

**Description of Alternatives
Central Gulf of Alaska Rockfish Program
June 2009 Discussion Paper**

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 for management of the Pacific Ocean perch, northern rockfish, and pelagic shelf rockfish fisheries (the target rockfish fisheries) in the Central Gulf of Alaska. Specifically, Congress passed the following legislation:

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

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. The reauthorization also developed new requirements for share-based management programs, now referred to as Limited Access Privilege Programs (or LAPPs) by the MSA.

After review of the program, at its October 2008 meeting, the Council requested staff to develop a discussion paper addressing certain concerns with the program by stakeholders. On receiving that discussion paper in February 2009, the Council elected to consider a process to develop comprehensive management for the fishery that could include modifications to address shortcomings in the existing program. This comprehensive management program could be implemented at the time the pilot program expires. To begin this process, the Council tasked staff to provide a description of four alternatives that range from taking no action and allowing the program to redesigning elements of the existing program to satisfy concerns expressed by stakeholders. These alternatives specifically include:

1. no action, under which the fishery would revert to management under the License Limitation Program,
2. the current rockfish pilot program,
3. a variation on the existing program with changes to address issues that arise under the new MSA limited access privilege program requirements, and
4. a variation on the existing program with changes to address concerns of various interests.

This paper provides a description of these alternatives. Elements and options defining Alternatives 2, 3, and 4 are set out in Appendix A. In preparing the range of elements and options, staff utilized the June 2005 final Council motion as the basis for this proposed action. New elements and options are underlined

and are referenced based on the associated alternative. In those cases where there is no proposed modification to the June 2005 motion, the existing language would apply to Alternatives 2, 3, and 4.

Purpose and need

In the development of the program, the Council will need to adopt a purpose and need statement describing its rationale for considering and its goals for the action. The MSA includes general requirements for a LAPP, including that the program:

1. promotes fishing safety,
2. promotes fishery conservation and management,
3. promotes social and economic benefits, and
4. if a fishery is determined by the Secretary or Council to be overcapacity, reduces capacity in the fishery (see Sec. 303A(c)).

The Council will fashion a program to address the first three of these requirements. The fourth requirement is conditional on a Secretarial or Council finding of 'overcapacity'. In April of 2008, a technical report submitted to Congress by NOAA Fisheries on behalf of the Secretary concluded that the rockfish fishery suffered from overcapacity based on the 2004 performance of the fishery.¹ NOAA Fisheries implemented the program in 2007. The program allocated shares in the main fishery, alleviating capacity concerns by preventing additional entry and allowing participants to fish more efficiently through share allocations. As a result, the fishery in its current form is not believed to be overcapacity and any potential overcapacity problem would be addressed by the implementing a follow on management program by this action.

For the adoption of the pilot program, the Council identified the following purpose and need statement:

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

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

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

[cited legislation SEC. 802. GULF OF ALASKA ROCKFISH DEMONSTRATION PROGRAM shown in full above.]

The fishing fleets have had little experience with cooperative fishery management and need to begin the

¹ National Marine Fisheries Service, "Excess Harvesting Capacity in U.S. Fisheries A Report to Congress Mandated under Section 312(b)(6) of the Magnuson-Stevens Fishery Conservation and Management Act," April 28, 2008.

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

Since this purpose and need statement is based on the legislation directing the development of the program, it is clearly inapplicable to the development of a long term program. Several elements of the purpose and need statement could be incorporated into a purpose and need statement for this action, if the Council believes those elements identify applicable concerns and goals. As such, the purpose and need statement could be used as the basis for the development of a purpose and need statement for this action.

Alternative descriptions

Following is a description of the alternatives suggested by the Council.

Alternative 1 – (no action) The Rockfish Fishery Management Reverts to the License Limitation Program

Under this alternative, management of the Central Gulf of Alaska rockfish would revert back to the License Limitation Program used prior to the implementation of the rockfish program in 2006. The fisheries would open to fixed gear participants on January 1. The trawl season would open in early July. Ongoing catch would be monitored by managers with fishery closures timed to coincide with harvest of the TAC. Trawl participants would be subject to an aggregate limit on the amount of halibut that can be caught, all of which must be discarded as prohibited species catch (PSC). Incidental catch species would be managed under “bycatch status”, with a maximum retainable allowance (MRA), which would limit their retention to a percent of the retained target harvest. Harvest would be monitored in-season and each of the target rockfish fisheries would be closed when managers estimate that the TAC was harvested. Directed fishing allowances would be set to accommodate incidental catch of the rockfish species in other fisheries during the remainder of the year. After closure of the directed fishery, Pacific ocean perch, pelagic shelf rockfish, and northern rockfish would be managed on a bycatch basis and would be subject to MRAs in other target fisheries, limiting the retention of these rockfish relative to target species.

Alternative 2 – Existing Rockfish Program

Under this alternative represents the existing rockfish program in its current form. This alternative is included primarily for comparative analytical purposes as certain elements of the program may be beyond the Council’s current authority under the MSA as reauthorized.

Currently, the Central Gulf of Alaska rockfish program establishes a cooperative fishery that is open to holders of Central Gulf of Alaska trawl LLP licenses that have qualifying history in the rockfish fisheries. Prior to making the allocations to the cooperative fisheries, two set asides of the target rockfish are made. The first of these set asides allocates 5 percent of the TAC for each target rockfish species, the aggregate of which is divided equally between two entry level fisheries (one for trawl fishermen and the other for non-trawl fishermen). Both entry level fisheries are prosecuted as a competitive fishery open to any applicant. The second set aside is an incidental catch allowance to support incidental catch of the rockfish by participants in other directed fisheries. The set aside is based on the incidental catch needs of other fisheries, which are estimated using rockfish incidental catch rates from those fisheries in recent years.

After removal of the two set asides, the remainder of the target rockfish are divided between the catcher vessel sector and the catcher processor sector. The allocations are based on historic catches of the participants in these respective sectors. In addition to target rockfish allocations, each sector is also allocated important incidental catch species (i.e., sablefish, Pacific cod, shortraker rockfish, rougheye

rockfish, and shortspine thornyhead rockfish) based on the historic harvests of the sector. Exceptions are Pacific cod, which is not allocated to catcher processors cooperatives, and shorttraker rockfish and roughey rockfish, which are not allocated to catch vessel cooperatives, but are instead managed under MRAs. These species are not allocated because the sectors have limited historic catch, which could lead to allocations that are inadequate to support catch of target rockfish. Each sector is also allocated halibut PSC based on historic catch of halibut in the target rockfish fisheries.

Participants in each sector can either fish as part of a cooperative or in a competitive, limited access fishery. Each cooperative receives allocations of target rockfish, secondary species, and halibut PSC from the sector's allocation based on the target rockfish catch histories of its members. The limited access fishery receives an allocation of target rockfish based on the target rockfish catch histories of sector members that choose not to join a cooperative. Secondary species catch is limited by an MRA that is reduced from the historic level to maintain total catch at a level comparable to a corresponding cooperative allocation and to reduce the incentive to fish in the limited access fishery.

