightness requires following the National Standards, MSA and all other relevant law (like crew Lay Share federal contractual rights), and ending this species-by-species march of privatization. The public is watching.

Respectfully,



Stephen Taufen, Groundswell Fisheries Movement – Kodiak, AK 99615-0714

Email: groundswellak@hotmail.com Website: <http://groundswellalaska.com>



Fishermen's
Finest

Fishermen's Finest, Inc.

1532 N.W. 56th Street ■ Seattle, WA 98107
TEL: (206) 283-1137 ■ FAX: (206) 281-8681

March 30, 2010

Mr. Eric Olson, Chairman
North Pacific Fishery Management Council
605 W 4th Avenue, Suite 306
Anchorage, AK 99501-2252

Re: Agenda Item C-4, GOA Rockfish Program

Dear Chairman Olson,

Fishermen's Finest, Inc. manages two trawl catcher-processors, both of which are Amendment 80 and Rockfish Pilot Program participants. The vessels have targeted rockfish continuously in the Gulf of Alaska since 1986 through the present, and as an entity, represent the second highest quota share holder of the RPP catcher processors. We would like to take this opportunity to comment on important aspects of the fishery.

CP Sideboards

RPP vessels have sideboard catch limits for the month of July. These sideboards cap RPP vessel activity in the WGOA and WYAK rockfish fisheries, and in the July deep water and shallow water complex halibut, which drives both rockfish and flatfish target ability. If vessels are in limited access, the RPP sideboards are applied in the aggregate. If vessels are in coops, the RPP sideboards are applied to the coop level.

Once Amendment 80 took effect, the A80 fleet received sideboard catch limits in the Gulf, in the same fisheries: WGOA and WYAK rockfish and in deep and shallow water complex halibut. (There are also Pacific cod and pollock sideboards but they are not at issue in the conflict with RPP sideboards.) Additionally, just eleven A80 CPs were granted the right to harvest flatfish in the Gulf, based on historic participation criteria. A80 coop and A80 limited access vessels have access to the full A80 sideboard.

All A80 vessels now have quota shares for their catch history in the month of July. Some vessel Qs are in the AI POP or BS flatfish fisheries, and others are in the CGOA rockfish fisheries. Until A80 started, only RPP CPs had quota shares. RPP sideboards should probably have been replaced once Amendment 80 came into effect. Since they

Fishermen's Finest, Inc.
C-4, GOA Rockfish Program
March 30, 2010

page 2 of 2

were not, the management for the month of July has become unnecessarily complicated and redundant. We estimate that there are six different categories of A80 vessels where July Gulf fisheries are concerned, and each one has one of three different sideboards to which it must adhere, with the RPP coop sideboard managed to the individual vessel basis:

- A80 limited access CP/non-RPP eligible (aggregate A80 sideboard)
- A80 limited access CP/RPP eligible and in RPP coop (RPP coop sideboard)
- A80 limited access CP/RPP eligible and in RPP limited access (RPP aggregate sideboard)
- A80 coop CP/non-RPP eligible (aggregate A80 sideboard)
- A80 coop CP/RPP eligible and in RPP coop (RPP coop sideboard)
- A80 coop CP/RPP eligible and in RPP limited access (aggregate RPP sideboard)

The main reason that the RPP sideboards were so complicated was so that 1) CPs did not encroach on CVs and 2) CGOA rockfish CPs did not encroach on non-CGOA rockfish CPs. The implementation of the A80 program has superceded the need for the RPP sideboards within the sector, and the CV sectors are protected from the CPs through A80 annual catch limits placed on halibut, rockfish, pollock and cod.

Community Conditions/Effects

We would like to point out the effects of the RPP CPs and the A80 fleet on the community of Sand Point. For many years now, Sand Point has been the location for CP offloads of Western and Central Gulf flatfish and rockfish. In the last five years, Fishermen's Finest alone has averaged 6 offloads per year in Sand Point. The CPs offload to trampers, generating landing tax revenues. The CP fleet also does numerous crew changes in Sand Point, using the local lodging and store. Fuel is purchased when available. All of this generates revenue for the community. Without consistent CP share of the rockfish, revenues to Sand Point from the CP fleet will diminish.

Thank you for the opportunity to comment on the importance of equitable sideboards for the A80 RPP CPs, and on the importance of the community of Sand Point as a critical support services location for our operations in the Gulf, year round.

Sincerely,

Susan Robinson

Susan Robinson

2/24

TO: NPFMC
FROM: Rhonda Maker, Kodiak
RE: Comment for the Official Record, GOA Rockfish Program
DATE: 3/29/2010

907.481.3100

508 W. Maurice Way #100

To Whom it May Concern: *North Pacific Fisheries Management Council,*

Sablefish and I am a small business owner in Kodiak. My business has been negatively affected *by Halibut/*
by Crab Rationalization, and I expect further harm from the GOA Rockfish program.

As a small business owner and resident of Kodiak, my position is that the NPFMC should sunset the Rockfish Pilot Program. Briefly, I oppose extending GOA Rockfish into a continuing FMP for the following reasons:

Basic Framework: Why must the resource be privatized?

The RPP has not been diligently analyzed to see if there are any reasons at all to use allocation approaches (Catch Shares) rather than using either traditional management tools, or developing other approaches that do not entail privatization of the resource. To date, proponents of privatization have failed to provide *any* reason why the resource must be privatized in order to meet management goals.

The promise of Value-added has been broken, and dock prices are not competitive.

The recent design of Alternatives is not capable of a "fair and equitable" distribution of the resources, or of meeting overall Community goals and maximizing net national benefits.

Inadequate Public Input

Inadequate public input is occurring, largely because of a Council rushing forward without establishing a proper set of alternatives, and without conducting Community Outreach. The Statutory basis in Section 802 of the 2004 Consolidated Appropriation Act was a non-public process, and did not go through the proper authorizing and jurisdictional committees of Congress. It contains specific qualifying years merely for demonstration, and is at best a biased premise -- hardly one capable of proper analysis, public input, and future management. It appears to be all about selecting winners for giveaways of national resources to the exclusion of the vast majority of participants and interests.

By-catch Mitigation Minimization

By-catch Mitigation has not occurred, especially because of the designation of "secondary species" and presence of allocated Prohibited Species Catch. For example, Black Cod TACs under other management amendments have declined as a result of the RPP.

Problem Statement for GOA Rockfish

The Problem Statement for GOA Rockfish is flawed and untruthful. It is designed to move toward greater consolidation for a special few who are setting themselves up for quota shares. It does not address the issue of conversion of public commons resources into private property, nor does it address restraint of trade issues.

2/1

Further consolidation/privatization will clearly lead to more wealth leaving Alaska and our fishery dependent communities, harming my customers and my small business. Those few vessel owners (many from out of state) and few large processors (most belong to foreign companies) want their investments protected, and their interests are being looked after. But the collective investments of many small local businesses and the economies of fishing communities are not being adequately considered or protected.

This creates a Restraint of Trade against other USA businesses who want to compete and raise the incomes of fleets and their crews, denying them extra disposable income my business depends on.

The EA/RIR-IRFA and Motion

The EA/RIR-IRFA and Motion, its Alternative and Options and Elements, is incomplete. Given the flawed Problem Statement, we cannot get to a future of proper management from here.

There are no options included to allocate quota to "commons serving" entities, or to small businesses, either in fish processing or as part of a community pool, as it is presumed the rights to public fisheries somehow only belong to a few who fished for select years. This issue also helps illustrate the absurdity of allocating (privatizing) the resource at all. Privatizing the resource inhibits competition and participation.

There are no options to allocate quota to the Crewmembers (my customers, too) who have historically earned 30% to 40% based on their investments of decades of labor. Advancement in the industry is effectively stopped

Many of the options proposed would through indirect means attain what would otherwise be illegal cooperative linkages with a closed-class of processors for their select fleets.

For the above reasons and others, I oppose extending GOA Rockfish into a continuing FMP. My position is also supported by Dr. Daniel Pauly from UBC, in his paper entitled, "Major Trends in Small-Scale Fisheries, with Emphasis on Developing Countries, And Some Implications for the Social Sciences." Every element of the attached table from page 17 should be thoroughly examined and explained by NPFMC.

Also, I am sick of your attitude toward the rules we ~~are~~ all supposed to follow. It seems you just make up the rules as you go.

Our town of Kotzebue cannot stand any more privatization + consolidation. We are already on shaky ground economically around here, + I don't know how this council can, in any good conscience give what belongs to all of us, Americans, our fish, to anyone for any reason! Boat owners just are not that special, certainly no one is swinging me ^{subjective or more} _{Sincerely,}

I conclude with a vision of vibrant small-scale fisheries contributing to coastal communities and supplying, throughout the world, the bulk of fish for human consumption, harvested with a minimum expenditure of energy, in a sustainable fashion (Figure 3). This is what small-scale fisheries can do, once they are freed from the constraints under which they presently operate.

