

OUTSTANDING TRAWL RATIONALIZATION ISSUES

This document contains notes on the decisions needed at the June Council meeting. Most of these decisions are covered in the Groundfish Allocation Committee’s (GAC) report to the Council.

Matters requiring council attention that are not covered in the GAC report or that are covered in the GAC report but require some additional follow up are highlighted in *bold italics*. There are a few additional items listed under “clean-up”.

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Individual Fishing Quota (IFQ) Alternative

Bycatch Management in the Whiting Fishery (A-1.1 Scope for IFQ Management and A-1.5 Management of Whiting Trips)

In their reports, the GAC and Trawl Individual Quota Committee (TIQC) recommend consideration of an option under which IFQ would be required only for whiting sector deliveries. Bycatch species would be managed as a pool. There are two suboptions for how the bycatch

species pools would be managed, either as a pool accessible by all whiting sectors or as a pool for each whiting sector. Under the co-op alternatives, there are options for different approaches to managing bycatch pools. *The Council may want to look at those as options to incorporate as part of the IFQ option for pools of whiting bycatch species.*

If there are only three trawl sectors some additional interpretation is required for what constitutes the “whiting sector.” The staff has incorporated the following approach into the alternative (Agenda Item E.9.a, Attachment 2): if there are three trawl sectors and whiting bycatch is managed as a pool(s), the shoreside whiting directed deliveries would not be counted as whiting sector and IFQ would be required for bycatch (i.e. the only whiting sectors would be the two at-sea delivery sectors). Alternatively, an interpretation could be given that would not require a vessel to have IFQ for nonwhiting species when making a shoreside whiting delivery. However, under this interpretation there would be little difference between the three and four sector option.

The TIQC report also provides a recommendation for intersector allocations that might be implemented in association with the option to manage bycatch in the whiting fishery as pools. These recommendations are included below in the section on “Decision Process for Allocating Among Trawl Sectors.”

Area Management (A-1.2 IFQ Management Units)

The main task for the Council on this topic is to decide on the process that should be followed in considering area management. The GAC recommends that the EIS state that existing area management tools will be used, including latitudinal areas needed to management for OY/ABCs. Additionally, the GAC has recommended that staff complete an option which would facilitate movement of management lines after the IFQ program is implemented. The TIQC has addressed area management previously and, in general, recommended that additional area management only be implemented based on biological need.

It is likely that the trawl rationalization EIS will find that creation of an IFQ program will increase the likelihood of geographic shifts in harvest. An excerpt of a preliminary analysis on the potential for geographic shifts under an IFQ taken from the Council’s June 2005 scoping document, is provided as Appendix A to this document. This analysis indicates a greater likelihood of geographic shifts in response to geographic differentials in catch per unit effort, cost structures, and market prices, due to the divisibility and transferability of quota shares independent of the permit and vessel. Given this analysis there are a number of policy options open for the Council including (partial list):

1. Adopt IFQs acknowledging the possibility of geographic shifts but making no other adjustments
2. Adopt IFQs acknowledging the possibility of geographic shifts and including provisions that facilitate the implementation of area management at a later time, as the need develops.
3. Same as 2, but fully develop an area management system for the trawl fishery as part of the trawl rationalization decision

4. Same as 2 but commit to fully developing an area management system for all appropriate sectors
 - a. as part of an intersector allocation decision OR
 - b. as part of a subsequent decision process on area management

The Council could also reject IFQs on the basis of concerns about area management.

The Groundfish Management Team (GMT) report on area management (Agenda Item E.9.a, GMT Report) recommends that the trawl individual quota program incorporate area management tools currently in use (existing latitudinal division or optimum yields and depth based gear restrictions/closures) and continue to pursue data and research informing spatial management. Further, the GMT recommends that depending on the results of the data compilation and review, the Council should determine whether and how spatial management concepts could be used in developing fishery management measures for the 2009-2010 biennium as well as the development of an Ecosystem Fishery Management Plan.

With respect to area management concerns, the Scientific and Statistical Committee's groundfish subcommittee has offered to hold a meeting prior to the September Council meeting to discuss different ways of defining localized depletion and identification of data sources that would be useful in describing spatial and temporal patterns in the distribution and abundance of trawl-caught groundfish stocks.

Area management may require that existing areas be subdivided and/or existing boundaries be moved. Moving area lines would be achieved by subdivision and recombination. The IFQ alternative includes a method to be followed for subdivision of quota shares (QS) by area after the initial allocation. Currently, the alternative leaves area recombination for development at a later time, on an as needed basis. The GAC has recommended that it be included as part of the current alternative.