Cooperatives manage and coordinate fishing of their allocations. Target rockfish and secondary species are subject to a full retention requirement to minimize discards. All allocations to a cooperative are constraining, so a cooperative must manage and monitor members' catch of target rockfish, allocated secondary species, and halibut PSC, to ensure that it is able to fully harvest its allocations without overage.

To protect processors, each catcher vessel in the program is eligible for membership in a cooperative associated with the processor to which it delivered the most rockfish catch during a processor qualifying period. These cooperative/processor associations are intended to ensure that a cooperative lands a substantial portion of its catch with its member's historic processor. Note that processor association requirement for eligible catcher vessels may be beyond the general authority granted the Council under the MSA. No clear MSA authority authorizes a requirement that a harvester associate with a specific processor to access an exclusive harvest privilege. There are references in the MSA for the development of policies to promote fishing communities that depend on the fisheries by including regional or port-specific landing or delivery requirements that could address the harvester/processor associations. Despite the potential for processor associations to be beyond the authority granted to the Council by the MSA, it is the intent of staff to continue to include processor associations in the analysis of Alternative 2 for comparison of other potential processor protection options included in Alternatives 3 and 4.

Under this alternative, the main program cooperative fishing season would continue to open May 1st and close November 15th. The limited access fishery in the main program would continue to open in the beginning of July and would close when its participants are estimated to have fully harvested the allocation in that fishery.

Long term privileges in the fishery are associated with a qualified LLP license and transfer with the license (along with all other fishing privileges associated with the license). Long term quota in the program that is derived from a license is not severable from the license or divisible. Annual allocations can be transferred within a cooperative and among cooperatives, but catcher vessel cooperatives are not permitted to transfer annual allocations to catcher processor cooperatives.

Under this alternative, sideboards will continue to limit encroachment of participants in the rockfish program on other fisheries. Since the CGOA rockfish fishery was historically prosecuted in July, sideboards limit program participants to their historic harvests in other fisheries during July only. Sideboards for GOA fisheries that are historically constrained by halibut PSC would continue to be limit eligible participants in each sector to their historic halibut mortality in the month of July, in the aggregate under this alternative. NOAA Fisheries would continue to apportion halibut sideboards between the deep

water complex and the shallow water complex. These July halibut sideboards will continue to be administered by ending fishing in halibut limited fisheries in a complex by sector members eligible for the rockfish program when the sector halibut limitation is reached in that complex.

Alternative 3 – The Existing Program modified to address Limited Access Privilege Program requirements of the Magnuson Stevens Act Requirements

The Council requested staff to develop Alternative 3 by modifying the existing CGOA rockfish limited access program with changes necessary to address the requirements of the new Magnuson Stevens Act limited access privilege program requirements. So, except for differences described here, Alternative 3 would maintain the same cooperative program previously described as Alternative 2.

§303A of the MSA provides the Council and Secretary with authority to establish LAPPs. In the interest of brevity, salient provisions from that section and their effects as viewed by staff are summarized here. Since the MSA provisions are subject to interpretation, a copy of section 303A is attached as Appendix B.

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As the Council begins developing alternatives, it should note that the process is defined by the MSA (as reauthorized). Under that process, the Council is required to consider a variety of factors in the development of certain aspects of the program. Only after consideration of identified factors (with a supporting record) can the Council decide certain aspects of the program. In many cases, these requirements do not dictate that the Council adopt changes to the program, but instead require that the Council consider various factors in determining whether to maintain an existing element or some other element. For example, the legislation directing the development of the pilot program required that the program recognize historic participation of fishing vessels (1996 to 2002, best 5 of 7 years). This requirement largely superseded other considerations for determining the basis of harvest allocations under the program. In developing a new management program for the fisheries, the Council may choose to rely on harvest histories from these years for determining share allocations, but in doing so, the Council must undertake a process consistent with the MSA, which requires the consideration of a variety of factors, such as fishery harvests, employment, investments, and dependence. **If, at any time after due consideration, the Council determines that an element is not appropriate for the program, it need not include the provision in the program or an alternative. Most importantly, the Council must demonstrate for all such elements, through its deliberations, that it has given the element due consideration. For some elements, this may require simple discussion by the Council; for others, the Council may not believe that it has adequately considered an element until it has received an analysis of the element.**

The discussion that follows attempts to address these procedural requirements and considerations and identifies program elements that may be affected. In addition, the elements and options outlined at the end of the paper include notes identifying pertinent considerations arising under the new LAPP requirements, where appropriate. The more straightforward (and therefore less discretionary) requirements are simply identified as elements in the outline of alternatives at the end of the document.

Allocations

The legislation directing establishment of the rockfish pilot program dictated harvest histories to be recognized by the program. Clearly, the Council must consider whether the allocations made under the pilot program satisfy the MSA requirements for allocations when developing a program. The MSA at §303A(c)(5)(A) requires the Council to:

- establish procedures to ensure fair and equitable initial allocations, including consideration of
 - (i) current and historical harvests
 - (ii) employment in the harvesting and processing sectors
 - (iii) investments in, and dependence, upon the fishery; and
 - (iv) current and historical participation of fishing communities.

At a minimum, the Council is required to revisit the qualifying years for the program to determine whether those years (including the drop year provision) appropriately weight these considerations. In addition, the Council could consider whether allocations give adequate consideration to current and historical participation of fishing communities and processing sector employment. These determinations may depend on whether those interests are adequately represented by other aspects of the program, such as cooperative/processor associations that the Council may wish to consider incorporating in the program.

Harvester/Processor Linkages

Under the pilot program, processor and community participation is arguably recognized through the harvester/processor linkages, under which a harvester is eligible for a cooperative that associates with the shore-based processing plant to which it made the most deliveries during a processor qualifying period specified by the authorizing legislation. The program allows no flexibility for a harvester to change cooperatives (effectively locking in processor associations). If the Council wishes to incorporate this rigid structure into its program, it will need to establish its consistency with both its goals for the program and the MSA authority for establishing the program. In addition, potential antitrust issues with this rigid structure will need to be examined. As with harvest share allocations, the Council will need to revisit the processor qualifying years of any processor component included in the program to ensure that selected years adequately recognize employment in the processing sector, fishery investments and dependency, and current and historic participation of fishing communities.

Alternatively, the Council could consider other, less rigid, cooperative/processor associations or other mechanisms altogether to recognize processor and community interests. Again, the authority for a different structure would need to be established, based on the Council's rationale for its action and a demonstration of the connection between the action, its purpose, and the Council's authority under the MSA. Depending on its goals, the Council might consider a structure of cooperative/processor associations, which may be severed subject to a harvest share penalty. The Council could also examine structures that allocate harvest shares to processors. A cooperative structure could be superimposed on these allocations to improve coordination of harvesting and processing efforts in the fishery.