Figure 3. Schematic illustration of the duality of fisheries prevailing in most countries of the world, using numbers raised to global levels. This duality of fisheries largely reflects the misplaced priorities of fisheries development, but also offers opportunity for reducing fishing mortality on depleted resources while maintaining most social benefits. The solution here is to phase out the large-scale fisheries. Based on an original graph by Thompson and FAO (1988), with updates from Chuenpagdee and Pauly (in press); Kelcher (2005); Tyedem et al. (2005) and data on the FAO website (www.FAO.org).

FISHERY	SMALL SCALE	LARGE SCALE
Number of fishers employed	about 1/2 million	about 30 million
Annual catch for human consumption		
Capital cost of each job on fishing vessels	\$ 30,000 - 300,000	\$ 30,000,000 - 300,000,000
Annual catch reduced to meet end use		
Annual fuel consumption	About 3 million t	About 37 million t
Cost per tonne of fuel consumed	1-2 t	1-2 t
Fishers employed for each \$1 million invested in vessels		
Fish and other wildlife discarded at sea		

MAJOR TRENDS IN SMALL-SCALE MARINE FISHERIES, WITH EMPHASIS ON DEVELOPING COUNTRIES, AND SOME IMPLICATIONS FOR THE SOCIAL SCIENCES

Daniel Pauly
 Fisheries Centre, University of British Columbia
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Full report can be found in your email in your email
 Pauly
 Pauly

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Global Seafoods North America

North Pacific Fishery Management Council (NPFMC)
197th Plenary Session — For the Record by Fax to 907-271-2817
April 8-13, 2010 Hilton Hotel Anchorage, Alaska
Public Comment from: Global Seafoods North America, LLC ("GSNA")

**Re C-4 GOA Rockfish Program -- Initial Review
of Analysis for CGOA Limited Access (8 hours)**

Discontinuing an Anticompetitive 'Catch Shares' Program Designed in Restraint of Trade

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

GSNA is a U.S. owned company. We have long stated the reasons for return to Status Quo, and other relevant testimony. We continue to believe that:

- **The NPFMC should let the Rockfish Pilot Program expire— it is a failed demonstration.**
- **The Problem Statement remains critically flawed and inadequate as a basis of an FMP.**
- **Accordingly, the current convoluted Motion is biased and irreparably flawed, and all stakeholders are not fairly represented, especially small processors, crewmembers, and local businesses; accordingly,**
- **The EA/RIR-IRFA, its Alternatives, Options and Elements, is highly incomplete.**
- **The CGOA Rockfish program is an attempt to convert privileges to fish public resources to private rights, for a select few winners (certainly not GSNA) and ignores other means and management tools to resolve problems.**
- **We believe it is largely based on biased bycatch information in violation of the Information Quality Act (P.L. 106-544) by the very entities pushing for these allocations.**
- **Anticompetitive review — considering both exploitative and exclusionary offenses — especially regarding Restraint of Trade (against GSNA and others) is long overdue, and must occur before proceeding.**
- **Any new CGOA Amendment should fully comply with MSA and other law.**
- **The need is highly questionable, as NMFS Assistant Administrator Penelope Dalton pointed out on January 28, 2000, "none of the 36 groundfish species ... covered by [the GOA FMP] is at or below a level of abundance that is considered to be overfished." And today?**
- **NMFS' Dalton also stressed to the Senate Subcommittee on Oceans and Fisheries, "One of NOAA Fisheries' highest priorities is to improve our social and economic analyses." This**

mandate is not being fulfilled by rolling over the RPP demonstration based on a flawed legislative foundation.

- The CGOA Rockfish LAP process should never proceed until the Steller Sea Lion Biological Opinion is publicly released, and fully reviewed. As Asst. Admin. Dalton stated, *"Ensuring that our fisheries do not negatively affect species protected under the Marine Mammal Protection Act and the Endangered Species Act (ESA) is a high priority for NOAA Fisheries."* The public needs to know how all groundfish species figure in to the SSL problem, and elements and options adjusted accordingly.
- NMFS' Dalton also said, *"Existing prohibited species catch limits and closed areas in the groundfish fisheries, however, effectively move fisheries out of areas of high bycatch of non-groundfish species."* How does this square with the "Allocated PSC" practices, and concept of 'secondary species' (that is simply a side-step of normal definitions of incidental catch)?

Our 'small processor' shoreside facility in Kodiak suffered severe economic losses due to the illegitimate Rockfish Pilot Program (RPP) since 2007.

- If new options were chosen that would force us to buy quotas for primary species (e.g. pollock) from the closed-class who already 'politically obtained' those rights by taking GSNA's historical share, it could effectively drive us into bankruptcy by government order, enacted on an agency level rather than by Congressional intent.

This is no small consequence, both to the NPFMC arena and to all RFMC arenas across the Nation and its insular territories. At this time, without a cogent EIS and EA/RIR, we can't even begin to assess the slate of options that would or would not best serve the Nation. It is useless to even try at this point to digest the now 321 page document, released March 24, mere days before the April session.

- **It is imperative that any attempts to cut short a full calendar of required days for Initial Review, Public Comment, adaptations, additional Public Comment on proposed rules, etc. not be allowed.** The temptation to do this, by the NPFMC and NOAA (in its "push to Catch Shares") and the special interests involved in drafting the limited document and options is enormous. Will the Council staunchly protect the Public, or give in to special interests?

We have already provided you before with the evidence of the "fleet boycott" — in Restraint of Trade — that was enacted against us by the 'closed-class processors' and their affiliated (and illegal) linked cooperatives of trawler fleets. Together, they take over 90% of the GOA groundfish under the RPP.

Under Antitrust or competition law, **the anticompetitive effect "is said to be comprised of two types of offenses – exploitative and exclusionary"** (Eleanor M. Fox, professor of Trade Regulation, NYU School of Law). *"The paradigmatic exclusionary offense is a boycott to enforce a cartel. The cartel members must keep at bay outsiders who would destroy their enterprise. This means that such a boycott is also exploitative – a use of exclusion to achieve exploitation."*

In the case of the RPP, Senator Ted Stevens used an end-run of Congressional authorizing and jurisdictional committees to statutorily establish a Demonstration (the RPP) by including a Rider in the Consolidated Appropriations Act of 2004, P.L. No. 108-199, section 802. In specifying the qualifying years for processors as the best 4 of 5 years from 1996 to 2000, GSNA was cut out altogether. This statutorily defined ineligibility immediately contrasted with our competitive market investments prior to

the RPP's start, which were in excess of \$8 million. It also flies in the face of our demonstrated successes in 2005 and 2006. This is an invasive level of government control and planning in the marketplace which is a key distinguishing feature of creating a nonmarket sub-economy, in the national seafood industry segment, and in direct conflict with maximizing economic benefits of trade globally, too.

Our processing of key rockfish species for those two years, on average, greatly exceeds the current level of TAC computed in accordance with Section 802 provision to *"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 Council needs to consider the following facts.

The Council's 2008 recommendation for Pacific ocean perch for the entry level was 345 MT trawl and 54 MT for fixed gear. GSNA's purchases alone averaged 646 MT in 2005-06. The Council's Northern rockfish recommendation was 115 MT, while GSNA alone purchased an average (2005-06) of 270 MT.

Considering other firms and vessels in the entry level arena, how was this "fair and equitable" as a distribution? Obviously for any new FMP (replacing RPP), the 'recency' issue (qualifying years and other factors) needs to be revisited to comply with National Standards and MSA requirements to maximize net national benefits.

The NPFMC must seriously consider this shortfall and its anticompetitive effects to date, and the need to do full analysis of future expectations based on the 5%, and what it means to all entrants and existing small processors (and their fleets and local stakeholders), especially in regard to allocated PSC.

Another key point regarding the CAA2004 Rider was made with regards to the Section 801 provisions on Crab and the Voluntary (*sic*) Three-pie Cooperative Program. In a June 2, 2004 to then NPFMC Chair, Stephanie Madsen. The letter by Dr. James Balsiger, Administrator of the Alaska Region, discussed whether or not Council action should be defined *"to identify the Program as the preferred alternative for the Final EIS because the Program has already been legislated."*

There is a similar concern here for the RPP and attempts to roll it over into an FMP without going back through the proper public process, examining the facts and especially updating the 'recency' aspects in the years of eligibility, and what that meant to limiting the design of a demonstration program, and limiting who could participate on what level, in which alternatives under the inadequate Program. We believe that Dr. Balsiger's cautions regarding the Crab program and EIS apply today to the C-4 CGOA Rockfish action, its motion and Alternatives and Options and elements design – which we find wholly lacking in fairness and equity. Balsiger stated:

"Any amendments, however, must be consistent with the MSA, as amended by the Consolidated Appropriations Act, and other applicable law. Notwithstanding the broad authority to amend the Program granted by the legislation, the authority to manage the crab fisheries [think rockfish, too!] is defined substantively by the MSA. As a result, any amendments to the Program must be limited to management measures authorized under the MSA."