Challenges and Alternatives to IFQs *(A-1.6 Special Overfished Species Management Provisions, Placeholder) [No GAC Recommendation]*

Agenda Item E.9.a, Attachment 5 explains some of the difficulties the fleet may encounter with overfished species under an IFQ program. The paper is presented to facilitate discussion about whether or not there are other provisions that should be included in anticipation of these potential challenges.

Currently, the trawl sector catch of overfished species is constrained based on target species trip limits, depth-based management, and average bycatch rates developed from prior years' observer data. The percentage of observed trips is far less than 100%, and data from a trip is not available until after the season. Under an IFQ program it is anticipated that there will be 100% at-sea catch monitoring and catch data will be available quickly. Under any system with 100% at-sea coverage and rapid catch reporting, it is likely that inseason management of the fleet would present significant challenges. Additionally, under an IFQ program, vessels would be held individually accountable for their catch and the vessel could incur substantial costs if it

accidentally catches too many overfished species or does not harvest its IFQ before, as a result of the overages of other vessels, the fleet takes its limit of overfished species and portions of the fishery are closed. Challenges such as these are discussed in Attachment 5.

Section A-6 is reserved as a temporary placeholder for additional provisions to address overfished species concerns. Currently, special provisions for overfished species are included as part of the initial allocation formula (A-2.1.3). Additionally, carryover provisions are proposed, in part, to address issues concerning overfished species (A-2.2.2.b).

Quota Share Allocation Formulas (A-2.1.3 Allocation Formula)

Review Initial Quantitative Analysis

The purpose of presenting the preliminary analysis provided in Agenda Item E.9.a Attachments 3 and Supplemental Attachment 4, is to ensure that the quota share allocation options are performing as expected. No specific action is required by the Council, however, on the basis of their review of some preliminary analysis both the GAC and TIQC have recommended some changes.

The GAC concurred with the TIQC report recommendations that (1) recent participation requirements for permits (including those for catcher processors) not be included as part of the program, (2) the recent participation requirement for motherships be 1,000 mt processed in each of any two years from 1998 – 2004, and (3) Option 1 for allocation to catcher processors (“Schedule developed by unanimous consent of catcher processors”) be eliminated. Additionally, the GAC agreed with the TIQC that an option be analyzed in which there would not be equal sharing of the quota share pool associated with buyback permits, but the GAC recommends that this option be a replacement for the existing option, which includes such an equal sharing element. The TIQC recommended that both options go forward as part of the alternatives.

Preliminary analysis of the following are included in Attachment 3: the recent participation requirements and allocation formula for catcher vessel permits, recent participation requirements for motherships and catcher-processors, co-op endorsement and permit qualifying requirements, and history for catcher vessel permits under the co-op alternative. Supplemental Attachment 4 provides information on a quota share allocation formula that does not include equal sharing of the buyback permits’ QS pool. The shoreside processor allocation analysis is pending the development of data sets on processing companies that operate under multiple buyer codes and those processors which also own limited entry permits.

Proxy Species-Based Formulas for Overfished Species

The Council task is to recommend an approach for the allocation of QS for certain species using a proxy. For the nonwhiting fishery there are two options for allocating overfished species. Under one option, overfished species would be allocated using the same formula as for all other species. Under the other option, overfished species would be allocated based on some other

species, a proxy species, through the application of a bycatch rate. For the whiting sectors, there are two similar options, only the options apply to all bycatch species rather than just to overfished species. If IFQ are allocated for bycatch in the whiting fishery, whiting would serve as the proxy species and all bycatch species (including overfished species) would be allocated in proportion to the whiting QS allocation, on a pro rata basis.

To proceed with the analysis, a proxy-species based method needs to be selected for the nonwhiting fishery. The TIQC has recommended an approach based on fleet average bycatch rates for overfished species (2003-2006 observer data), fleet average distribution of catch of target species by depth and latitude (2003-2006 logbook data), and each permit's QS allocation for target species (determined based on landings data). The approach recommended by the TIQC (Option 3 in the following table) differs from other methods considered in that it uses fleet aggregate logbook information rather than permit-specific logbook information. The GAC concurred with the TIQC recommendation and requested SSC and GMT review.

Table. Summary of the proxy species based allocation options for overfished species.