Cooperatives/Regional Fishery Associations

The Council's authority to establish cooperative allocations in a fishery was implicit in its ability to make allocations of shares in fisheries prior to authorization of the program. This authority likely continues to exist, provided those allocations continue to satisfy the general requirements for share allocations under the Council's LAPP authority. The MSA revision, however, supplements the Council's authority with new authority to establish regional fishery associations. Regional fishery associations are voluntary

associations of the holders of quota designated for use in a region that meet criteria established by the Council. In developing participation criteria the Council must consider:

1. traditional fishing and processing practices and fishery dependence,
2. the cultural and social framework relevant to the fishery,
3. economic barriers to access to the fishery,
4. projected economic and social impacts of the program on harvesters, captains, crew, processors, and fishery dependent businesses in the region,
5. the administrative and fiduciary soundness of the association, and
6. the expected effectiveness, operational transparency, and equitability of the fishery association plan (see §303A(c)(4)).

If the Council believes that the regional fishery association provides a more desirable structure for its allocations, it could choose to undertake the development of a system of regional fishery associations, as an alternative to a system of cooperatives.

Owner-Operated Vessels

The MSA at §303A(c)(5)(B) requires the Council to consider the basic cultural and social framework of the fishery, emphasizing two aspects of that framework. The development of policies promoting sustained participation of owner-operated vessels is the first emphasized aspect. The current program contains no preferences or requirements for owner-operators. Whether any provisions for sustaining owner-operator participation in the fishery are appropriate depends on the Council's view of the cultural and social framework of the fishery and whether maintaining that fleet characteristic is consistent with the goals of the Council for the fishery. In any case, the Council is directed by this section to consider this possible aspect of the fishery in development of the program.

Fishery Dependent Communities

The sustained participation of communities dependent on the fishery is the second aspect of cultural and social framework that is emphasized. The establishment of cooperative/processor associations could be argued to support sustained participation of communities in the fishery, as those associations are plant specific, and thereby, grounded in their home communities. The Council may also include regional or port specific landing requirements to address community interests. The Council is also directed to consider procedures to prevent excessive geographic consolidation in the harvesting and processing sectors as a part of its efforts to consider the cultural and social framework of the fishery. The current program contains no provision to address concerns over geographic consolidation of either harvesting or processing. On their face, these provisions appear intended to ensure that Council considers historic community interests in the fisheries, but not to a level that leads to excessive geographic consolidation.

Allocative Set Asides

The MSA at §303A(c)(5)(C) requires the Council, where necessary and appropriate, to include measures to assist entry level and small vessel owner-operators, captains, crew, and fishing communities through set asides of harvest allocations or economic assistance in the purchase of shares. Entry level interests are recognized in the current program through an entry level set aside of 5 percent of the TAC of target rockfish, which is split equally between trawl and fixed gear vessels that are ineligible for the main program. Continuation of one or both of these allocations could be advanced to address entry level concerns, as appropriate.

The pilot program includes no direct provisions recognizing the interests of captains or crew. These

aspects were likely omitted, in part, because they did not fit well in the temporary structure of the program. The Council should consider whether these protections are appropriate and necessary in this program. Maintaining a licensed based system may mitigate some effects on captains and crew, as vessels in the rockfish fishery participate in a variety of fisheries other than the rockfish fishery. Specifically, the rockfish program alone is unlikely to affect the number of crew employed, as it is unlikely to lead to substantial vessel retirement. Historically, Central Gulf rockfish revenues were a minor part of a vessel's revenue. To obtain reasonable returns from a license, that license would likely need to be used in several fisheries. Only if, the returns from a license across all fisheries, including the rockfish fishery, are negligible would the license be retired, although vessels could be removed from the rockfish fishery. In determining whether to include captain and crew protections, the Council should also consider the effects of the program on crew shares. In other fisheries, share allocations have affected crew shares. Generally, average crew compensation has increased, but crew payments as a percentage of gross vessel income has declined. The Council should consider the potential for these effects and whether to take action to mitigate any negative effect in developing this program. The MSA specifically suggests that set asides or economic assistance (such as a loan program) could be used to address these effects, if found to be necessary and appropriate. Specific authority for a loan program is provided in §303A(g), under which a Council adopt a loan program that reserves up to 25 percent of cost recovery² fees collected under the program.³

No specific set aside is established for communities under the existing program. Some aspects of the program may indirectly protect community interests, particularly the cooperative/processor associations, which are on a shore plant basis. Whether additional community measures (including a set aside) should be included in the program should be considered. If the Council elects to proceed with a community allocation, eligible communities would need to meet criteria adopted by the Council, consist of residents who are active in commercial or recreational fishing, processor or fishery support businesses, and must develop a community sustainability plan demonstrating how the plan will address social and economic development needs of coastal communities, including those that have not historically had the resources to participate in the fishery. In developing participation criteria for communities the Council is required to consider traditional fishing and processing practices and fishery dependence, the cultural and social framework in the fishery, economic barriers to fishery access, the existence and severity of projected economic and social impacts of LAPPs on harvesters, captains, crew, processors and other businesses substantially dependent on the fishery, and the potential for improving economic conditions in remote coastal communities lacking resources to participate in harvesting and processing in the fishery (see §303A(c)(3)).

Eligibility to Hold Shares and Share Limits

The Council must also define eligibility to hold and use shares under the program. This eligibility must authorize persons who substantially participate in the fishery to hold shares (see §303A(c)(5)(E)). The Council is also required to define a policy and criteria for transfers consistent with the Council's policy concerning allocation and make up of the fishery (see §303A(c)(5)(D)). These two requirements interact, as the eligibility to acquire shares may effectively define the transfer criteria. The program currently limits transfers of long term privileges through the limitations on transfers of LLP licenses and the limits on excessive consolidation of shares. LLP licenses may only be transferred to persons eligible to document a fishing vessel and may not cause the recipient to exceed the rockfish share limit or result in

² The requirement of the Council to establish a cost recovery program to cover administrative expenses of program is discussed below.

³ The Council should note that these loan programs require a Congressional appropriation of funds. In the crab fishery, implementation of loan program has been delayed (since implementation of that program in 2005), in part, because of the delay in Congress in providing that appropriation.

the person holding more than 10 LLP licenses. Leasing is limited to cooperatives in the program. In addition, to protect shoreside interests, catcher vessel shares may not be transferred to a catcher processor cooperative. A process for monitoring transfers (including sale and lease of shares is also required) (see §303A(c)(7) and its reference to §303A(c)(5)). LLP license transfers and leases of shares between cooperatives are monitored by the Restricted Access Management Division. The Council could continue these measures, if they believe that they are consistent with their policies for the fishery (including policies intended to affect the cultural and social framework of the fishery).

The program must also ensure no share holder acquires an excessive share of harvest privileges by establishing a maximum share (or percent of the share pool that may be held, or used by any person) and to establish any other limitation necessary to prevent an inequitable concentration of shares under the program (see §303A(c)(5)(D)). In addition, the Council is required to consider procedures to address concerns over any excessive consolidation of harvesting and processing in the fishery (see §303A(c)(5)(B)(ii)). The current rockfish program includes a prohibition on any person holding or using in excess of 5 percent of the aggregate target rockfish catcher vessel share pool. In addition, no cooperative may hold or use more than 30 percent of the aggregate target rockfish catcher vessel share pool. In addition, no shoreside processor is permitted to process in excess of 30 percent of aggregate target rockfish landings from the catcher vessel sector. Similar limitations apply to the catcher processor sector, in which no person may hold or use more than 20 percent of the aggregate target rockfish catcher processor share pool and no cooperative may hold or use more than 60 percent of the aggregate target rockfish catcher processor share pool. If the Council believes that these limitations are appropriate, they could be continued in any future program.

