SUMMARY OF COUNCIL DIRECTION ON SAFE HARBORS FROM JUNE 2011

At its June 2011 meeting, the Pacific Fishery Management Council (Council) provided the following direction on quota share (QS) control rule safe harbors for community fishing associations (CFAs) and risk pools. The alternatives provided in the preliminary draft environmental assessment (Agenda Item G.6.a, Attachment 2) have been updated to reflect these directions.

**Direction on QS Safe Harbors for CFAs**

**Motion:** the Council move forward the package as it is for CFA special privileges, the qualifying criteria, and other elements that a designated CFA would have to adhere to and then have the Council make decisions in September.

During Council discussion, the following points were established:

- Under the Alternative to status quo (Alternative 1) there would be specifications for a designated CFA which would receive special privileges that would not be afforded to any other entity that operates within the control caps, even if it is community based.
- In its final action the Council could choose different limits from within the range of alternatives. For example, for designated CFAs the total groundfish accumulation limit might be held at status quo but the sablefish south of 36° N. latitude limit for designated CFAs might be set anywhere from 15% (1.5 times the current 10% limit, as specified in CFA special privileges Option a) up to 60% (as specified in CFA special privileges Option c). Further, the Council could select a limit that ranges down toward the status quo level (e.g. 10% for sablefish south of 36° N. lat.)

**Direction on QS Safe Harbors for Risk Pools**

**Motion:** the Council adopt as its preliminary preferred alternative, a limited modification alternative for risk pools with the following specifications:

1. retain the language in the No Action Alternative as described in Section 2.2.2 in Agenda Item E.7.a, Attachment 1 (June 2011), page 38 and
2. adopt the language in Agenda Item E.7.b, Supplemental GAP Report.

- Relative to the limited modification, select Option A with a sub-option to allow renewal of annual contracts across multiple years (as preliminary preferred), but analyze both Options A and B.
- Adopt the language on
  - qualifying risk pools;
  - risk pool species;
  - eligible members;
  - agents (including the language identified in the paragraph entitled “Option”);
o the qualifying risk pool holding account Option B; and,
o for the Application, Oversight, Enforcement, and Monitoring section, Option A with a mechanism to notify NMFS of the risk pool.

From Agenda Item E.7.b, Supplemental GAP Report

“Limited Modification” to the control rule language specifying that it does not constitute quota share (QS) control for “qualifying risk pools” to insure against catch events for specified “risk pool species” under certain circumstances, even where such agreement might otherwise exceed the QS control caps.

**Limited modification**

The modification to the control language would state that it is not control of QS for participants in qualifying risk pools to obligate QP from the following year to the pool, where such obligation is only for the purposes of providing coverage to a risk pool participant who had incurred a deficit which could not be covered by the pool in the current year. Each of the individuals making up the risk pool structure, or operating under the risk pool structure, would be held to QS control limits individually.

**Option A**: Qualifying risk pool contracts would expire at the end of every calendar year, with the stipulation that QP from the following year could be obligated to the pool solely to cover overages that could not be covered by the risk pool in the year in which they were incurred. Uncoverable overages incurred in the current year would have to be covered within 30 days of quota being issued for the following year.

**Option B**: Qualifying risk pool contracts would run indefinitely, but any signatory to the risk pool agreement could opt out at the end of each calendar year subject only to satisfying its obligation.

**Qualifying risk pools**

A qualifying risk pool is an entity developed solely to manage specified “risk pool species” (see below). This includes active and reactive risk management terms such as: Risk pool species quota pound sharing rules, harvest activity management (which may include provisions such as tie up provisions, area closures, or gear restrictions), and financial rewards and penalties over bycatch performance. Qualifying risk pools may not specify delivery terms or take any other action deemed to constitute control of QS outside of the limited modification to the control language described above.

**Risk pool species**

Risk pool species means non-target overfished species as designated in the harvest specifications process and halibut. Currently, risk pool species are
yelloweye, canary, widow, darkblotched, Pacific ocean perch, bocaccio, cowcod, and halibut.

Eligible members

Qualifying risk pools are composed of limited entry trawl licensed vessel owners and quota share owners, or their representatives. Members may include (but are not limited to) independent harvesters, processors which own vessels, or quota share holders which neither process nor harvest. Entities which do not own trawl permitted vessels or quota shares may not participate in risk pool activities, including negotiations over governance structures, unless they are acting on behalf of a vessel owner(s) or quota share holder(s).

Agents

Risk pools may hire agents to enact and enforce the provisions of the risk pooling arrangement. These arrangements may include: monitoring vessel performance and enforcing the terms of any agreed-upon reward/penalty structure, or dictating harvesting activity with the intention of reducing bycatch. Risk pools may also form an entity which self-monitors and self-enforces the agreement rather than using a third party.

Option: Risk pools will be entitled to designate an agent for whom National Marine Fisheries Service (NMFS) will provide a “qualifying risk pool holding account” to which QP governed by the risk pool agreement may be transferred.

Qualifying Risk Pool Holding account

Option A: Qualifying risk pools would be assigned a holding account into which all risk pool species managed by the pool would be deposited until used. No limited entry permit or vessel designation required.  
Option B: Qualifying risk pools could elect to open a holding account into which all risk pool species managed by the pool would be deposited until used. No limited entry permit or vessel designation required.  
Option C: No risk pool holding accounts allowed. All qualifying risk pool QP would be held in accounts established under current program rules.

Application, oversight, enforcement, and monitoring

As a condition for receiving the privilege of forming a risk pool, the risk pool and its members agree to make public the identities of those entities participating in the risk pool and all information pertaining to the amounts of QS and QP controlled and harvested under the terms of the risk pool agreement (but not the exvessel value of such product), regardless of confidentiality protections that might otherwise restrict the release of such information.

1 Option A frees up limited entry permits for use by active fishermen. It also facilitates auditing of QP controlled by the pool and its usage. Finally, NMFS OLE states a holding account will save money to the program overall by reducing enforcement/auditing costs.
Option A: Risk pools are able to form and function without direct acceptance of their formation agreement by NMFS and without a requirement that they submit performance reports to an oversight body such as the Council or NMFS. However, risk pool contracts must be made available to NMFS or state agencies upon request.

Option B: Risk pools are able to function only after review and acceptance of their formation agreement and related contracts by NMFS. Annual performance reports must be submitted to NMFS and provided to the Council.

Risk pool agreement

Any risk pool contract must include standards and requirements consistent with the elements, exceptions, and criteria above. Such agreements must be signed by risk pool members and those members (names of any person or corporation) must be clearly identifiable next to the signature.