Proxy Species/ Bycatch Rate Based Allocation Options for the Nonwhiting Fishery	Bycatch Rate	Target Species Strata	Harvest Level
Option 1	Fleet 2003-2006 Observer Data	<u>Permit</u> 2003-2006 Logbook Records	Permit 2003-2006 Target Species <u>Landings</u>
Option 2	Fleet 2003-2006 Observer Data	<u>Permit</u> 2003-2006 Logbook Records	Permit's 1994-2003 Target Species <u>Landings</u>
Option 3 (GAC & TIQC recommended)	Fleet 2003-2006 Observer Data	<u>Fleet</u> 2003-2006 Logbook Records	Permit's <u>QS</u> for Target Species

Options 1 and 2, considered by the Council at its March 2007 meeting would have relied on 2003-2006 fleet bycatch rates from the observer program and 2003-2006 permit specific logbook information. Using this approach, two different periods were considered for scaling the absolute amount of overfished QS allocated to a permit: (1) the permit's 2003-2006 landings and (2) the permit's 1994-2003 landings history (or other period used for QS allocation). The approach recommended by the TIQC does not rely on permit specific logbook information and ties the overfished species allocation to the permit's target species QS rather than either 2003-2006 or 1994-2003.

Reallocation once a Species is Rebuilt or Declared Overfished

The Council should consider the GAC guidance provided to staff. The TIQC discussed the possible need to reallocate QS once a species is rebuilt. The GAC discussed this issue and directed the staff to develop options for reallocation of QS under these scenarios. The GAC recommended that such options reallocate QS while maintaining status quo sector allocations, until such time that the Council takes specific action to reallocate the OY.

Carryovers (A-2.2.2.b Carryover (Surplus and Deficit)) [No GAC Recommendation]

The Council should consider other policy adjustments that will be needed to make carryover provisions a feasible option. If quota pounds are issued for the entire trawl allocation each year, with an overage carryover the trawl fleet would exceed its annual allocation in the current year, or, with an underage carryover, the trawl fleet could exceed its annual allocation the following year. In either case, this could result in the fishery exceeding its ABC or OY. The adjustments needed may be a part of the IFQ alternative (e.g. a sector specific buffer), a part of the intersector allocation considerations (e.g. a buffer to protect all sectors from one another), or a part of the development of national policy (e.g. provisions to allow multiyear/rolling ABCs/OYs).¹

Carryover provisions allow a vessel to carry over to the following year an overage (cover current year catch with quota pounds it receives from the following year, when those quota pounds are issued) or an underage (carry over to the following year quota pounds issued for the current year). While a carryover provision would apply to all groundfish species, it is anticipated that the provision may be most important for the management of constraining overfished species. The multispecies nature of the fishery and difficulty of fully utilizing all of the quota pounds a vessel has available on its final trip lead to consideration of a carryover provision. Without a carryover provision, more lively trading in the quota pound (QP) market would be likely as vessels seek to acquire the mix of QP needed to for their last trips. With a carryover provision a vessel might finish off its season with overages of some species and underages of others, without losing fishing opportunity or incurring penalties (as long as overages are covered within proscribed time limits).

Carryover provision will likely affect market prices for quota pounds. On the one hand, a carryover provision could exert a downward pressure on QP prices as it increases the supply of QP that could be used in the current year. However, the additional supply of QP for the current year would come from the following year's QPs, diminishing supply in the following year. On the other hand, a carryover provision might also exert an upward influence on price. Those owning QP for a scarce species might hold on to their end-of-year surpluses to reduce their own risk for the following year. If there were not a carryover provision, surplus quota pounds left at the end of the year would have no utility in the following year. Someone owning scarce QP in the current year would be able to generate additional income from putting it on the market and would likely derive no utility from holding the QP past the end of the year.

¹ Another possibility to consider might be to allow a carryover but use inseason management to close areas with high bycatch rates, thereby reducing the likelihood of fleet overages while still allowing individual vessel overages/underages.

Eligible to Own Rules (A-2.2.3.a Eligible to Own/Hold)

The Council task is to review the draft language developed to specify who is eligible to own quota shares and quota pounds and provide guidance if it believes any adjustments need to be recommended at this time.

At its March 2007 meeting, the Council directed that language on “eligible to own” be developed based on that used in the north Pacific. Draft language has been provided in Appendix B which is believed to generally reflect the Council intent. Exact language will be drafted when regulations for the IFQ program are developed, if such a program is adopted by the Council.

Control Rules for Accumulation Cap (A-2.2.3.e Accumulation Limits (Permit and Own or Control))

The Council task is to review the draft language developed to specify how “control” will be defined for the purpose of assessing limits on the amount of IFQ owned or controlled by a particular entity and provide guidance if it believes any adjustments are needed at this time. *Additionally, the Council may wish to consider proposals for revising the percentage limits that are part of the current accumulation limit options.*

At its March 2007 meeting, the Council directed that language on “control” be developed based on that used in the North Pacific. Draft language has been provided in Appendix C. The TIQC reviewed this language and noted that they may want to recommend changes to the examples provided with the draft language, to make them more specific and applicable to this fishery. While GAC members had some concern about how the provision might be interpreted and applied, the GAC did not have any comments about the specific proposed language.