The MSA requires a limit period on shares, under which all privileges (or shares) under the program must be issued for a limited period (not to exceed 10 years). Shares are required to be reissued at the end of the period, unless revoked, limited, or modified. The Council is required to establish terms for the revocation, limitation, or modification of shares. The Council also may provide for the redistribution of any shares revoked or for the reacquisition of shares limited under this provision (see §303A(f)). The current program contains no provisions defining a term for shares under the program. The Council could elect to define certain actions or violations as possible grounds for revocation, limitation, or modification of an allocation under the program. Any such change in status of the allocation will occur only after notice and opportunity for a hearing. The authority for deciding whether a revocation, limitation, or modification occurs will remain at the discretion of NOAA Office of Law Enforcement and NOAA General Counsel. The redistribution could be as simple as proportional redistribution to current share holders. Alternatively, the Council could choose another method of reallocation.

Auctions

The MSA requires the Council to consider, if appropriate, an auction system or other program to collect royalties for the initial (or any subsequent distribution of) allocations. If the Council wishes to develop an auction system, the distribution of shares arising from the auction must meet the requirements for allocations set out above. The MSA requires any revenues generated from an auction or other royalty collect program to be deposited in a Limited Access System Administration Fund. Funds are available to the Secretary to administer a central registry of permits and to implement management in the fishery in which the fees were collected. The central registry is intended, in large part, to establish a system of permit registration to allow the establishment of security interests in fishing permits.

Cost Recovery

The Council is also required by the MSA to develop a cost recovery program to cover management, data collection and analysis, and enforcement costs for the program (see §303A(e)). Fees under the program

may not exceed 3 percent of the ex vessel value of fish harvested under the program. Up to 25 percent of these fees may be set aside to support a loan program for purchase of shares by fishermen who fish from small vessels and first-time purchases of shares under the program. If the Council wishes to establish such a loan program, it is directed to recommend loan qualify criteria (defining small vessel participants and first-time purchasers), as well as the portion of fees to be allocated for loan guarantees.

The cost recovery requirement includes a requirement that the Council develop a methodology and means to identify and assess the management, data collection and analysis, and enforcement of the program. The current management system defines both management and enforcement requirements and included a review of the program. The Council should discuss whether existing data collection and analysis of the program are defined adequately for examining the program in the future. Assessing those aspects of the program in an ongoing manner might be accomplished through a review that also satisfies the requirement for a periodic review of the program.

Program Review

The Council is required to undertake a formal detailed review of the program 5 years after implementation of the program to determine the progress of the program in achieving the goals of the program and the MSA. Additional reviews will be conducted every 7 years there after coinciding with the fishery management plan review⁴ ((see §303A(c)(1)(G)). As a part of these reviews, the Council could assess whether management, data collection and analysis, and enforcement needs are adequately met.

Alternative 4 – Existing Program with Changes to Address Concerns of Various Interests

Alternative 4 is a variation on the existing program with changes to address concerns of various interests. These changes, which were presented in a February 2009 discussion paper on CGOA rockfish program revisions, are included as options for consideration in the elements and options presented in Appendix A. Suggested changes included:

- a possible amendment to qualify persons with CGOA rockfish history who acquired a license to remain eligible to fish in the CGOA fisheries
- measures to control effort in the entry level trawl fishery
- modification of the entry level fixed gear fishery to avoid leaving the allocation unharvested
- a change in the management of shortraker rockfish in the catcher processor sector
- a change in the management of maximum retainable amount under the program to include catch of allocated secondary species in the basis for determining the MRA of a species that is not allocated
- a change in the management of halibut PSC in the entry level trawl fishery.

On reviewing the potential for measures to effectively limit effort in the entry level trawl fishery, it was perceived that no such measures would have the desired effect. As an alternative, this alternative includes an option to admit participants in the entry level trawl fishery to the main program.

In addition, Alternative 4 includes two additional options. The first option is to eliminate the limited access fisheries. The elimination of these fisheries would reduce management costs and reduce the potential for participants to exert undue leverage in negotiations. Alternative 4 also includes an option to

⁴ The review could be scheduled to coincide with the fishing management plan policy review, which is conducted on an annual basis.

remove catcher processor rockfish program sideboards limits for WYAK and WGOA primary rockfish species and 3rd season halibut PSC since these same vessels are already limited by the Amendment 80 sideboards. The removal these sideboards will simplify management of the sideboard limits for both NMFS staff and industry and increase the incentive for catcher processors to join a cooperative. For the catcher vessel sector, an option was added to prohibit directed fishing for WYAK and WGOA primary rockfish species given that the current sideboard limits are too small to accommodate a directed fisheries.

APPENDIX A

Elements and options defining the Rockfish Program Alternatives

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.

Entry-level Set Aside

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

Trawl and fixed gear entry level fisheries

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.

Halibut PSC Limit Allocation

Option 1 – (Alt. 2) 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. 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 – (Alt. 4) 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. 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.

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

Entry level fixed gear sector are exempt from VMS requirements.

Fixed gear only entry level fishery (Alt. 4)

The annual set aside will be;

____ percent of the POP TAC

____ percent of the northern rockfish TAC

____ percent of the pelagic shelf rockfish TAC.

If the entry-level fishery harvests 90% or more of their allocation of a species, the set-aside would increase ____ percent, up to a maximum set-aside of 5 percent.

The entry level fishery will be managed as an 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 holder of a CGOA fixed gear LLP may enter a vessel in the entry level fishery. Before the beginning of each fishing year an application must be filed with NMFS by the interested vessel.

Entry level fixed gear sector are exempt from VMS requirements.

Notes: Provisions concerning processor qualification are omitted, as those requirements may be inapplicable under this structure.

In addition, no provision is made for reallocations of unharvested amounts, as it is assumed that the allocation to the entry level sector will be set based on harvest performance of the fishery.

Options for cooperative management, individual allocations, and lotteries are not included, as those options appear unable to address problems cited with the entry level fishery. If the Council wishes to pursue an entry level trawl fishery under cooperative management, additional effort could be devoted to that management structure.

The provision for an entry level fishery might satisfy the requirement of §303A(c)(5)(C) for the consideration of a set aside for entry level and small vessel owner-operators, where necessary and appropriate.

Program eligibility

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.

Options (Alt.4) - In addition, the following participants would be eligible to entry the program:

Option 1 - 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 is still assigned to that vessel.

Option 2 - Eligible entry level CGOA trawl LLPs that participated in the entry level program.

Qualified catch

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 (Alt. 4) – 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.

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

- 1) 1996-2002 (drop two) Alt. 2
- 2) _____
- 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.

To include participants in the pilot program entry level fishery, pilot program years (i.e., 2005-2008) could be considered qualifying years.

Sector definitions

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.

Rationalized areas

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

Sector allocations

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

Secondary species

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

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

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

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 (Alt. 2) - Only primary allocated rockfish species

Option 2 (Alt. 4) - All allocated species

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.