Only a complete review, in public, of that substantive need and applicable MSA measures will assure proceeding correctly. A rollover from a demonstration program to a full-on FMP will not. That, among other reasons outlined in our earlier testimonies to the Council (and elsewhere), is why GSNA believes that a complete stand down and return to Status Quo is required before proceeding on any CGOA

Rockfish amendment. Otherwise, GSNA's approximate \$3 million losses to date under the RPP will simply grow.

And it pays to remember that a boycott of GSNA, along with the product contract arrangements of the closed-class processors, is also an anticompetitive harm under the Clayton Act as it substantially and improperly excludes suppliers from access to marketable products that might otherwise be available through GSNA given a free market to compete for vessel catches, especially by establishing a competitive price – which especially on the margin is a rational price. The cartel price is not.

As Fox assesses, *"Debate over the concept of competitive harm can be disguised as debate over proof."* Council debate is highly skewed because of a Motion and alternatives written primarily under the undue influence of the closed-class processors and their affiliated fleet cooperatives. GSNA is subjected to policy-framework coercion by the firms with power.

To date, at no time has anyone on the Council analytical staff or membership shown even enough concern about our prior testimonies and evidence to so much as give us a call or in any other way include our concerns into the policy-making process. If you believe you have, we'd certainly like to see the proof of it. The continued absence of any respectable options and elements and an alternative that would break up the plenary powers of the closed-class processors (cartel) demonstrates Council complicity as deliberately constructing 'artificial market obstructions'.

These NPFMC policy effects and output limitation on small competitors and their creativity are a callous position considering requirements of Sec. 600.325 National Standard 4 on "fair and equitable" distributions, and no excessive share provisions, and given the effects on Communities (Sec. 600.345 NS#8 provisions). Structure implies strategy – and the boycotting practices carry obvious illegal intent.

Should the Council and its staff fail to stand down, revisit the full facts, call for assistance by Justice Antitrust Division, and correctly analyze the situation, it will guarantee ongoing anti-competitiveness through its ill-designed policy mechanism of the CGOA Rockfish Amendment. Especially because of the flawed options and lack of competitive options in the current motion under analysis.

As Eleanor Fox's discussion on *"What is Harm to Competition?"* reminds us, *"on a larger canvas... the analyst looks at the market structure and dynamics, and asks whether the practice interferes with and degrades the market mechanism. Freedom of trade (and competition and innovation) without artificial market obstruction is presumed to be in the public interest, especially the public's economic interest. Barriers must be justified. By this metric, significant unjustified exclusionary practices are anticompetitive and should be prohibited."*

Again, GSNA had a clear record of historical deliveries that quantifies our severe losses under the RPP. Let us remind you of the table and conclusions that we presented in February 2008 for the first-year review, in evidence of the effects of that restraint of trade against GSNA. It also indicated that prices dropped for Headed & Gutted Rockfish as processors tried to force it on the market, and GSNA was removed from offering comparable uncontrolled prices at the docks, as well. See APPENDIX A – TABLE 1.

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

The recommendations of the GAO against special interests using legislative end-runs, and for more public involvement in proper due process for all stakeholders, have yet to be followed. NOAA Fisheries' recently demonstrated national push for more "Catch Share" regimes foretells more of the "full speed ahead" economic crash paradigm to serve only special interests. NOAA is accordingly desperate to rollover the RPP, regardless of all of its severe flaws, regardless of due process, and regardless of its anticompetitive design.

The State of Alaska's November 2006 Goals for GOA Groundfish Fisheries are still worthy of consideration and modification. Especially, *"To the degree possible, absentee ownership should be discouraged."* And *"... increased product utilization that enables value-added production and optimum infrastructure utilization. There should also be clear entry opportunities for those who can enhance the market potential and economic value of the GOA fishery resources."* GSNA and its \$8 million investments was well on the way to serving those goals when we were illegitimately pushed out by the RPP.

Given Section 802's genesis, fairness and equitable distributions, and containment of excessive shares cannot be attained by rolling over the RPP into an equally flawed FMP for GOA Rockfish. Furthermore, the NP Council should seriously consider areas east of the 140 degrees longitude line, so that other Alaskan regions are covered. As excluded competitors in the CGOA, firms like ours may be forced to seek groundfish elsewhere, and we need to know the foundations of our investments are protected and will not again be subjected to fickle carryover effects of a flawed CGOA program.

The Scoping Process needs to be restarted, from ground zero. The old one was based on a statutorily imposed "two-Pie" management scheme. It has little to do with actual fisheries management and everything to do with driving forward the conversion of public resources for a select few to own in perpetuity as if private property. This selective enrichment deliberately targeted and left out GSNA and its investments, our employees, and suppliers and buyers.

The Problem Statement is highly flawed, and at least 7 years outdated. Reduced product value and utilization was a stated concern, yet little to no true value-added processing has repaired that concern. It does not fit in with the goals of the foreign-owned firms in the closed-class of processors, who desire extracting the resources from the USA with limited (not maximized) economic benefit to Alaska and the Nation. Their idea of economic viability and stability is that of having a cartel-like set of coercive monopolies and excluding all who would establish more value-added products and demonstrate a comparable uncontrolled price, raising dock prices as well. Again, the fleet cooperatives were illegal.

Please revisit our prior Public Comment, especially from the 196th Plenary Session held in February 2010 in Portland. It contains many important additional legal concerns you must still consider. We are gravely concerned that the current convoluted Motion and its options may also preclude GSNA from utilizing the post-RPP implementation adaptations it has taken to remain competitive.

Sincerely,

Oleg Nikitenko, President

Appendix A follows.

APPENDIX A – TABLE 1

GLOBAL SEAFOOD NORTH AMERICA – KODIAK PLANT

Production (Lbs) of Rockfish major species: 2007 drop due to the RPP1

<u>Species</u>	<u>2005</u>	<u>2006</u>	<u>2007</u>
Dusky Rockfish	311,000	229,000	26,000
Northern Rockfish	506,000	692,000	47,000
Pacific Ocean Perch	1,354,000	1,497,000	3,000
<u>Bycatch</u>			
Black cod	85,000	84,000	0
Pacific Cod	438,000	201,000	[20,000# from different fisheries]
Pollock	55,000	77,000	0

Conclusion:

- A serious downturn in GSNA's traditional landings occurred after the implementation of the RPP.
- Losses in Year 1 amount to between US\$750,000 and \$1 million, for GSNA.
- GSNA not only doesn't get the rockfish, now it can't get the "bycatch" or secondary species that come in with loads from other fishing.
- The Headed and Guttled (H&G) rockfish market, especially destined for China, crashed this past year; yet some processors produced H&G and tried to force it on the market. Fresh Rockfish (US market) was traditionally weak; the Biggest market for Rockfish fillets is the West Coast (East Coast does not eat much if any). The H&G prices crashed from a range of 20% to 35% or more at the higher end of the range, from 2006 to 2007. This explains why "fillet production tripled" ... "while production of lower priced whole fish was cut in half"
- The 1999-2000 promised "fleet boycott" has occurred, and low percentages of rockfish available to non-affiliated processors have harmed GSNA and its Kodiak plant workers.
- Without GSNA in the program, there is no competitor offering 'comparable, uncontrolled prices' by which to compare the harms of transfer pricing abuses from larger Kodiak processors to their foreign parent firms.

The Rockfish Pilot Program eliminated some processors and used GSNA's share (10-15% of the total rockfish fisheries) to split between all of the larger, closed-class processors. One must remember that before GSNA entered the Kodiak arena, the prices for groundfish were flat and stable. Global's entry resulted in an increase in fish ticket prices, until it did not buy in 2001 and 2002. At this time the large processors again laid flat and stable prices, until 2003 when Global again bought fish and again raised prices.

[end of Appendix]

Re: C-4 GOA Rockfish Program – Initial Review

North Pacific Fishery Management Council (NPFMC)
197th Plenary Session — April 8-13, 2010 Hilton Hotel Anchorage, Alaska

Public Comment of Stephen R. Taufen, Groundswell Fisheries Movement

March 30, 2010 — For the Record via Fax to (907) 271-2817

Mr. Secretary, Chairman Olson & Council Members:

The Council should stop the Rockfish privatization LAP program, and consider a new process that is fully compliant with the MSA and other laws. The SSL BiOp should be released first, as well, because of its potential effects on the groundfisheries. It is also time to ask Congress to cease the Rockfish Demonstration Program so that a completely new review of its performance to date occurs before proceeding, if at all.