On a related matter, the TIQC has recommended some additional specific options for limits on control in the whiting catcher-processor sector: 50%, 55%, or 60%. Additionally, for the catcher-processor permit accumulation limit the TIQC has recommended the following options: 65%, 70%, or 75%. The GAC asked that each representative consult with members of their sector and bring forward their proposed changes.

Split Loads and Monitoring Program (A-2.3.1 Tracking and Monitoring)

The GAC did not concur with the TIQC recommendation for an option to allow an off-load to be split between different locations nor with recommendations that an option be added to require electronic logbooks.

Processor Compensation in Trawl Rationalization (A-2.4 Additional Measures for Processors)

The Council needs to decide whether additional options should be considered for compensating processors for potential impacts of an IFQ program. The GAC has recommended some options for Council consideration. *Guidance should also be provided on moving forward with the Council’s previous direction that a separate white paper on the options be developed.*

The Council tasked the GAC with considering whether measures other than an initial allocation of IFQ to processors should be considered to address impacts on processors. The allocation of IFQs to processors has been proposed as a method of compensating processors for impacts such as that which might occur from stranded capital. There may be other impacts of concern as well. To assist in the consideration of the issue, a draft paper has been developed summarizing the rationale for and against allocating IFQ to processors, as it has been expressed to date (Appendix D). Staff gathered comments for potential inclusion in the paper during the May TIQC and GAC meetings and will continue to do so at the June Council meeting. Council members, advisory body members, and the public have commented that compensation for impacts may not be the only reason for considering the allocation of IFQ to processors and that there should be evaluation of the reasons for allocating or not allocating to every group considered for an initial allocation.

In addition to the tasks assigned to the GAC, at its March 2007 meeting, the Council directed that a white paper be developed on mechanisms to compensate for impacts on processors as a result of stranded capital and other impact mechanisms. However, the Council also directed that development of such a paper not proceed until after GAC consideration of the issue. New options that the Council decides to incorporate into the alternatives will be analyzed in the EIS. The Council should provide direction if it would like this analysis pulled out and incorporated into a separate white paper for its consideration.

Adaptive Management/Holdback Options (A-3 Adaptive Management)

The Council needs to decide whether or not to include for analysis an option for adaptive management. Under such a program, some portion of the trawl allocation would be held back each year and allocated based on criteria that help address certain management objectives.

Earlier in this process, the TIQC recommended consideration of a holdback provision as part of a community stability program. The provision was patterned after a similar provision in the BC groundfish trawl IFQ program. In that program, 10% of the QP are held back from each QS holder's allocation and then allocated back to those who bring forward proposals for using the QP in ways that meet criteria pertaining to community stability and other objectives. While the TIQC recommended such a provision be considered, it asked that evaluation criteria for the proposals be quantifiable and objectives, in order to control administrative costs and reduce appeals. The development of such criteria was delegated to committee members advocating for this proposal and a request was made to the Council for assistance. At its December 2006 meeting, the GAC rejected the community stability program, based in part on complexity, anticipated administrative costs, and the possibility that community needs might be addressed through area management. At the May 2007 TIQC and GAC meetings, TIQC member Dorothy Lowman introduced a presentation that was developed by members of the environmental community on a range of options that could use a allocation holdback as an adaptive management tool to address community and other concerns. The TIQC received the presentation by Stu Nelson at its May meeting but did not develop a recommendation because, at that time, the specific details of the proposal had not been fleshed out. The GAC reviewed a more fully developed proposal and is recommending Council consideration of such a provision.

Pacific Halibut Individual Bycatch Quota (A-4 Pacific Halibut Individual Bycatch Quotas)

The Council task under this item is determine whether or not individual bycatch quota (IBQ) for Pacific halibut should be included as part of the IFQ alternative. IBQ for Pacific halibut were recommended by the TIQC in its June 2005 report to the Council. Some of the options in that report would have allowed for the retention of Pacific halibut. When the Council adopted options for analysis, it did not include any options halibut IBQ. At its March meeting, the GMT recommended consideration of halibut IBQ in the context of “sideboards” for the trawl fishery, the TIQC disagreed with the GMT rationale but concurred with the recommendation. During discussion, the Council members indicated their desire to have an opportunity to discuss the issue further. The issue was addressed at the may GAC meeting and the GAC is recommending Council consideration of an option that would provide IBQ for halibut (the option would not allow for retention). Excerpts from the March 2007 reports to the Council and June 2005 scoping document are provided as Appendix E to this document.