Exceptions:

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

For shortraker and roughey:

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

Option 1a (Alt. 2): 30.03 percent

Option 1b (Alt. 4): 50 percent

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

Option 2 (Alt. 4): shortraker and roughey will be managed with a combined MRA of 2%.

For the CV sector, shortraker and roughey 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.

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

Prohibited species (halibut mortality)

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

Allocation from sector to vessel

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

Target Species

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

Secondary Species

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

PSC (Halibut Mortality)

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

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.

Alt. 3 – required by Section 303A(c)(1)(E)

Shore based processor provisions – Apply to catcher vessel sector only

Processor eligibility

An eligible processor is a processing facility that has purchased:

Option 1 (Alt. 2) - 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 (Alt. 3) - _____ MT of aggregate Pacific Ocean perch, northern rockfish, and pelagic shelf rockfish from ___ to ___.

Harvesters can participate in a:

Option 1 (Alt. 2): cooperative or LLP/open access. The LLP's share will be fished in a competitive fishery open to rockfish qualified vessels that are not members of a cooperative and must be delivered to one of the qualified processors.

Option 2 (Alt. 4): cooperative

This option can be modified to consider years other than those provided in the rockfish legislation.

Option A - Processor allocation of harvest shares (Alt. 3/4)

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 - _____

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.

Processor qualifying years

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

Option 1 - 1996-2000 (drop 1 year)

Option 2 - _____

Option 3 - _____

This option can be modified to consider years other than those provided in the rockfish legislation.

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

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

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

Option B – Harvester cooperatives with processor associations (Alt. 2)

Voluntary cooperatives may form between eligible harvesters in association with the processing facility to which the harvester delivered the most pounds of the three rockfish species combined during the processor qualifying years. If an LLP holder has no deliveries to a qualified processor, the LLP holder may join a cooperative with any one of the qualified processors, but its membership would not be considered in determining whether the threshold is met for cooperative formation.

Harvester cooperative/processor association qualifying years are:

1996-2000 (drop 1 year)

Drop year is selected by the processor and applied to all LLP licenses when determining associations.

Catcher vessel cooperatives are required to have at least 75 percent of the eligible historical shares for each cooperative associated with its processor

If a processing facility has closed down and another processing facility has acquired that processing history through purchase, the history belongs to the facility that purchased that history. That history must remain in the community that it was generated in.

The processor will be an associate of the cooperative but will not be a cooperative member.

A pre-season contract between eligible, willing harvesters in association with a processor is a pre-requisite to a cooperative receiving an annual allocation.

Co-op membership agreements will specify that processor affiliated harvesters cannot participate in price setting negotiations except as permitted by general antitrust law.

Processors are limited to 1 co-op per plant.

Co-ops may engage in inter-cooperative transfers of annual allocations to other cooperatives with agreement of the associated qualified processor.

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

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

Option C – Modified harvester cooperatives with initial processor association (Alt. 3/4)

On implementation of the program, each eligible harvester will be eligible to join a cooperative in association with any processing facility in the community to which it delivered the most pounds of the three rockfish species combined in the processor qualifying years.

Harvester cooperative/processor association qualifying years are:

Option 1 - 1996-2000 (drop 1 year)

Option 2 - _____

Option 3 - _____

Drop year is selected by the processor and applied to all LLP licenses when determining associations.

If an eligible harvester joins a cooperative in association with the processor to which it delivered the most pounds of the three rockfish species combined during the processor qualifying years, it will maintain all landings history without forfeiture. An eligible harvester may elect not to join the cooperative in association with the processor identified by its landings history in any year, including the first year of the program. In the first season that an eligible harvester elects not to join a cooperative in association with the processor identified by its landings history, it will forfeit:

Option 1 - 10 percent

Option 2 - _____

Option 3 - _____

of its qualified catch history to the identified processor. After this forfeiture, the harvester may elect to enter and exit any cooperative in the fishery without share forfeiture.

If an LLP holder has no deliveries to a qualified processor, the harvester may join a cooperative

associated with any processor in the community to which it delivered the most pounds of the three rockfish species during the harvester cooperative/processor qualifying years. After the first year, the harvester will make a forfeiture of qualified catch history on changing processor associations, as if the processor were identified by the harvester's landings history.

If a processing facility has closed down and another processing facility has acquired that processing history through purchase, the history belongs to the facility that purchased that history. That history must remain in the community that it was generated in.

The processor will be an associate of the cooperative but will not be a cooperative member.

Co-op membership agreements will specify that processor affiliated harvesters cannot participate in price setting negotiations except as permitted by general antitrust law.

Co-ops may engage in inter-cooperative transfers of annual allocations to other cooperatives with agreement of the associated qualified processor.

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

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

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 would have a choice of participating in:

Option 1 (Alt. 4): a co-op or opt out of the rockfish program,

Option 2 (Alt. 2): a co-op, a limited access fishery, or opt of the rockfish program

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.

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 to the extent permitted under the Contract.

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 (Alt. 2) - 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.

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.

Cooperative Harvest Use Caps

CV cooperatives (Alt. 2)

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

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

CP cooperatives (Alt. 2)

No person may hold or use more than 20% of the CP historic shares, using the individual and collective rule (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. 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 30% of aggregate POP, Northern Rockfish and PSR for the CV sector. (The year 2002 will be used as a base (or index) year for applying the aggregate caps.)

Eligible processors will be grandfathered.

At the time of implementation, the Council expressed an intent to reconsider use caps for share holdings and vessels, in the event this program has a duration of more than 2 years. The Council could consider whether to modify use caps by changing cooperative or individual use cap levels or by including vessel use caps.

Whether processor use caps are necessary might depend on the processor provisions that are incorporated into the program.

Harvesting provisions

The cooperative season start date is May 1 and a closing date of November 15.

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

Full retention of all allocated species is required.

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 thereafter coinciding with the fishery management plan policy review.

Antitrust review – An information collection system and a review process will be defined to provide any information to determine whether any illegal acts of anti-competition, antitrust, price collusion, or price fixing have occurred among regional fishery associations or persons receiving limited access privileges.

Alt. 3 – required by Section 303A(c)(1)(J) – note, this is required in any program, but its scope will be based on the program selected – further scoping can be provided after consultation with NOAA GC, NMFS, and other agencies (such as the Department of Justice)

Share duration (Alt. 3)

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

The Secretary may revoke any privilege under this program from any person found to have violated antitrust laws.

Cost recovery (Alt. 3)

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

Sideboards

General Provisions

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

WYAK and WGOA Primary Rockfish Species

Option 1 (Alt. 2) For fisheries that close on TAC in the GOA, the qualified vessels in each sector (trawl CV and trawl CP) would be limited, in aggregate, in the month of July to the historic average catch of those vessels based on the retained catch as a percentage of the retained catch in the fishery in the month of July during the qualification years 1996 to 2002. Fisheries that this sideboard provision would apply to include West Yakutat rockfish and WGOA rockfish.

Option 2 (Alt. 4) For catcher processors, remove sideboard limits for WYAK and WGOA primary rockfish species.

Option 3 (Alt. 4) For catcher vessels, prohibit directed fishing for WYAK and WGOA primary rockfish species.