The CAA2004 legislative language is being used as an excuse not to fully adhere to the MSA and other relevant law, and to avoid a proper process that could lead to a reasonable preferred alternative. Like for BSAI Crab Rationalization, its statutory beginning will be used to excuse normal due process. This is also one mechanism to deny crewmembers their 30% to 40% historical participation rights – and their disposable income losses will harm communities.

That will give “demonstration programs” the force of pre-selecting the course of all future action, regardless of the pilot design and its shortcomings and regardless of its findings. It would mean those with the political power to circumvent Congressional debate at the pilot program’s inception – in order to select themselves as eventual winners in the economic allocation of public rights by giveaways without compensation to the USA – primarily predetermine the eventual FMP, like this one now under consideration. This clearly was not the intent of Congress.

The qualifying years (for processors, the best 4 of 5 years, 1996-2000) are a decade out of date, and initial demonstration program design is also outmoded and flawed. Accordingly, the Motion and its Options do not reflect the current realities of the fishery. This is even more offensive to the pre-selected losers when one considers the flaws in the Problem Statement that continue to carry forward despite any proof of their credibility, especially for such concepts as value-added, safety concerns, economic instability among the closed-class processors, etc.

One of the most offensive excuses in the Problem Statement is that there was allegedly a “limited ability to adapt to MSA requirements to minimize bycatch and protect habitat.” This is ludicrous in light of the targeting of what are now renamed ‘secondary species’ and the facts about destruction to halibut, king and tanner crab, and other species by the trawl cooperatives who often fish in the wrong habitat. This negates achievement of National Standard 9’s goals.

In short, the Council has been negligent in doing its job of managing the multispecies complex of biological resources while it concentrates instead on creating particular winners and creating coercive buying monopolies, and unlawfully linking the two together. Meanwhile, it ignores the economic losses to the community, crew, small businesses and regional economy, and the fact of a nationally tragic giveaway of public commonwealth.

The EIS is flawed, in large part because the Motion and its alternatives, options and elements are biased and proceeding based on the wrongfully designed (deeply flawed) pilot program. More importantly, it is common knowledge that the bycatch reporting and data are wholly inaccurate. The fact that bycatch reporting is done in large part by the biased Alaska Groundfish Data Bank and related trawlers with no ability to independently verify it, and without adequate observer coverage, means that the objectivity and other requirements of the Data Quality Act (also known as the Information Quality Act) are not being met. Third-party duplication of the data is impossible, and NOAA fights for more money for Catch Shares instead of for better observer coverage, simply adding insult to injury in the CGOA groundfisheries.

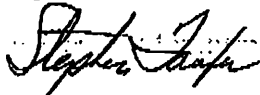
The Council is also failing to ask for a Department of Justice Antitrust and Federal Trade Commission review of the "artificial market obstructions" and fleet boycotting barriers inherent in the RPP to date. No clearer example of a firm harmed through these exclusionary and thus exploitative violations may be found than with Global Seafoods NA's groundfish processing plant in Kodiak. The flawed structural economics of the pilot program cut them out and has already harmed them by nearly \$3 million, as they have repeatedly testified to the NPFMC.

The lack of promised value-added production, the flattening of ex-vessel groundfish prices and other failures under the RPP seem to be of no noticeable concern to the Council, and most certainly are not taken into consideration in this program design or by any corrective measures. Why? The answer lies in the clear conflicts of interest among some Council members, and in how the staff engages with certain industry players to the exclusion of crew and others. The Council is, again, protecting certain competitors at the expense of competition itself.

There is much more to say, but let's just cut to the chase. A few people want a one-time get rich quick bailout for themselves, and a few companies want to own public resources in perpetuity. Nowhere else can one find such a remarkable and harmful giveaway of the public's natural resources. To abet them, I am fairly certain that just as was underhandedly done for Crab, the Council will treat the CAA2004 legislation (Ted Stevens' end-run of normal congressional process) as a legitimate reason to swiftly drive a predetermined preferred alternative forward to enact these harms and public larceny. This will be a due process mistake.

If you are finally intent on doing your proscribed duties, and willing to actually protect the net national benefits to the USA, you will stop this now. If not, history will record you as the ushers who dressed it all up, and walked them down the aisle, to give a select few a front row seat at 'the fishery giveaway Oscars'. Uprightness requires following the National Standards, MSA and all other relevant law (like crew Lay Share federal contractual rights), and ending this species-by-species march of privatization. The public is watching.

Respectfully,



Stephen Taufen, Groundswell Fisheries Movement - Kodiak, AK 99615-0714

Email: groundswellak@hotmail.com Website: <http://groundswellalaska.com>



Fishermen's
Finest

Fishermen's Finest, Inc.

1532 N.W. 56th Street ■ Seattle, WA 98107
TEL: (206) 283-1137 ■ FAX: (206) 281-8681

March 30, 2010

Mr. Eric Olson, Chairman
North Pacific Fishery Management Council
605 W 4th Avenue, Suite 306
Anchorage, AK 99501-2252

Re: Agenda Item C-4, GOA Rockfish Program

Dear Chairman Olson,

Fishermen's Finest, Inc. manages two trawl catcher-processors, both of which are Amendment 80 and Rockfish Pilot Program participants. The vessels have targeted rockfish continuously in the Gulf of Alaska since 1986 through the present, and as an entity, represent the second highest quota share holder of the RPP catcher processors. We would like to take this opportunity to comment on important aspects of the fishery.

CP Sideboards

RPP vessels have sideboard catch limits for the month of July. These sideboards cap RPP vessel activity in the WGOA and WYAK rockfish fisheries, and in the July deep water and shallow water complex halibut, which drives both rockfish and flatfish target ability. If vessels are in limited access, the RPP sideboards are applied in the aggregate. If vessels are in coops, the RPP sideboards are applied to the coop level.

Once Amendment 80 took effect, the A80 fleet received sideboard catch limits in the Gulf, in the same fisheries: WGOA and WYAK rockfish and in deep and shallow water complex halibut. (There are also Pacific cod and pollock sideboards but they are not at issue in the conflict with RPP sideboards.) Additionally, just eleven A80 CPs were granted the right to harvest flatfish in the Gulf, based on historic participation criteria. A80 coop and A80 limited access vessels have access to the full A80 sideboard.

All A80 vessels now have quota shares for their catch history in the month of July. Some vessel Qs are in the AI POP or BS flatfish fisheries, and others are in the CGOA rockfish fisheries. Until A80 started, only RPP CPs had quota shares. RPP sideboards should probably have been replaced once Amendment 80 came into effect. Since they

Fishermen's Finest, Inc.
C-4, GOA Rockfish Program
March 30, 2010

page 2 of 2

were not, the management for the month of July has become unnecessarily complicated and redundant. We estimate that there are six different categories of A80 vessels where July Gulf fisheries are concerned, and each one has one of three different sideboards to which it must adhere, with the RPP coop sideboard managed to the individual vessel basis:

- A80 limited access CP/non-RPP eligible (aggregate A80 sideboard)
- A80 limited access CP/RPP eligible and in RPP coop (RPP coop sideboard)
- A80 limited access CP/RPP eligible and in RPP limited access (RPP aggregate sideboard)
- A80 coop CP/non-RPP eligible (aggregate A80 sideboard)
- A80 coop CP/RPP eligible and in RPP coop (RPP coop sideboard)
- A80 coop CP/RPP eligible and in RPP limited access (aggregate RPP sideboard)

The main reason that the RPP sideboards were so complicated was so that 1) CPs did not encroach on CVs and 2) CGOA rockfish CPs did not encroach on non-CGOA rockfish CPs. The implementation of the A80 program has superceded the need for the RPP sideboards within the sector, and the CV sectors are protected from the CPs through A80 annual catch limits placed on halibut, rockfish, pollock and cod.

Community Conditions/Effects

We would like to point out the effects of the RPP CPs and the A80 fleet on the community of Sand Point. For many years now, Sand Point has been the location for CP offloads of Western and Central Gulf flatfish and rockfish. In the last five years, Fishermen's Finest alone has averaged 6 offloads per year in Sand Point. The CPs offload to trampers, generating landing tax revenues. The CP fleet also does numerous crew changes in Sand Point, using the local lodging and store. Fuel is purchased when available. All of this generates revenue for the community. Without consistent CP share of the rockfish, revenues to Sand Point from the CP fleet will diminish.

Thank you for the opportunity to comment on the importance of equitable sideboards for the A80 RPP CPs, and on the importance of the community of Sand Point as a critical support services location for our operations in the Gulf, year round.