IFQ Alternative Clean-up [No Recommendations in the GAC Report]

Whiting Trip Limits in the Nonwhiting Fishery (A-1.4 Management of Nonwhiting Trips)

For the nonwhiting fishery, there is a potential that a vessel might make a targeted whiting trip by accumulating whiting QPs provided to cover whiting bycatch in the nonwhiting fishery. This could create a problem if it occurred during a time when the whiting fishery is closed to control for impacts on ESA listed salmon. Other than that, whiting targeted trips using whiting QP intended for whiting bycatch in the nonwhiting fishery might not create much of a problem. Previously, language was included in the IFQ alternative specifying that, for the nonwhiting fishery, whiting trip limits would be used to prevent whiting targeted trips. *The GAC suggested to staff that the provision be simplified by removing trip limit language and noting that restrictions might be imposed as needed to address ESA concerns.*

Minimum Quota Pound (QP) Holding Requirement (A-2.2.1 Permit/IFQ Holding Requirements)

The IFQ alternative includes an option for a minimum amount of QP a vessel would be required to have prior to departing on a fishing trip. The amount has yet to be specified. Both species specific (e.g. for an overfished species) and general holding requirements (e.g. minimum pounds of nonwhiting groundfish in any combination of species) have been discussed. In December 2006, the GAC asked the Enforcement Consultants (EC) to specify a minimum holding requirement option. The EC has reviewed some trip data and discussed a minimum holding requirement in the range of 500 to 1,000 QP of any groundfish species. However, based on the strength of the tracking and monitoring system needed to ensure individual vessel accountability under IFQs, neither the TIQC nor the EC believe that such a requirement is necessary. During its discussions EC members noted that there is no enforcement basis for determining the appropriate level for such a requirement.

The Council may wish to consider eliminating the option of requiring a vessel hold some minimum number of QP prior to departure, proceeding with a general minimum holding requirement as an option until it receives a preliminary analysis, or directing that an

additional species specific requirement be developed and included for consideration in the preliminary analysis.

Elimination of Section on Liens (A-2.2.3.x Liens)

The section on liens (previously A-2.2.3.e) has been eliminated based on discussion with the GAC. This section was residual from early deliberations in the process. It simply stated that liens could be placed on QP and QS but that this was a private matter. The section provided no program provisions related to the issue. The issue of whether or not there will be a central lien registry is covered under Section A-2.3.1, Option 3.

Co-op Alternative (B. Whiting Sector Co-op Alternative)

The Council task is to specify a co-op alternative for analysis. The co-op alternative, as recommended by the GAC, is provided in Agenda Item E.9.a, Attachment 2. The alternative includes some general provisions pertaining to all sectors of the whiting fishery as well as a distinct co-op program for each whiting sector. It is hoped that after the June Council meeting, the only provisions that will be subject to revision are those pertaining to the permit and endorsement qualifying requirements and the initial attribution of catch history to vessel permits. Agenda Item E.9.a, Attachment 6 provides a general explanation of how co-ops work to rationalize the fishery and address bycatch concerns. The document also contains a summary of the reasons that have been presented for provisions that link harvesters and processors.

Decision Process for Allocating Among Trawl Sectors

The GAC has recommended that allocation among trawl sectors be handled under the intersector allocation EIS. This recommendation was based on a staff report that inclusion of options for allocating among trawl sectors as part of the intersector allocation analysis would result in more efficient, less complex analytical documents than including such options as part of the IFQ analysis.

The following are various recommendations on allocation among trawl sectors that are currently contained in the trawl rationalization document or are part of the TIQC report at this meeting.

Leave whiting trawl allocations intact between shoreside whiting sector (42%), mothership delivery sector (24%) and catcher-processor sector (34%) [*from the Co-op Alternative*].

Divide the allocation among trawl sectors based on the fleet history over the same time periods used to allocate QS. If different periods are used for different trawl sectors, either (1) calculate the share for each sector based on its IFQ allocation period, then adjust all percentages proportionately such that they sum to 100%; OR (2) use the shortest period common to the allocation formula for all sectors. [*From the IFQ Alternative*]

If bycatch in the whiting sectors is not managed with IFQs and is pooled at the or sector level, or if the co-op alternative is selected and there is a separate pool of bycatch for

each whiting sector, allocate between the whiting sectors:

Option 1: pro rata in proportion to the whiting allocation to each sector, or

Option 2: based on a weighted historical catch formula (for example, in projecting bycatch in the whiting fisheries prior to the start of the season, the GMT uses a four-year weighted average starting with the most recent year: 40%, 30%, 20%, 10%).

[From both alternatives]

Appendix A: Area Management: Excerpt From June 2005 Scoping Document

Potential for Geographic Shifts Under an IFQ Program

The potential for geographic shifts may be evaluated by looking at likely effects of changes in the management system on factors affecting the existing distribution of harvest and past tendencies for harvest to shift between regions.