Halibut PSC

Option 1 (Alt. 2) 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 (Alt. 4) For catcher processors, remove sideboard limits for WYAK and WGOA 3rd season halibut PSC.

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

CP Specific Sideboard Provisions

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

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

CPs that opt out of the rockfish cooperative program will be prohibited, for two weeks following the start of the traditional July rockfish fishery, from entering other GOA fisheries in which they have not previously participated. Participation shall be defined as having been in the target fishery during the first week of July in at least two of the qualifying years. For purposes of

qualifying under this provision, history from area 650 (SEO) will be considered the same as history from area 640 (WY). The following weekending dates will be used for determining participation in a target fishery:

1996 – July 6
1997 – July 5
1998 – July 4
1999 – July 10
2000 – July 15
2001 – July 7
2002 – July 6

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

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

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

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

To the extent permitted by the motion, history may be leased between vessels that are not members of a cooperative. Each non-member of a cooperative that transfers its history to another CP or CV must still refrain from operating in any other 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.

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

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

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

CV Specific Sideboard Provisions

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

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

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.

APPENDIX B

Magnuson-Stevens Fishery Conservation and Management Act

Sec. 303A. Limited Access Privilege Programs.

P.L. 109-479, sec. 104(b), MSA § 303 note

16 U.S.C. 1853 note

EFFECTIVE DATES; APPLICATION TO CERTAIN SPECIES.—The amendment made by subsection (a)(10)¹⁶—

(1) shall, unless otherwise provided for under an international agreement in which the United States participates, take effect—

(A) in fishing year 2010 for fisheries determined by the Secretary to be subject to overfishing; and

(B) in fishing year 2011 for all other fisheries; and

(2) shall not apply to a fishery for species that have a life cycle of approximately 1 year unless the Secretary has determined the fishery is subject to overfishing of that species; and

(3) shall not limit or otherwise affect the requirements of section 301(a)(1) or 304(e) of the Magnuson-Stevens Fishery Conservation and Management Act (16 U.S.C. 1851(a)(1) or 1854(e), respectively).

109-479

SEC. 303A. LIMITED ACCESS PRIVILEGE PROGRAMS.

16 U.S.C. 1853a

(a) **IN GENERAL.**—After the date of enactment of the Magnuson-Stevens Fishery Conservation and Management Reauthorization Act of 2006, a Council may submit, and the Secretary may approve, for a fishery that is managed under a limited access system, a limited access privilege program to harvest fish if the program meets the requirements of this section.

(b) **NO CREATION OF RIGHT, TITLE, OR INTEREST.**—Limited access privilege, quota share, or other limited access system authorization established, implemented, or managed under this Act—

(1) shall be considered a permit for the purposes of sections 307, 308, and 309;

(2) may be revoked, limited, or modified at any time in accordance with this Act, including revocation if the system is found to have jeopardized the sustainability of the stock or the safety of fishermen;

(3) shall not confer any right of compensation to the holder of such limited access privilege, quota share, or other such limited access system authorization if it is revoked, limited, or modified;

(4) 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; and

(5) shall be considered a grant of permission to the holder of the limited access privilege or quota share to engage in activities permitted by such limited access privilege or quota share.

¹⁶ Section 104(a)(10) of P.L. 109-479 added section 303(a)(15).

(c) REQUIREMENTS FOR LIMITED ACCESS PRIVILEGES.—

(1) IN GENERAL.—Any limited access privilege program to harvest fish submitted by a Council or approved by the Secretary under this section shall—

(A) if established in a fishery that is overfished or subject to a rebuilding plan, assist in its rebuilding;

(B) if established in a fishery that is determined by the Secretary or the Council to have over-capacity, contribute to reducing capacity;

(C) promote—

(i) fishing safety;

(ii) fishery conservation and management; and

(iii) social and economic benefits;

(D) prohibit any person other than a United States citizen, a corporation, partnership, or other entity established under the laws of the United States or any State, or a permanent resident alien, that meets the eligibility and participation requirements established in the program from acquiring a privilege to harvest fish, including any person that acquires a limited access privilege solely for the purpose of perfecting or realizing on a security interest in such privilege;

(E) require that all fish harvested under a limited access privilege program be processed on vessels of the United States or on United States soil (including any territory of the United States);

(F) specify the goals of the program;

(G) include provisions for the regular monitoring and review by the Council and the Secretary of the operations of the program, including determining progress in meeting the goals of the program and this Act, and any necessary modification of the program to meet those goals, with a formal and detailed review 5 years after the implementation of the program and thereafter to coincide with scheduled Council review of the relevant fishery management plan (but no less frequently than once every 7 years);

(H) include an effective system for enforcement, monitoring, and management of the program, including the use of observers or electronic monitoring systems;

(I) include an appeals process for administrative review of the Secretary's decisions regarding initial allocation of limited access privileges;

(J) provide for the establishment by the Secretary, in consultation with appropriate Federal agencies, for an information collection and review process to provide any additional information needed to determine whether any illegal acts of anti-competition, anti-trust, price collusion, or price fixing have occurred among regional fishery associations or persons receiving limited access privileges under the program; and

(K) provide for the revocation by the Secretary of limited access privileges held by any person found to have violated the antitrust laws of the United States.

(2) WAIVER.—The Secretary may waive the requirement of paragraph (1)(E) if the Secretary determines that—

- (A) the fishery has historically processed the fish outside of the United States; and
- (B) the United States has a seafood safety equivalency agreement with the country where processing will occur.

(3) FISHING COMMUNITIES.—

(A) IN GENERAL.—

(i) ELIGIBILITY.—To be eligible to participate in a limited access privilege program to harvest fish, a fishing community shall—

- (I) be located within the management area of the relevant Council;
- (II) meet criteria developed by the relevant Council, approved by the Secretary, and published in the Federal Register;
- (III) consist of residents who conduct commercial or recreational fishing, processing, or fishery-dependent support businesses within the Council's management area; and
- (IV) develop and submit a community sustainability plan to the Council and the Secretary that demonstrates how the plan will address the social and economic development needs of coastal communities, including those that have not historically had the resources to participate in the fishery, for approval based on criteria developed by the Council that have been approved by the Secretary and published in the Federal Register.

(ii) FAILURE TO COMPLY WITH PLAN.—The Secretary shall deny or revoke limited access privileges granted under this section for any person who fails to comply with the requirements of the community sustainability plan. Any limited access privileges denied or revoked under this section may be reallocated to other eligible members of the fishing community.

- (B) PARTICIPATION CRITERIA.—In developing participation criteria for eligible communities under this paragraph, a Council shall consider—
- (i) traditional fishing or processing practices in, and dependence on, the fishery;
 - (ii) the cultural and social framework relevant to the fishery;
 - (iii) economic barriers to access to fishery;
 - (iv) the existence and severity of projected economic and social impacts associated with implementation of limited access privilege programs on harvesters, captains, crew, processors, and other businesses substantially dependent upon the fishery in the region or subregion;
 - (v) the expected effectiveness, operational transparency, and equitability of the community sustainability plan; and
 - (vi) the potential for improving economic conditions in remote coastal communities lacking resources to participate in harvesting or processing activities in the fishery.

