

**Central Gulf of Alaska rockfish fishery
North Pacific Fishery Management Council
December 2009**

In June 2009, the Council adopted alternatives for developing a new management program for the Central Gulf of Alaska rockfish fishery to replace the existing pilot program. At its October meeting, the Council revised its alternatives based on public comment, a staff discussion paper, and advice from NOAA General Counsel. Staff is in the process of preparing a preliminary EA/RIR/IRFA analyzing the revised alternatives. In the course of developing the analysis, staff has identified one aspect of the alternatives that could require additional development by the Council – the rules governing harvest shares that would be allocated to processors under catcher vessel alternative 3. This paper briefly discusses that aspect of the program and attempts to provide the Council with information that might be useful in more fully developing the alternative.

Discussion

As currently defined, one of the proposed alternatives includes provision for the allocation of harvest shares to processors. Under this alternative, a defined percentage of the harvest share pool would be allocated to eligible processors based on their qualifying processing histories. Identifying characteristics of this alternative are:

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

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

Option 1: 90/10

Option 2: 80/20

Option 3: 70/30

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

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

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

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

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

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

Notably, the alternative contains no definition of the rules governing transfers and holdings of the harvest shares issued to processors. Specifically, the Council should consider whether rules should be established governing:

- 1) qualifications to receive shares by transfer; and
- 2) divisibility of share holdings.

In the pool of shares that will be allocated to license holders, all shares are attached to a license and are not divisible. These license allocations are believed to be structured to reflect the nature of the rockfish fishery participation. Vessels participating in the rockfish fishery all participate in a variety of other fisheries during the course of a year, with the rockfish fishery being one part of their operations. Attachment of the long term shares to the licenses is a reflection of the connection of a license's rockfish participation to its participation in those other fisheries and the continuation of the License Limitation Program (LLP) management in those other fisheries. Since the long term shares are associated with a specific license, those long term shares are not divisible. Annual allocations are made to cooperatives, and are freely transferable among cooperatives within the catcher vessel sector and among vessels within a cooperative without the agency recording a transfer. Since processors have no limit on entry, no license similar to an LLP license exists to which to attach the harvest shares. Most other aspects of the use, transferability, and holdings would be governed by the rules that would govern other harvest shares.

In the absence of other direction, annual allocations would be governed by the same rules that govern other harvest shares. Under those rules, annual allocations are accessible only through cooperatives and must be fished by a vessel carrying an LLP license that qualifies for the program. A share holder must join a cooperative to access harvest shares, with annual allocations of harvest shares made to the cooperative. These annual allocations are fished within a cooperative without agency recorded transfers, but may also be transferred to other cooperatives within the catcher vessel sector. Share holdings could be subject to the same general limits that apply to all catcher vessel harvest shares. Under that provision, no person is permitted to hold or use in excess of 5 percent of the aggregate catcher vessel harvest share pool. An option could require harvest shares allocated to processors to be harvested by a vessel with no affiliation to the processor holding the shares. That option will be analyzed as a part of the regulatory analysis being prepared for the Council.

Beyond these general rules, **the Council could consider whether it is appropriate to limit acquisition of these harvest shares allocated processors.** At a minimum, the MSA requires that only persons who substantially participate in the fishery be permitted to hold the shares. This mandate can be achieved by requiring a person to meet minimum participation requirements to acquire shares, as the Council has done in other programs. Whether other requirements should be incorporated into the program is at the discretion of the Council and should be based on its long term perspective on the purpose of these shares. Any rules should be developed based on MSA considerations, including most importantly, the social and cultural framework of the fishery. If the shares are intended to be an ongoing resource available to active participants in the processing sector of the rockfish fishery, the Council could require that any person acquiring the shares meet some minimum processing requirement.¹ The Council could consider other limits to meet other possible social and cultural objectives.

The Council could also consider the extent to which harvest shares allocated to processors (and not attached to an LLP license) should be divisible. The indivisibility of harvest shares associated with LLP licenses is believed to be intended to preserve the multiple fishery character of the license and associated fishing operation. Typically, divisibility of shares has been determined by the nature of the privileges created by the program. In programs that are either vessel-based (AFA) or license-based (the Central Gulf of Alaska rockfish pilot program) allocations are associated with a permit or asset and are

¹ Under the MSA, these shares can only be acquired by persons who are a U.S. citizen or permanent resident alien or corporation, partnership, or other entity established under the laws of the U.S. This limitation will be applied notwithstanding any other restrictions on acquisitions that the Council might wish to impose.

indivisible. In other programs, that create a complete share basis for the fishery (such as the halibut and sablefish program and the crab program) shares have been largely divisible.² In some cases, this divisibility may allow for entry to the harvest sector. In this case, the scale of operations in the fishery may be an obstacle to entry through small share purchases. As such, it may be that divisibility of these shares may not adequately support entry (to either the harvesting or processing sectors).

Conclusion

In developing the alternative to allocate harvest shares to processors, the Council should consider whether it is appropriate to establish rules governing the transfer of these shares that are different from the rules governing other harvest shares. Clarification of the Council's intent will help advance the analysis of this action.

² An exception is the block program in the halibut and sablefish fisheries, which prevents division or consolidation of share holdings below an specific size to ensure those holdings are available for entry.