Influence of Management System Changes on Distribution of Fishing

The ability to divide and transfer quota shares under an IFQ system will increase the likelihood that fishing activities will be responsive to influences in the natural and socioeconomic environment. . . . Effects of factors influencing the distribution of harvest activity are muted and harvest distribution may be geographically smoothed out under the current management system with its indivisible permits and trip limits. IFQ programs can provide relief from the “all or nothing” choice constraint presented by the license limitation system. Relief from regulatory constraints under a revised management program may also result in a redistribution of catch. . . . While the degree and direction of shift is not predictable, the likelihood of changes in the geographic distribution of fishing activity is greater under IFQs than under the current system.

Numerous factors influence the distribution of harvest, including relative profit opportunities (affected by factors such as catch per unit effort (CPUE), port costs, exvessel prices, local labor costs etc.). . . . Opportunities to improve efficiency under IFQs is likely to vary between ports. Social and climatological factors also influence participation decisions. . . .

Interviews with stock assessment scientists indicated that current management has not directly limited concentrations of fishing effort. Some felt that designing an IFQ system without area allocation of OY may not be a significant issue as effort does shift around anyway, and declining CPUE would lead to compensatory fishing behavior that would result in changes in fishing location. However, as discussed above, factors other than the CPUE for a particular species also affect distribution of harvest, for example, port costs, grounds familiarity, CPUE for a complex (as distinct from that for an individual stock), exvessel prices, and social connections to a particular port.

Appendix B: Draft Language for “Eligible to Own or Hold”

The issue in this section is “Who is allowed to acquire IFQ in the future?” The Trawl Individual Quota Committee’s (TIQC) intent is that those eligible to own quota shares or quota pounds should include any person eligible to own or control a US documented fishery and, additionally, persons who are not otherwise allowed to own US documented vessels but are allowed to do so pursuant to the American Fisheries Act (AFA). Based on this intent, and on Council direction that language be developed based on that used in the North Pacific, the following draft language has been developed for consideration.

Those eligible to own QS will be restricted to

- i. any person or entity eligible to own and control a US fishing vessel with a fishery endorsement pursuant to 46 USC 12108 (general fishery endorsement requirements) and 12102(c) (75% citizenship requirement for entities) and
- ii. any person or entity eligible to own or control a US fishing vessel with a fishery endorsement pursuant to sections 203(g) and 213(g) of the AFA

In addition, the reauthorized Magnuson-Stevens Fishery Management and Conservation Act (MSA) provides slightly more restrictive language on who is allowed to own a limited access privilege (LAP). Under the MSA LAP program language, entities other than US citizens and permanent resident aliens must be established under either Federal or state law.

The new LAP program provisions of MSA section 303A 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...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.”

The MSA definition of “person”² does not require that the entity be organized under Federal or state laws. This difference **may not** affect any current entities in the trawl fishery (corporations and partnerships likely are established under state law).

² The definition of “person” under the MSA means

any individual (whether or not a citizen or national of the United States), any corporation, partnership, association, or other entity (whether or not organized or existing under the laws of any State), and any Federal, State, local, or foreign government or any entity of any such government.

Underlining highlights the most relevant text.

Sec. 12108. Fishery endorsements

(a) A certificate of documentation may be endorsed with a fishery endorsement for a vessel that -

- (1) is eligible for documentation;
- (2) was built in the United States;
- (3) if rebuilt, was rebuilt in the United States;
- (4) was not forfeited to the United States Government after July 1, 2001, for a breach of the laws of the United States; and
- (5) otherwise qualifies under the laws of the United States to be employed in the fisheries.

(b) Subject to the laws of the United States regulating the fisheries, only a vessel for which a certificate of documentation with a fishery endorsement is issued may be employed in the fisheries.

(c) A fishery endorsement to engage in fishing in the territorial sea and fishery conservation zone adjacent to Guam, American Samoa, and the Northern Mariana Islands

(d) A vessel purchased by the Secretary of Commerce through a fishing capacity reduction program under the Magnuson-Stevens Fishery Conservation and Management Act (16 U.S.C. 1801 et seq.) or section 308 of the Interjurisdictional Fisheries Act (!) (16 U.S.C. 4107) is not eligible for a fishery endorsement, and any fishery endorsement issued for that vessel is invalid.

Sec. 12102. Vessels eligible for documentation

(a) A vessel of at least 5 net tons that is not registered under the laws of a foreign country is eligible for documentation if the vessel is owned by -

- (1) an individual who is a citizen of the United States;
 - (2) an association, trust, joint venture, or other entity -
 - (A) all of whose members are citizens of the United States;
- and

(B) that is capable of holding title to a vessel under the laws of the United States or of a State;

(3) a partnership whose general partners are citizens of the United States, and the controlling interest in the partnership is owned by citizens of the United States;

(4) a corporation established under the laws of the United States or of a State, whose chief executive officer, by whatever title, and chairman of its board of directors are citizens of the United States and no more of its directors are noncitizens than a minority of the number necessary to constitute a quorum;

- (5) the United States Government; or
- (6) the government of a State.