Sincerely,

Susan Robinson

Susan Robinson

2/24

TO: NPFMC
FROM: Rhonda Maker, Kodiak
RE: Comment for the Official Record, GOA Rockfish Program
DATE: 3/29/2010

907.481.3100

508 W. Mainie Way #106

To Whom it May Concern: *North Pacific Fisheries Management Council,*

Sablefish and I am a small business owner in Kodiak. My business has been negatively affected *by Halibut/*
by Crab Rationalization, and I expect further harm from the GOA Rockfish program.

As a small business owner and resident of Kodiak, my position is that the NPFMC should sunset the Rockfish Pilot Program. Briefly, I oppose extending GOA Rockfish into a continuing FMP for the following reasons:

Basic Framework: Why must the resource be privatized?

The RPP has not been diligently analyzed to see if there are any reasons at all to use allocation approaches (Catch Shares) rather than using either traditional management tools, or developing other approaches that do not entail privatization of the resource. To date, proponents of privatization have failed to provide *any* reason why the resource must be privatized in order to meet management goals.

The promise of Value-added has been broken, and dock prices are not competitive.

The recent design of Alternatives is not capable of a "fair and equitable" distribution of the resources, or of meeting overall Community goals and maximizing net national benefits.

Inadequate Public Input

Inadequate public input is occurring, largely because of a Council rushing forward without establishing a proper set of alternatives, and without conducting Community Outreach. The Statutory basis in Section 802 of the 2004 Consolidated Appropriation Act was a non-public process, and did not go through the proper authorizing and jurisdictional committees of Congress. It contains specific qualifying years merely for demonstration, and is at best a biased premise -- hardly one capable of proper analysis, public input, and future management. It appears to be all about selecting winners for giveaways of national resources to the exclusion of the vast majority of participants and interests.

By-catch ~~Mitigation~~ Minimization

By-catch Mitigation has not occurred, especially because of the designation of "secondary species" and presence of allocated Prohibited Species Catch. For example, Black Cod TACs under other management amendments have declined as a result of the RPP.

Problem Statement for GOA Rockfish

The Problem Statement for GOA Rockfish is flawed and untruthful. It is designed to move toward greater consolidation for a special few who are setting themselves up for quota shares. It does not address the issue of conversion of public commons resources into private property, nor does it address restraint of trade issues.

2/21

Further consolidation/privatization will clearly lead to more wealth leaving Alaska and our fishery dependent communities, harming my customers and my small business. Those few vessel owners (many from out of state) and few large processors (most belong to foreign companies) want their investments protected, and their interests are being looked after. But the collective investments of many small local businesses and the economies of fishing communities are not being adequately considered or protected.

This creates a Restraint of Trade against other USA businesses who want to compete and raise the incomes of fleets and their crews, denying them extra disposable income my business depends on.

The EA/RIR-IRFA and Motion

The EA/RIR-IRFA and Motion, its Alternative and Options and Elements, is incomplete. Given the flawed Problem Statement, we cannot get to a future of proper management from here.

There are no options included to allocate quota to "commons serving" entities, or to small businesses, either in fish processing or as part of a community pool, as it is presumed the rights to public fisheries somehow only belong to a few who fished for select years. This issue also helps illustrate the absurdity of allocating (privatizing) the resource at all. Privatizing the resource inhibits competition and participation.

There are no options to allocate quota to the Crewmembers (my customers, too) who have historically earned 30% to 40% based on their investments of decades of labor. Advancement in the industry is effectively stopped

Many of the options proposed would through indirect means attain what would otherwise be illegal cooperative linkages with a closed-class of processors for their select fleets.

For the above reasons and others, I oppose extending GOA Rockfish into a continuing FMP. My position is also supported by Dr. Daniel Pauly from UBC, in his paper entitled, "Major Trends in Small-Scale Fisheries, with Emphasis on Developing Countries, And Some Implications for the Social Sciences." Every element of the attached table from page 17 should be thoroughly examined and explained by NPFMC.

Also, I am sick of your attitude toward the rules we ~~are~~ all supposed to follow. It seems you just make up the rules as you go.

Our town of Kodiak cannot stand any more privatization + consolidation. We are already on shaky ground economically around here, + I don't know how this council can, in any good conscience give what belongs to all of us Americans, our fish, to anyone for any reason! Boat owners just are not that special certainly. no one is swiping me a lifetime or more.

MAJOR TRENDS IN SMALL-SCALE MARINE FISHERIES, WITH EMPHASIS ON DEVELOPING COUNTRIES, AND SOME IMPLICATIONS FOR THE SOCIAL SCIENCES¹

Daniel Pauly
 Fisheries Centre, University of British Columbia
 d.pauly@fisheries.ubc.ca

Full report
 can be found
 in your email
 very soon.

Thank you,
 Daniel

















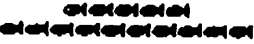

BENEFITS	FISHERY	
	LARGE SCALE 	SMALL SCALE 
Number of fishers employed	 about 1/2 million	 over 12 millions
Annual catch for human consumption	 about 30 million t	 same: about 30 million t
Capital cost of each job on fishing vessels	\$\$\$\$\$\$\$\$\$\$ 30,000 - 300,000	\$ 300 - 3,000
Annual catch reduced to meals and oils	 20 - 30 million t	 Almost none
Annual fuel consumption	 About 37 million t	 About 5 million t
Catch per tonne of fuel consumed	 =  1 - 4 t	 =  4-8 t
Fishers employed for each \$1 million invested in vessels	 3 - 30	 300 - 4,000
Fish and other waste discarded at sea	 8-20 million t	 Very little

Figure 3. Schematic illustration of the duality of fisheries prevailing in most countries of the world, using numbers raised to global levels. This duality of fisheries largely reflects the misplaced priorities of fisheries 'development', but also offers opportunity for reducing fishing mortality on depleted resources while maintaining most social benefits. The solution here is to phase out the large-scale fisheries. Based on an original graph by Thompson and FAO (1988), with updates from Chuenpagdee and Pauly (in press); Kelleher (2005); Tyedmers et al. (2005) and data on the FAO website (www.FAO.org).

I conclude with a vision of vibrant small-scale fisheries contributing to coastal communities and supplying, throughout the world, the bulk of fish for human consumption, harvested with a minimum expenditure of energy, in a sustainable fashion (Figure 3). This is what small-scale fisheries can do, once they are freed from the constraints under which they presently operate.

C-4 Central GOA Rockfish Program

The SSC received a presentation of the initial draft RIR/EA/IRFA from Mark Fina and Jon McCracken (NPFMC). There was no public comment.

The draft analysis is thorough, clearly documented, and well reasoned. We commend the effort of the authors and the SSC recommends the analysis be released for public review. The SSC did, however, identify a few issues that ought to be addressed and these issues are described below. (Minor structural and editorial comments will be supplied directly to the authors.)

The GOA Rockfish Pilot Program “sunset” on December 31, 2011. Absent alternative action by the Council, the management of the fishery reverts to the structure that prevailed before the Rockfish Pilot Program was implemented, as modified by various Council actions that have been taken in the interim, (e.g., Amendment 80). Alternative 1 does not perpetuate the “status quo” and should be identified as the “No Action” alternative.

The draft analysis should be revised to temper text that suggests that resource rents and economic profits *will* be generated. While leases, sales, and fishing allocations, create the *opportunity* to capture resource rents and normal profits, gaining those rents and profits is still contingent on individual skill and business acumen (estimates of rents and profits should be adjusted to reflect risk expectations.) Similarly, as has been observed in the halibut/sablefish IFQ program and the Alaska salmon limited entry program, the sales price of shares may not reflect the future stream of resource rents, etc., because buyers bid for (and sellers offer) shares based on imperfect and incomplete knowledge of the future. Moreover, share transfers can reflect non-pecuniary considerations.

The MRA discussion (pages 105 through 111) suggests that P.cod and sablefish MRAs result in high discards, poor quality of product, and economic hardship for rockfish target operators. Yet, at the same time, the analysis describes commonly occurring covert targeting of P.cod and sablefish during trips with very low rockfish catch. This appears to demonstrate that P.cod and sablefish can be avoided, at least to a “natural” bycatch rate (i.e., MRA), making the initial assertion of “unavoidable” waste and discards dubious. The RIR should be revised to provide a more objective discussion of the operational implications of “topping off” and/or covert targeting of P.cod and sablefish.

Where possible, the RIR should be revised to highlight the extent to which the CGOA Rockfish Pilot Program resulted in statistically significant gains (management, economics, safety, and conservation) relative to the status quo ante commencement of the CGOA Rockfish Pilot Program.

The RIR indicates that some combinations of alternatives and options may be unworkable, e.g., the alternative that allocates a portion of catcher vessel shares to processors. It would be useful to provide a list or matrix of those combinations that are unworkable in order to highlight these for the public and the Council.

There is inconsistency between the RIR and the EA in the characterization of the relative exvessel values of the target rockfish species.