(4) REGIONAL FISHERY ASSOCIATIONS.—

(A) IN GENERAL.—To be eligible to participate in a limited access privilege program to harvest fish, a regional fishery association shall—

- (i) be located within the management area of the relevant Council;
- (ii) meet criteria developed by the relevant Council, approved by the Secretary, and published in the Federal Register;
- (iii) be a voluntary association with established by-laws and operating procedures;
- (iv) consist of participants in the fishery who hold quota share that are designated for use in the specific region or subregion covered by the regional fishery association, including commercial or recreational fishing, processing, fishery-dependent support businesses, or fishing communities;
- (v) not be eligible to receive an initial allocation of a limited access privilege but may acquire such privileges after the initial allocation, and may hold the annual fishing privileges of any limited access privileges it holds or the annual fishing privileges that is [sic]¹⁷ members contribute; and
- (vi) develop and submit a regional fishery association plan to the Council and the Secretary for approval based on criteria developed by the Council that have been approved by the Secretary and published in the Federal Register.

(B) FAILURE TO COMPLY WITH PLAN.—The Secretary shall deny or revoke limited access privileges granted under this section to any person participating in a regional fishery association who fails to comply with the requirements of the regional fishery association plan.

¹⁷ So in original.

(C) PARTICIPATION CRITERIA.—In developing participation criteria for eligible regional fishery associations under this paragraph, a Council shall consider—

- (i) traditional fishing or processing practices in, and dependence on, the fishery;
- (ii) the cultural and social framework relevant to the fishery;
- (iii) economic barriers to access to fishery;
- (iv) the existence and severity of projected economic and social impacts associated with implementation of limited access privilege programs on harvesters, captains, crew, processors, and other businesses substantially dependent upon the fishery in the region or subregion;
- (v) the administrative and fiduciary soundness of the association; and
- (vi) the expected effectiveness, operational transparency, and equitability of the fishery association plan.

(5) ALLOCATION.—In developing a limited access privilege program to harvest fish a Council or the Secretary shall—

(A) establish procedures to ensure fair and equitable initial allocations, including consideration of—

- (i) current and historical harvests;
- (ii) employment in the harvesting and processing sectors;
- (iii) investments in, and dependence upon, the fishery; and
- (iv) the current and historical participation of fishing communities;

(B) consider the basic cultural and social framework of the fishery, especially through—

- (i) the development of policies to promote the sustained participation of small owner-operated fishing vessels and fishing communities that depend on the fisheries, including regional or port-specific landing or delivery requirements; and
- (ii) procedures to address concerns over excessive geographic or other consolidation in the harvesting or processing sectors of the fishery;

(C) include measures to assist, when necessary and appropriate, entry-level and small vessel owner-operators, captains, crew, and fishing communities through set-asides of harvesting allocations, including providing privileges, which may include set-asides or allocations of harvesting privileges, or economic assistance in the purchase of limited access privileges;

(D) ensure that limited access privilege holders do not acquire an excessive share of the total limited access privileges in the program by—

- (i) establishing a maximum share, expressed as a percentage of the total limited access privileges, that a limited access privilege holder is permitted to hold, acquire, or use; and
- (ii) establishing any other limitations or measures necessary to prevent an inequitable concentration of limited access privileges; and

(E) authorize limited access privileges to harvest fish to be held, acquired, used by, or issued under the system to persons who substantially participate in the fishery, including in a specific sector of such fishery, as specified by the Council.

(6) PROGRAM INITIATION.—

(A) LIMITATION.—Except as provided in subparagraph (D), a Council may initiate a fishery management plan or amendment to establish a limited access privilege program to harvest fish on its own initiative or if the Secretary has certified an appropriate petition.

(B) PETITION.—A group of fishermen constituting more than 50 percent of the permit holders, or holding more than 50 percent of the allocation, in the fishery for which a limited access privilege program to harvest fish is sought, may submit a petition to the Secretary requesting that the relevant Council or Councils with authority over the fishery be authorized to initiate the development of the program. Any such petition shall clearly state the fishery to which the limited access privilege program would apply. For multispecies permits in the Gulf of Mexico, only those participants who have substantially fished the species proposed to be included in the limited access program shall be eligible to sign a petition for such a program and shall serve as the basis for determining the percentage described in the first sentence of this subparagraph.

(C) CERTIFICATION BY SECRETARY.—Upon the receipt of any such petition, the Secretary shall review all of the signatures on the petition and, if the Secretary determines that the signatures on the petition represent more than 50 percent of the permit holders, or holders of more than 50 percent of the allocation in the fishery, as described by subparagraph (B), the Secretary shall certify the petition to the appropriate Council or Councils.

(D) NEW ENGLAND AND GULF REFERENDUM.—

(i) Except as provided in clause (iii) for the Gulf of Mexico commercial red snapper fishery, the New England and Gulf Councils may not submit, and the Secretary may not approve or implement, a fishery management plan or amendment that creates an individual fishing quota program, including a Secretarial plan, unless such a system, as ultimately developed, has been approved by more than 2/3 of those voting in a referendum among eligible permit holders, or other persons described in clause (v), with respect to the New England Council, and by a majority of those voting in the referendum among eligible permit holders with respect to the Gulf Council. For multispecies permits in the Gulf of Mexico, only those participants who have substantially fished the species proposed to be included in the individual fishing quota program shall be eligible to vote in such a referendum. If an individual fishing quota program fails to be approved by the requisite number of those voting, it may be revised and submitted for approval in a subsequent referendum.

(ii) The Secretary shall conduct a referendum under this subparagraph, including notifying all persons eligible to participate in the referendum and making available to them information concerning the schedule, procedures, and eligibility requirements for the referendum process and the proposed individual fishing quota program. Within 1 year after the date of enactment of the Magnuson-Stevens Fishery Conservation and Management Reauthorization Act of 2006, the Secretary shall publish guidelines and procedures to determine procedures and voting eligibility requirements for referenda and to conduct such referenda in a fair and equitable manner.

(iii) The provisions of section 407(c) of this Act shall apply in lieu of this subparagraph for an individual fishing quota program for the Gulf of Mexico commercial red snapper fishery.

(iv) Chapter 35 of title 44, United States Code, (commonly known as the Paperwork Reduction Act) does not apply to the referenda conducted under this subparagraph.

(v) The Secretary shall promulgate criteria for determining whether additional fishery participants are eligible to vote in the New England referendum described in clause (i) in order to ensure that crew members who derive a significant percentage of their total income from the fishery under the proposed program are eligible to vote in the referendum.

(vi) In this subparagraph, the term ‘individual fishing quota’ does not include a sector allocation.

(7) TRANSFERABILITY.—In establishing a limited access privilege program, a Council shall—

(A) establish a policy and criteria for the transferability of limited access privileges (through sale or lease), that is consistent with the policies adopted by the Council for the fishery under paragraph (5); and

(B) establish, in coordination with the Secretary, a process for monitoring of transfers (including sales and leases) of limited access privileges.