(b) A vessel is eligible for documentation only if it has been measured under part J of this subtitle. However, the Secretary of Transportation may issue a temporary certificate of documentation for a vessel before it is measured.

(c)(1) A vessel owned by a corporation, partnership, association, trust, joint venture, limited liability company, limited liability partnership, or any other entity is not eligible for a fishery endorsement under section 12108 of this title unless at least 75 per centum of the interest in such entity, at each tier of ownership of such entity and in the aggregate, is owned and controlled by citizens of the United States.

AMERICAN FISHERIES ACT

SEC. 203. Enforcement of Standard.

(g) CERTAIN VESSELS.—The vessels EXCELLENCE(United States official number 967502), GOLDEN ALASKA (United States official number 651041), OCEAN PHOENIX (United States official number 296779),NORTHERN TRAVELER (United States official number 635986), and NORTHERN VOYAGER (United States official number 637398) (or a replacement vessel for the NORTHERN VOYAGER that complies with paragraphs (2), (5), and (6) of section 208(g) of this Act) shall be exempt from section 12102(c), as amended by this Act, until such time after October 1, 2001 as more than 50 percent of the interest owned and controlled in the vessel changes, provided that the vessel maintains eligibility for a fishery endorsement under the federal law that was in effect the day before the date of the enactment of this Act, and unless, in the case of the NORTHERN TRAVELER or the NORTHERN VOYAGER (or such replacement), the vessel is used in any fishery under the authority of a regional fishery management council other than the New England Fishery Management Council or Mid-Atlantic Fishery Management Council established, respectively, under subparagraphs (A) and (B) of section 302(a)(1) of the Magnuson-Stevens Fishery Conservation and Management Act (16 U.S.C. 1852(a)(1)(A) and (B)), or in the case of the EXCELLENCE, GOLDEN ALASKA, or OCEAN PHOENIX,the vessel is used to harvest any fish.

SEC. 213. DURATION.

(g) INTERNATIONAL AGREEMENTS.—In the event that any provision of section 12102(c) or section 31322(a) of title 46, United States Code, as amended by this Act, is determined to be inconsistent with an existing international agreement relating to foreign investment to which the United States is a party with respect to the owner or mortgagee on October 1, 2001 of a vessel with a fishery endorsement, such provision shall not apply to that owner or mortgagee with respect to such vessel to the extent of any such inconsistency. The provisions of section 12102(c) and section 31322(a) of title 46, United States Code, as amended by this Act, shall apply to all subsequent owners and mortgagees of such vessel, and shall apply, notwithstanding the preceding sentence, to the owner on October 1, 2001 of such vessel if any ownership interest in that owner is transferred to or otherwise acquired by a foreign individual or entity after such date.

Appendix C: Draft Language for “Own or Control” Definition for Accumulation Limit

The reauthorized Magnuson-Stevens Act requires that accumulation limits be established within a limited access privilege program. Until the March Council meeting, the trawl individual quota (TIQ) program contained three different accumulation limits: an ownership limit, a control limit, and a use limit. The Council then decided that *own* and *control* should be combined into a single accumulation limit (i.e. be treated the same),³ and the “use” limit was better specified as a permit accumulation limit⁴.

A definition needs to be established for “own or control” with respect to the IFQ alternative accumulation limits. In March, the Council made the decision to use the North Pacific Fishery Management Council’s (NPFMC) definition. This document provides a draft definition based on that used for the NPFMC crab rationalization program, modified as necessary for this application.

Proposed Definition:

The “own or control” accumulation limit restricts the acquisition of excessive shares, including acquisition by means other than through purchase of QS or QP. “Ownership” and potential violation of such limits would be tracked on an ongoing basis in a National Marine Fisheries Service (NMFS) database. NMFS might require that additional information be submitted to assist in assessing levels of control, however, investigation and prosecution of potential violations of control limits would likely require information beyond that contained in the regular submissions to NMFS. Such investigations would likely be instigated based on citizen complaints or other sources of information. While a control limit may be difficult to enforce, without the inclusion of such a limit in the program, anti-trust law would provide the next level of protection against excessive control. Anti-trust laws are also difficult to enforce and would likely apply only at greater levels of concentration than are in the control options currently being contemplated by the Council.