The analysis of the effects of the alternatives on ESA listed species, marine mammals, and seabirds is minimal, consisting of a statement that the alternatives are not expected to affect interactions. However, adoption of any of the alternatives is likely to change the temporal and possibly spatial distribution of the fishery, which is likely to have implications for interactions of the fishery with migratory animals whose densities in the region change throughout the year. The discussion should be expanded to address these potential changes in interactions.

The provisions for rollover of unused halibut PSC to other GOA trawl fisheries are likely to increase effort and catch in those fisheries that have historically been constrained by halibut PSC, as was the case in the pilot program. While the analysis clearly states that this has the potential to increase impacts to benthic habitat from these fisheries, it would be beneficial to include information on the sensitivity of the habitat to fishing impacts.

Finally, the SSC observes that the proposed action is relatively complex, but the draft is systematically presented so as to facilitate an understanding of the many elements, options, and suboptions, as well as their myriad interactions. One inherent outcome of the analytical approach adopted by the authors is substantial redundancy in the successive iterative treatment of decision points. With the RIR alone extending over 200 pages, some effort at editorial consolidation deserves consideration as subsequent versions of the document emerge.

DRAFT
ADVISORY PANEL MINUTES
North Pacific Fishery Management Council
April 6-9, 2010

The following members were present for all or part of the meetings:

Joe Childers	Tim Evers	Matt Moir
Mark Cooper	Jeff Farvour	Theresa Peterson
Craig Cross	Becca Robbins Gisclair	Ed Poulsen
John Crowley	Jan Jacobs	Beth Stewart
Julianne Curry	Bob Jacobson	Lori Swanson
Jerry Downing	Simon Kinneen	Anne Vanderhoeven
Tom Enlow	Chuck McCallum	

C-4 Central GOA Rockfish Program

The AP recommends the Council move forward with the existing elements and options for development of the new Central GOA rockfish management program as shown in the analysis, with the following language clarifications (new language is **bold/underline**, ~~strikeout~~ signifies deleted language, **bold/asterisk(*)** indicates a preferred preliminary option):

8 **Regionalization – Apply to catcher vessel sector only:**
***Option 1: All CV CQ must be landed in the Port of Kodiak at a shorebased processing facility. [*select as preferred option]**

9 Catcher vessel/shore based processor provisions (CV – all)
~~For alternatives with processor associations the drop year is selected by the processor and applied to all LLP licenses when determining those associations.~~

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

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

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

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

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

11 **Cooperatives will be required to notify RAM division which LLP holders are in a cooperative by March 1st.**

12 Sector Transfer provisions

Harvest shares held by processors may be transferred to:

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

Option 2: Those processors who have processed at least ~~100~~ 250 metric tons of rockfish delivered by catcher vessels ~~within any two-year period~~ **two years of the last four years** during the new program **prior to transfer**

Suboption 1: **to a shoreside processing facility** in the port of Kodiak

Suboption 2: to a shoreside processing facility

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

Note: More than one option can be chosen.

13 Cooperative Harvest Use Caps

CV cooperatives

No person may hold or use more than 3-5% of the ~~CV historic shares~~ **CV OS (including any shares allocated to processors)**, using the individual and collective rule (Option: with grandfather provision).

No CV may catch more than 4-10 % of the target CV allocation **of POP**

(Option: with grandfather provision).

No person may hold or use more than 20-25% of the OS initially allocated to processors, using the individual and collective rule (Option: with grandfather provision).

~~Harvest shares held by processors will be subject to the same 3-5% cap for holding and use that applies to harvest shares held by harvesters~~

~~Suboption: 10% cap~~

~~Suboption: Grandfather initial recipients~~

Option: Eligible processors will be grandfathered for the processing cap based on total processed catch during the qualifying years.

(The year **average annual retained catch over** the **qualifying years** ~~2002~~ will be used as a base (or index) year for applying the aggregate caps.)

~~Option: Eligible processors will be grandfathered.~~

14 Harvesting provisions

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

Option 1 - Only primary allocated rockfish species

***Option 2 - All allocated species [*select as preferred alternative]**

18 Sideboards

18.1 Catcher vessel options

West Yakutat and Western Gulf Primary Rockfish Species

***Option 2: For catcher vessels, prohibit directed fishing for WYAK and WGOA primary rockfish species. [*Select as preferred alternative]**

Suboption: Exempt a vessel that participated in the WYAK rockfish fishery for 2006-2008 and participated in the entry level pilot fishery at least one year. These vessels will be sideboarded at their catch history for 2006-2008
[motion for addition of suboption passed 14/5]

Bering Sea and Aleutian Island Sideboard Provisions

Yellowfin sole, other flatfish, and Pacific ocean perch fisheries

***Option 2: The qualifying vessels in the trawl catcher vessel sector can participate in the limited access yellowfin sole, other flatfish or Pacific Ocean perch fisheries in the BSAI in the month of July. [*Select as preferred alternative]**

Pacific cod fishery

***Option 2: The qualifying vessels in the trawl CV sector can participate in the BSAI Pacific cod fishery in the month of July without any sideboard limit. [*Select as preferred alternative]**

[Final motion as amended passed 19/0]

**DRAFT
ADVISORY PANEL MINUTES
North Pacific Fishery Management Council
April 6-9, 2010**

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C-4 Central GOA Rockfish Program

The AP recommends the Council move forward with the existing elements and options for development of the new Central GOA rockfish management program as shown in the analysis, with the following language clarifications (new language is **bold/underline**, ~~strikeout~~ signifies deleted language, **bold/asterisk(*)** indicates a preferred preliminary option):

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***Option 1: All CV CQ must be landed in the Port of Kodiak at a shorebased processing facility. [*select as preferred option]**

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

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

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

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

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Option 2: Those processors who have processed at least 100- 250 metric tons of rockfish delivered by catcher vessels ~~within any two year period~~ **two years of the last four years** during the new program **prior to transfer**

Suboption 1: **to a shoreside processing facility** in the port of Kodiak

Suboption 2: to a shoreside processing facility

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

Note: More than one option can be chosen.

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CV cooperatives

No person may hold or use more than 3-5% of the ~~CV historic shares~~ **CV QS (including any shares allocated to processors)**, using the individual and collective rule (Option: with grandfather provision).

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

No person may hold or use more than 20-25% of the QS initially allocated to processors, using the individual and collective rule (Option: with grandfather provision).

~~Harvest shares held by processors will be subject to the same 3-5% cap for holding and use that applies to harvest shares held by harvesters~~

~~Suboption: 10% cap~~

~~Suboption: Grandfather initial recipients~~

Option: Eligible processors will be grandfathered for the processing cap based on total processed catch during the qualifying years.

(The year **average annual retained catch over the qualifying years** 2002 will be used as a base (or index) year for applying the aggregate caps.)

~~Option: Eligible processors will be grandfathered.~~

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

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Suboption: Exempt a vessel that participated in the WYAK rockfish fishery for 2006-2008 and participated in the entry level pilot fishery at least one year. These vessels will be sideboarded at their catch history for 2006-2008

[motion for addition of suboption passed 14/5]

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Pacific cod fishery

***Option 2: The qualifying vessels in the trawl CV sector can participate in the BSAI Pacific cod fishery in the month of July without any sideboard limit. [*Select as preferred alternative]**

[Final motion as amended passed 19/0]

PUBLIC TESTIMONY SIGN-UP SHEET

Agenda Item: C-4 GOA ROCKFISH PROGRAM

	NAME (PLEASE PRINT)	TESTIFYING ON BEHALF OF:
1	PETER MC CARTHY	FV STELLA
2	Joseph HAM	F/V Chellissa
3	Tim Blott	Ocean Beauty Seafoods
4	KURT COCHRAN	FV MADATITON
5	John Franquelin	ISA
6	Matt Hegge	F/V SEIS Mac
7	TREVOR BROWN	KODIAK ISLAND BOROUGH & CITY OF KODIAK
8	Theresa Peterson	Amcc
9	Dave Wood	US Seafoods,
10	Sam Mitch	
11	Gregory [unclear]	[unclear]
12	John Tari	GOA Processors Group
13	Susan Robinson	Fishermen's Finest
14	Bob Krueger	Alaska Whitefish Trawlers
15	JOE PLESHA	TRIDENT SEAFOODS
16	Bert Ashley / Don Ashley	F/V Gold Rush
17	Mik's Szymanski	FCA
18	Heather McCarty & John Whidden	Island Seafoods
19	BRENT PAINK	UCB
20	Margaret & George Hall	F/V's Progress & Vanguard
21	Julie A. Binney	AFDB
22	LORI Swanson	^{passed} GFF
23	Stephen Taufen	Groundswell Fisheries Movement
24		
25		

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

Alaska Whitefish Trawlers Association

Central Gulf of Alaska Rockfish Program
Agenda Item C-4
April 2010

P.O. Box 991
Kodiak, AK
99615
(907) 486-3910
alaska@ptialaska.net

4.4- Entry level trawl qualifications

- 2) We recommend that 2009 be added to the suite of years and language inserted that states that a vessel must have registered in any two out of the three years.
- 3) We recommend that 2009 be included and language inserted that states that a vessel must have made at least one delivery in any of the three years.