(8) PREPARATION AND IMPLEMENTATION OF SECRETARIAL PLANS.—This subsection also applies to a plan prepared and implemented by the Secretary under section 304(c) or 304(g).

(9) ANTITRUST SAVINGS CLAUSE.—Nothing in this Act shall be construed to modify, impair, or supersede the operation of any of the antitrust laws. For purposes of the preceding sentence, the term ‘antitrust laws’ has the meaning given such term in subsection (a) of the first section of the Clayton Act, except that such term includes section 5 of the Federal Trade Commission Act to the extent that such section 5 applies to unfair methods of competition.

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MSA § 303A

(d) AUCTION AND OTHER PROGRAMS.—In establishing a limited access privilege program, a Council shall consider, and may provide, if appropriate, an auction system or other program to collect royalties for the initial, or any subsequent, distribution of allocations in a limited access privilege program if—

(1) the system or program is administered in such a way that the resulting distribution of limited access privilege shares meets the program requirements of this section; and

(2) revenues generated through such a royalty program are deposited in the Limited Access System Administration Fund established by section 305(h)(5)(B) and available subject to annual appropriations.

(e) COST RECOVERY.—In establishing a limited access privilege program, a Council shall—

(1) develop a methodology and the means to identify and assess the management, data collection and analysis, and enforcement programs that are directly related to and in support of the program; and

(2) provide, under section 304(d)(2), for a program of fees paid by limited access privilege holders that will cover the costs of management, data collection and analysis, and enforcement activities.

(f) CHARACTERISTICS.—A limited access privilege established after the date of enactment of the Magnuson-Stevens Fishery Conservation and Management Reauthorization Act of 2006 is a permit issued for a period of not more than 10 years that—

(1) will be renewed before the end of that period, unless it has been revoked, limited, or modified as provided in this subsection;

(2) will be revoked, limited, or modified if the holder is found by the Secretary, after notice and an opportunity for a hearing under section 554 of title 5, United States Code, to have failed to comply with any term of the plan identified in the plan as cause for revocation, limitation, or modification of a permit, which may include conservation requirements established under the plan;

(3) may be revoked, limited, or modified if the holder is found by the Secretary, after notice and an opportunity for a hearing under section 554 of title 5, United States Code, to have committed an act prohibited by section 307 of this Act; and

(4) may be acquired, or reacquired, by participants in the program under a mechanism established by the Council if it has been revoked, limited, or modified under paragraph (2) or (3).

(g) LIMITED ACCESS PRIVILEGE ASSISTED PURCHASE PROGRAM.—

(1) IN GENERAL.—A Council may submit, and the Secretary may approve and implement, a program which reserves up to 25 percent of any fees collected from a fishery under section 304(d)(2) to be used, pursuant to section 53706(a)(7) of title 46, United States Code, to issue obligations that aid in financing—

(A) the purchase of limited access privileges in that fishery by fishermen who fish from small vessels; and

(B) the first-time purchase of limited access privileges in that fishery by entry level fishermen.

(2) ELIGIBILITY CRITERIA.—A Council making a submission under paragraph (1) shall recommend criteria, consistent with the provisions of this Act, that a fisherman must meet to qualify for guarantees under subparagraphs (A) and (B) of paragraph (1) and the portion of funds to be allocated for guarantees under each subparagraph.

(h) EFFECT ON CERTAIN EXISTING SHARES AND PROGRAMS.—Nothing in this Act, or the amendments made by the Magnuson-Stevens Fishery Conservation and Management Reauthorization Act of 2006, shall be construed to require a reallocation or a reevaluation of individual quota shares, processor quota shares, cooperative programs, or other quota programs, including sector allocation in effect before the date of enactment of the Magnuson-Stevens Fishery Conservation and Management Reauthorization Act of 2006.

(i) TRANSITION RULES.—

(1) IN GENERAL.—The requirements of this section shall not apply to any quota program, including any individual quota program, cooperative program, or sector allocation for which a Council has taken final action or which has been submitted by a Council to the Secretary, or approved by the Secretary, within 6 months after the date of enactment of the Magnuson-Stevens Fishery Conservation and Management Reauthorization Act of 2006, except that—

(A) the requirements of section 303(d) of this Act in effect on the day before the date of enactment of that Act shall apply to any such program;

(B) the program shall be subject to review under subsection (c)(1)(G) of this section not later than 5 years after the program implementation; and

(C) nothing in this subsection precludes a Council from incorporating criteria contained in this section into any such plans.

(2) PACIFIC GROUND FISH PROPOSALS.—The requirements of this section, other than subparagraphs (A) and (B) of subsection (c)(1) and subparagraphs (A), (B), and (C) of paragraph (1) of this subsection, shall not apply to any proposal authorized under section 302(f) of the Magnuson-Stevens Fishery Conservation and Management Reauthorization Act of 2006 that is submitted within the timeframe prescribed by that section.

16 U.S.C. 1853a note, 1854
MSA §§ 303A note, 304

P.L. 109-479, sec. 106(e), MSA § 303A note

16 U.S.C. 1853a note

APPLICATION WITH AMERICAN FISHERIES ACT.—Nothing in section 303A of the Magnuson-Stevens Fishery Conservation and Management Act (16 U.S.C. 1801 et seq.), as added by subsection (a) [P.L. 109-479], shall be construed to modify or supersede any provision of the American Fisheries Act (46 U.S.C. 12102 note; 16 U.S.C. 1851 note; et alia).

P.L. 104-297, sec. 108(i), MSA § 303 note

EXISTING QUOTA PLANS.—Nothing in this Act [P.L.104-297] or the amendments made by this Act shall be construed to require a reallocation of individual fishing quotas under any individual fishing quota program approved by the Secretary before January 4, 1995.

SEC. 304. ACTION BY THE SECRETARY

16 U.S.C. 1854

104-297

(a) REVIEW OF PLANS.—

(1) Upon transmittal by the Council to the Secretary of a fishery management plan or plan amendment, the Secretary shall—

(A) immediately commence a review of the plan or amendment to determine whether it is consistent with the national standards, the other provisions of this Act, and any other applicable law; and

(B) immediately publish in the Federal Register a notice stating that the plan or amendment is available and that written information, views, or comments of interested persons on the plan or amendment may be submitted to the Secretary during the 60-day period beginning on the date the notice is published.

(2) In undertaking the review required under paragraph (1), the Secretary shall—

(A) take into account the information, views, and comments received from interested persons;

(B) consult with the Secretary of State with respect to foreign fishing; and

(C) consult with the Secretary of the department in which the Coast Guard is operating with respect to enforcement at sea and to fishery access adjustments referred to in section 303(a)(6).

(3) The Secretary shall approve, disapprove, or partially approve a plan or amendment within 30 days of the end of the comment period under paragraph (1) by written notice to the Council. A notice of disapproval or partial approval shall specify—

(A) the applicable law with which the plan or amendment is inconsistent;

(B) the nature of such inconsistencies; and

(C) recommendations concerning the actions that could be taken by the Council to conform such plan or amendment to the requirements of applicable law.

If the Secretary does not notify a Council within 30 days of the end of the comment period of the approval, disapproval, or partial approval of a plan or amendment, then such plan or amendment shall take effect as if approved.