The Groundfish Advisory Subpanel (GAP) discussed the Status and Follow-up on Implementation of Amendment 20 (Trawl Rationalization) and Amendment 21 (Intersector Allocation) with Mr. Jim Seger and Ms. Jamie Goen. The GAP has no comment on the technical corrections in Agenda Item I.5.a, Attachment 1; however, the GAP offers the following comments and recommendations regarding the National Marine Fisheries Service (NMFS) request for comments (Agenda Item I.5.a, Supplemental Attachment 7). The GAP notes that any recommended changes to the final components rule can be made through the public comment process. However, if recommended changes cannot be made through this process, the GAP recommends modifications to the components rule be considered in one or more trailing amendments.

Permit Transfers
Most limited entry permits may be transferred only one time per year and transfers are effective at the end of the bimonthly cumulative limit period. Mothership catch vessel (MS/CV) permits may be transferred twice during the year as long as the vessel to which the second transfer is made declares that it will not participate in the shoreside individual fishing quota (IFQ) fishery. NMFS requested comment on the effectiveness date that should be used for the second transfer of an MS/CV permit.

The GAP believes MS/CV permit transfers should be effective immediately. There is a need for flexibility in transferring permits to vessels, for example, to accommodate vessel break downs and other logistic problems that can occur during the mothership fishery. There is no reason to delay permit transfer in this fishery.

Conflict of Interest in the Observer or Catch Monitoring Program
The Council deemed a set of conflict of interest regulations which were substantially more liberal than those put forward by NMFS. NMFS has expressed its intent to approve a set of conflict of interest regulations different than those deemed by the Council.

The GAP believes the NMFS-proposed conflict of interest regulations are overly restrictive and could result in a problem finding qualified observers. The GAP recommends conflict of interest for observers and catch monitors be defined in regulations as having any interest in any west coast groundfish first receiver, west coast groundfish trawl-permitted vessel, or in any west coast groundfish quota share ownership. Such a regulation prevents the harm that potentially could come from biased observers or catch monitors without limiting the pool of qualified individuals.
Ownership Information
Joint ownership (e.g., husband and wife) and ownership in trust involving trustee, beneficiaries, and trustor present special challenges for the interpretation of ownership structures with respect to application of control limits. NMFS has made proposals on how to handle these situations and requested comment.

The GAP is concerned that the current treatment of trusts as contemplated by NMFS (as found in Agenda item I.5.a, Supplemental Attachment 7) creates a potential loophole to exceed control caps. That document notes that control rules may be violated depending on the specific language of the trust document. The GAP points out that it is not only the language of the trust document that may trigger control concerns, but also how the trust is executed.

While transparency will help eliminate most types of trust abuse by allowing linkages to be seen between trustors, trustees, and beneficiaries, there are certain types of arrangements which could potentially allow an individual to control quota share in excess of the control caps through the use of a trust vehicle. One example would be if an employer established several trusts with different employees and surreptitiously controlled the quota associated with each trust. Without digging deep to determine relationships, the trusts would appear on the surface to be innocuous.

The GAP discussed one potential solution which would credit the beneficiary, the trustee, and the trustor each with 100 percent of the quota share in the trust. We do not think this is the only or necessarily best solution to the problem.

Maximized Retention in the Pacific Whiting IFQ Fishery
The term “maximized retention” usually implies some minor amount of allowable discarding but the language of the Council’s Amendment 20 motion states that “maximized retention vessels” will not be allowed to discard. NMFS is seeking comment on the impact of this prohibition on prosecution of the maximized retention fishery and on what should constitute discarding.

The GAP believes there needs to be consistency in the maximized retention regulations for shoreside vessels declaring into the primary whiting season and catcher vessels in the at-sea mothership fishery. Currently, minor amounts of operational discards are allowed by catcher vessels in the mothership fishery to foster safety at sea, etc. The current proposed regulations allow minor amounts of operational discards in the mothership fishery but not the shoreside whiting IFQ fishery. The GAP believes the same regulations allowing minor amounts of operational discards should be implemented in the whiting IFQ fishery for the same reasons this allowance is continued in the proposed regulations for the mothership fishery. The GAP agrees the amount of any operational discards should be estimated by on board observers and covered by the quota pounds in the vessel’s account.

Weight Limits and Conversions
The IFQ program requires conversion factors be applied to fish landed headed and gutted. For some species, these factors are not standardized among the states. NMFS proposed a standard set of conversion factors for the federal catch monitoring system and has requested comment.

The GAP agrees with federal weight limit and conversion standards. The GAP requests consideration to allow the Council and NMFS to make routine adjustments for additional conversion categories.
Gear Switching Provisions
NMFS has requested comment on aspects of the gear declaration process which might limit how often a vessel could switch gears.

The GAP recommends maximum flexibility on gear switching provisions and believes the proposed regulations provide that flexibility.

IFQ Carryover Provision
Under the proposed rule, a vessel with a deficit that is within its carryover limit must cover that deficit within 30 days or opt-out of the fishery for the remainder of the year. NMFS requested comment on this issue.

The GAP believes the proposed regulations are unnecessarily restrictive. Situations may arise such that early in the year a vessel may not be able to acquire quota pounds (QP) at a reasonable price (e.g., yelloweye or canary rockfish) but that such pounds may become available at a more reasonable price later in the year. If a vessel covers its deficit during the year, there is no strong rationale for not allowing that vessel to re-enter the fishery. The GAP recommends that instead of a provision allowing the vessel to opt out for the entire year or to pay a fine to opt back into the fishery if the deficit is covered with QP after the 30-day limit, the provision should allow the vessel to opt back into the fishery once the deficit is covered after the 30-day limit without incurring a fine. This flexibility is needed to allow more time to acquire QP for constraining species such as yelloweye, where QP may not be readily available.

At-sea Sector Donation Program
NMFS has included the donation program as part of the proposed rule but questioned the need for it if there are no bimonthly limits on bycatch of non-whiting species. NMFS asked for public comment on this issue. This issue raises the question of whether or not the 2011-2012 biennial specifications included cumulative limits for non-whiting groundfish for the at-sea sectors. The Council staff understanding is that such limits are included as part of the proposed biennial specifications.

The GAP agrees with the staff perspective that the current trip limits would continue in this next biennial cycle to avoid non-whiting species targeting. The GAP believes that catch in excess of these trip limits in the at-sea whiting fisheries should be allowed to be donated instead of discarded.

Processor Obligations
In some portions of the plan amendment language there was ambiguity as to whether the obligation to deliver to mothership processors was for all the catch taken by a catcher vessel in the mothership fishery or for all the catch allocated to the catcher vessel’s permit. NMFS has interpreted the language as applying to all the catch allocated to the catcher vessel’s permit but has asked for comment on this issue.

The GAP agrees with the proposed rule for MS/CV processor obligations.

PFMC
9/14/10