4.5 –Entry level allocations

Each entry level vessel that moves into the main program should receive 1% of the aggregate Rockfish species as well as the associated secondary species.

Part 7.3 Prohibited species – Halibut

Option 1: Allocation to the rockfish cooperative program will be based on historic average usage, calculated by dividing the total number of metric tons of halibut mortality in the CGOA rockfish target fisheries during the qualifying years by the number of years.

Option for supplementing the last seasonal halibut apportionment for the trawl sector

100% of Halibut savings achieved during the rockfish fishery should be available to the trawl sector for use in the final fall fishery.

8 Allocation from sector to vessel - Regionalization

All fish harvested in this program, both primary and secondary must be landed in Kodiak. All fish must be landed at a shore-based processing facility

9 Catcher vessel/ shore-based Processor Provisions

We are in favor of Alternative CV4 - Harvester cooperatives with severable processor associations and no forfeiture. If CV 4 is found by NOAA GC to not be a workable alternative, we support CV2 - Harvester only cooperative.

13 Cooperative Use Caps

CV use cap – 5% (with grandfather provision)
CV catch cap – 10% of POP (with grandfather provision)
CV Cooperative cap – 30% of aggregate POP, Northern and PRS
Processor cap both Primary and Secondary Species 20% (with grandfather provision based on total processed catch during the qualifying years.)

18.1 Catcher Vessel Sideboards

West Yakutat and WGOA Primary Rockfish species

Option 2 - prohibit Catcher vessels from directed fishing in these areas

Halibut PSC

Option 2 - limit CVs in the GOA to the shallow-water complex during July

DRAFT
ADVISORY PANEL MINUTES
North Pacific Fishery Management Council
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Suboption: Exempt a vessel that participated in the WYAK rockfish fishery for 2006-2008 and participated in the entry level pilot fishery at least one year. These vessels will be sideboarded at their catch history for 2006-2008

[motion for addition of suboption passed 14/5]

Halibut PSC

***Option 2: For the month of July, limit all CVs to the shallow halibut complex fisheries (except for rockfish target fisheries in CGOA, WYAK and WGOA). [*Select as preferred alternative]**

IFQ halibut and sablefish are exempt from sideboard provisions

Bering Sea and Aleutian Island Sideboard Provisions

Yellowfin sole, other flatfish, and Pacific ocean perch fisheries

***Option 2: The qualifying vessels in the trawl catcher vessel sector can participate in the limited access yellowfin sole, other flatfish or Pacific Ocean perch fisheries in the BSAI in the month of July. [*Select as preferred alternative]**

Pacific cod fishery

***Option 2: The qualifying vessels in the trawl CV sector can participate in the BSAI Pacific cod fishery in the month of July without any sideboard limit. [*Select as preferred alternative]**

[Final motion as amended passed 19/0]

C-4 CGOA Rockfish Program

The Council directs staff to revise alternatives and options as follows and release the analysis for public review. The below listing of alternatives, elements, and options is based on the draft provided in March 2010 analysis. Additions are shown underlined and deletions in strikethrough.

Elements and options defining the program alternatives

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

Alternatives, Elements, and Options

Entry-Level Fishery Alternatives (EL)

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

Catcher Processor Alternatives (CP)

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

Catcher Vessel Alternatives (CV)

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

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

1 ICA Set Aside

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

2 Entry-level Set Aside (EL – all)

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

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

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

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

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

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

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

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

2.1.2 Halibut PSC Limit Allocation

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

Trawl halibut PSC options

Option 1: If sufficient halibut PSC is not available at the start of the trawl gear fishery (May 1), the start date will be on the next release of halibut PSC.

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

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

Option: Entry level fixed gear sector are exempt from VMS requirements.

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

The annual set aside will be;

~~5.4—10~~ mt of the POP TAC

~~5.4—10~~ mt of the northern rockfish TAC

10 - 30 mt of the pelagic shelf rockfish TAC.

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

~~5.4—10~~ mt POP

~~5.4—10~~ mt Northern rockfish

10 - 30 mt pelagic shelf rockfish

This increase would be capped at a maximum of:

POP

a. 1%

b. 3%

c. 5%

Northern Rockfish

a. 2%

b. 3%

c. 5%

Pelagic Shelf Rockfish

a. 2.5%

b. 3%

c. 5%

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

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

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

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

Option: Entry level fixed gear sector targeting rockfish are exempt from VMS requirements (Pacific cod VMS requirements continue to apply).

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

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

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

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

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

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

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

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

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

The CP catch history will be based on WPR data.
CV catch history will be based on fish tickets.

Note: Only legal landings will be considered in determining catch history.

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

- 1) Vessels / LLPs that do not qualify for Cooperative quota (CQ) for the CGOA rockfish cooperative program.
- 2) The trawl LLP must have registered for the entry level fishery ~~both~~ in 2007, ~~and~~ 2008, and 2009.

Option: Add 2009- The trawl LLP must have registered for the entry level fishery in two of three years, 2007-2009.

- 3) The trawl LLP must have made a landing of fish in the entry level fishery with trawl gear in ~~either~~ 2007, ~~or~~ 2008, or 2009.

~~Option: Add 2009~~

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

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

- ~~2) Average of the lowest one quarter to one third of all qualified CV LLPs.~~
- 3) 2) Actual catch history of the vessel/LLP in 2007 or 2008 or 2009 (information would be withheld due to confidentiality restrictions unless the vessel(s) agrees to have the data released to the public).
- ~~4) Average of the qualified CV LLPs that actively fished in the RPP program in either 2007 or 2008~~
- 5) 3) Average of all qualified CV LLPs.

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

Option: The qualified entry level trawl LLP's, in aggregate, would receive an allocation of QS for the primary rockfish species in an amount between 2.5% and 5% (the set-aside for the entry level trawl fishery and full entry level fishery under the Rockfish Pilot Program), to be determined by the Council. Within that allocation, each of the qualified entry level LLP's would receive an allocation of QS for the primary rockfish species in proportion to the number of years they made a delivery to an entry level processor from 2007 to 2009.

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

Allocations of QS for qualified entry level trawl LLPs would be established as a set aside, prior to allocations to the other CV sector licenses or CP sector.

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

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

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

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

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

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

7.1 Target rockfish species

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

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

Full retention of the target rockfish species required

7.2 Secondary species

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

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

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

7.2.3 Except as otherwise provided below, secondary species allocations will be based on: The sector's average annual percentage of retained catch of the secondary species by the rockfish target fisheries during the qualifying period. For each qualifying year calculate

the sector's retained catch of the species in the target rockfish fisheries divided by the retained catch of all CGOA fisheries. Sum these percentages and divided by the number of qualifying years. The calculated average annual percentage is multiplied by the secondary species TAC for that fishery year and allocated to each sector in the cooperative program.

7.2.4 Exceptions:

Shortraker and rougheye

For shortraker and rougheye:

For the CP sector:

a shortraker allocation of the TAC will be:

Option 1a: 30.03 percent

Option 1b: 50 percent

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

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

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

Sablefish and Pacific cod

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

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

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

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

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

7.3 Prohibited species (halibut mortality)

Option 1: Allocation to the rockfish cooperative program will be based on historic average usage, calculated by dividing the total number of metric tons of halibut mortality in the CGOA rockfish target fisheries during the qualifying years by the number of years.

~~Option 2: Allocation to the rockfish cooperative program will be based on historic average usage in the first three years of the rockfish pilot program, calculated by dividing the total number of metric tons of halibut mortality in the CGOA rockfish target fisheries during those years by the number of years.~~

Option 3: Allocation to the rockfish cooperative program will be based on the historic average usage, calculated as:

- 1) 50 percent of the total number of metric tons of halibut mortality in the CGOA rockfish target fisheries during the qualifying years divided by the number of qualifying years plus
- 2) 50 percent of the total number of metric tons of halibut mortality in the first three years of the rockfish pilot program divided by three (i.e., the number of years).

The halibut allocation will be divided between sectors based on the relative amount of target rockfish species allocated to each sector (e.g., the sector's share of total qualified catch).

Option for supplementing the last seasonal apportionment for trawl gear

10, 25, 50, or 75, or 100 percent of any allocation of halibut PSC that has not been utilized by November 15 or after the declaration to terminate fishing will be added to the last seasonal apportionment for trawl gear during the current fishing year. The remaining portion of any allocation will remain unavailable for use.

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

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

Target Species

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

Secondary Species

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

PSC (Halibut Mortality)

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

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

Allocations are revocable privileges

The allocations under this program:

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

Domestic processing

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

Regionalization – Apply to catcher vessel sector only:

~~Option 1:~~ All CV CQ must be landed in the ~~Port~~ City of Kodiak at a shorebased processing facility.

Option: Entry-level fixed gear landings must be landed at a shorebased processing facility in the Kodiak Island Borough.

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

9.1 Processor eligibility (CV-3)

An eligible processor is a processing facility that has purchased:

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

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

Suboption: (entry level fishery processor): 250 MT of aggregate Pacific Ocean perch, northern rockfish, and pelagic shelf rockfish ~~harvested~~ for two years, from 2007 to 2009.

~~Suboption: Add 2009~~

Processor qualifying years

Each eligible shore based processor is allocated processor catch history based on processor histories of CGOA target rockfish for the years (Option: based on individual average annual processing history):

Option 1 - 1996-2000 (drop 1 year)

Option 2 - 2000-2006 (drop 2 year)

Suboption 1: (entry level processors): 2007 – ~~2008~~2009 (drop one year)

~~Suboption: Add 2009~~

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

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

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

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

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

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

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

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

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

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

Option 1: 90/10

Option 2: 80/20

Option 3: 70/30

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

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

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

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

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

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

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

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

The shorebased Kodiak processor must have a federal processor permit and an approved Catch Monitoring and Control Plan (CMCP).

10 **Catcher processor cooperatives**

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

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

Participants have a choice of participating in:

~~Option 1: a co-op or opt out of the rockfish program,~~

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

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

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

11 **General cooperative provisions – apply to both sectors**

Duration of cooperative agreements is 1 year.

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

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

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

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

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

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

Cooperatives will report annually to the Council as per AFA.

Cooperatives will be required to notify RAM division which LLP holders are in a cooperative by March 1st of the fishing year.

12 Sector Transfer provisions

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

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

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

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

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

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

Harvest shares held by processors will be divisible for transfer.

Harvest shares held by processors may be transferred to:

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

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

Suboption 1: to a shoreside processing facility in the port City of Kodiak

Suboption 2: to a shoreside processing facility

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

Note: More than one option can be chosen

13 Cooperative Harvest Use Caps

CV cooperatives

No person may hold or use more than 3-5% of the ~~CV historic shares~~ CV OS (including any shares allocated to processors), using the individual and collective rule (Option: with grandfather provision).

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

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

No person may hold or use more than 20-25% of the OS initially allocated to processors using the individual and collective rule (Option: with grandfather provision).

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

~~Suboption: 10% cap~~

~~Suboption: Grandfather initial recipients~~

CP cooperatives

No person may hold or use more than 20, 30, or 40 percent of the CP historic shares, using the individual and collective rule

(Option: with grandfather provision).

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

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

Shoreside Processor Use Caps

Shoreside processors shall be capped at the entity level.

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

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

Option: Eligible processors will be grandfathered for the processing cap based on total processed catch during the qualifying years.

(The ~~year 2002~~ average annual received catch over the qualifying years used to allocate CV QS will be used as a base (or index) ~~year~~ for applying the aggregate caps.)

~~Option: Eligible processors will be grandfathered.~~

14 **Harvesting provisions**

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

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

~~Option 1— Only primary allocated rockfish species~~

~~Option 2— All allocated species~~

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

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

Full retention of all allocated species is required.

15 **Program review**

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

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

16 **Duration**

Share Duration

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

Option: Program Duration

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

17 **Cost recovery**

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

18 **Sideboards**

18.1 **Catcher vessel options**

West Yakutat and Western Gulf Primary Rockfish Species

~~Option 1: For fisheries that close on TAC in the Gulf, the qualified vessels in the trawl catcher vessel sector would be limited, in aggregate, in the month of July to the historic average catch of those vessels based on the retained catch as a percentage of the retained catch in the fishery in the month of July during the qualification years. Fisheries that this sideboard provision would apply to include West Yakutat rockfish and WGOA rockfish.~~

~~Option 2: For catcher vessels, prohibit directed fishing for WYAK and WGOA primary rockfish species.~~

Halibut PSC

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

~~Option 2: For the month of July, limit all CVs to the shallow halibut complex fisheries (except for rockfish target fisheries in CGOA, WYAK and WGOA).~~

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

Bering Sea and Aleutian Island Sideboard Provisions

Yellowfin sole, other flatfish, and Pacific ocean perch fisheries

~~Option 1: The qualifying vessels in the trawl catcher vessel sector cannot participate in the directed yellowfin sole, other flatfish (flathead, etc) or Pacific Ocean perch fisheries in the BSAI in the month of July.~~

~~Option 2: The qualifying vessels in the trawl catcher vessel sector can participate in the limited access yellowfin sole, other flatfish or Pacific Ocean perch fisheries in the BSAI in the month of July.~~

Pacific cod fishery

~~Option 1: Qualifying vessels in the trawl catcher vessel sector can fish in the BSAI Pacific cod fishery in the month of July and would be limited, in aggregate, to the historic average catch of those vessels in the BSAI Pacific cod fishery based on the retained catch as a percentage of retained catch in the catcher vessel trawl fishery in July during the qualification years 1996 to 2002.~~

~~Option 2: The qualifying vessels in the trawl CV sector can participate in the BSAI Pacific cod fishery in the month of July without any sideboard limit.~~

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

18.2 Catcher processor options

West Yakutat and Western Gulf Primary Rockfish Species

~~Option 1: For fisheries that close on TAC in the Gulf, the qualified vessels in the trawl catcher processor sector would be limited, in aggregate, in the month of July to the historic average catch of those vessels based on the retained catch as a percentage of the retained catch in the fishery in the month of July during the qualification years. Fisheries that this sideboard provision would apply to include West Yakutat rockfish and WGOA rockfish.~~

~~Option 2: For catcher processors, no sideboard limits will apply to the West Yakutat and Western Gulf primary rockfish species fisheries (rockfish eligible catcher processors that are also Amendment 80 participants would continue to be limited by Amendment 80 sideboards).~~

~~Non-Amendment 80 catcher processors will be prohibited from West Yakutat and Western Gulf rockfish species fisheries for the month of July.~~

Halibut PSC

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

~~Option 2: For catcher processors, no July GOA halibut sideboard limit (rockfish eligible catcher processors that are also Amendment 80 participants would continue to be limited by Amendment 80 sideboards) sideboard limits will apply to Gulf 3rd-season halibut PSC.~~

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

~~Note: IFQ halibut and sablefish are exempt from sideboard provisions.~~

Standdown for vessels that opt out of the rockfish fisheries

~~Option 1: CP vessels may decide to opt out of the CGOA cooperative program on an annual basis. These CP vessels may not target POP, Northern rockfish or Pelagic Shelf rockfish in the CGOA in the years they choose to opt out. They may retain these species up to the MRA amount in other fisheries. They will be sideboarded at the sector level in the GOA as described in the general provisions.~~

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

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

~~1996—July 6
1997—July 5
1998—July 4
1999—July 10
2000—July 15
2001—July 7~~

2002—July 6

Opting out is an annual decision. CP vessels which do not join cooperatives will be assigned opt out status 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.

~~Option 2: No standdown for vessels that opt out of the rockfish fishery.~~

Standdown for vessels that join cooperatives

~~Option 1: For the CP sector, the cooperative program fishery participants must either:~~

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

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

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

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

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

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

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

~~Option 2: No standdown (or alternative cooperative limit) for vessels that join cooperatives in the rockfish fishery.~~

Standdown for vessels that join the limited access fishery

Option 1: The limited access fishery starts at the same time as the traditional rockfish target fishery (early July). For vessels that account for less than 5% of the allocated CP history in the Pacific Ocean perch fishery that participate in the limited access rockfish

fishery, there are no additional intrasector sideboards. For vessels that account for greater than or equal to 5 percent of the allocated CP history in the Pacific Ocean fishery that participate in the limited access rockfish fishery and GOA standdowns are in place until 90% of the limited access Pacific Ocean perch quota is achieved.

~~Option 2: No standdown for any vessels that join the limited access rockfish fishery.~~

19 Observer Coverage

Shoreside observer coverage

Shoreside processor observer coverage requirements for all rockfish program deliveries will be:

Option 1: An observer will be on duty whenever program deliveries are made. No observer will be allowed to work more than 12 hours per day.

Option 2: Same observer coverage requirement for shoreside processors as in other groundfish fisheries.

Catcher vessel observer coverage

Fishing days and observer coverage under the rockfish program will be separate from and not count towards meeting a vessel's overall groundfish observer coverage requirement.

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