Own or control accumulation limit: A person, individually or collectively, may not control QS or QP in excess of the specified limit (unless exempted by the grandfather clause). QS or QP controlled by a person shall include those registered to that person, plus those controlled by other entities in which the person has a direct or indirect ownership interest, as well as shares that the person controls through other means. The calculation of QS or QP controlled by a person will follow the “individual and collective” rule.

“Individual and collective” rule: The amount of QS or QP that is computed as applying to a person is equal to the sum of the QS or QP registered to that person and an amount equal to the percentage of holdings by that person in any entity in which that person has an interest.

Example calculation: if an individual had QS registered to him and had a 20 percent interest in another entity to which QS were registered, the QS registered to that individual and 20 percent of the QS registered to the other entity would be summed to represent the amount of QS controlled by that individual. The same method would be used for calculating the QP controlled by that person.

³ In general, *control* includes both the control exerted through ownership of the QS/QP, as well as the control exerted by the ability to direct the use of QS/QP. The term “owner” means the QS/QP is registered to the person through NMFS.

⁴ “Use” is a vague term that could be interpreted in a number of ways (e.g. who uses QP – a permit owner, an operator, a crewmember?). In addition, permits can be transferred between vessels and stacked, so a vessel accumulation limit would leave open ways to circumvent the limits. The term “permit accumulation limit” is consistent with the TIQC’s recommendation that the limit should be applied to the permit and that permit stacking should be prohibited.

When NMFS implements the own or control accumulation limit, it will provide a regulatory definition of the Council's intent. With respect to the interpretation of "otherwise controls," the following is the regulatory interpretation that was provided for similar policy language for the North Pacific crab rationalization program.⁵ (Note: minor revisions have been made to these examples so that they can be better understood in the context of the TIQ program.)

- a) The person has the right to direct, or does direct, the business of the entity to which the QS or QP are registered;
- b) The person has the right to direct, or does direct, the delivery of groundfish harvested under a permit registered to a different person/entity;
- c) The person has the right in the ordinary course of business to limit the actions of or replace, or does limit or replace, the chief executive officer, a majority of the board of directors, any general partner or any person serving in a management capacity of the entity to which the QS or QP is registered;
- d) The person has the right to direct, or does direct, the transfer of QS or QP;
- e) The person, through loan covenants, has the right to restrict, or does restrict, the day-to-day business activities and management policies of the entity to which the QS or QP is registered;
- f) The person has the right to control, or does control, the management of, or to be a controlling factor in, the entity to which the QS or QP is registered;
- g) The person has the right to cause, or does cause, the sale of QS or QP;
- h) The person absorbs all of the costs and normal business risks associated with ownership and operation of the entity to which the QS or QP is registered.
- i) The person has the ability through any other means whatsoever to control the entity to which the QS or QP is registered.

Possible Interpretation of the Definition

The catch-all phrase at the end of the definition, "shares that the person controls through other means" restricts ways to circumvent the accumulation limit but also presents questions as to how the definition should be interpreted in its implementation. For example:

- *If someone is a crew member of a vessel or a cutting line employee for a processor, should the shares owned by that person be considered within the control of the harvesting/processing company?*
- *If someone is a vessel captain or a plant manager, should the shares owned by that person be considered within the control of the harvesting/processing company?*
- *If someone leases the vessel/facility to the harvesting/processing business, should the harvesting/processing business be considered under that person's control?*
- *If there is only one processor in the port, should that processor be considered to control the harvesting operations (and use of quota) of vessels in that port?*

Ultimately the evaluation of a possible accumulation limit violation ultimately would be based on specific situational facts.

⁵ NMFS based its examples on the indices used for determining impermissible control by a non-citizen of a United States fishing vessel under MARAD regulations at (46 CFR 356.11)

Appendix D: DRAFT Rationale For and Against the Initial Allocation of Quota Shares to Processors

Rationale for and against an initial allocation of quota shares (QS) to processors has been voiced by numerous participants within the trawl rationalization process, as well as in related fisheries rationalization policy discussions. Council staff has collected and summarized the primary rationale put forth thus far in order to facilitate discussion at Groundfish Allocation Committee (GAC) and Council meetings, including discussion on how analysis of the initial allocation should be conducted, as well as to facilitate final action decision-making. This paper incorporates comments provided by Trawl Individual Quota Committee members, GAC members, and members of the public. Rationale on allocation decisions relating to other groups of fishery participants will be provided in the trawl rationalization program EIS.

Rationale in favor of an Initial Allocation of Quota Shares to Processors

Rationale 1: Some say processors should receive initial allocations in order to prevent the occurrence of stranded capital and other adverse impacts that an IFQ program may have on the value of their assets. It is likely that creating IFQs, a new type of asset, will influence the value of existing assets. If compensation to owners of harvester assets – permits in particular – is an intention of the Council’s initial allocation, processors have argued that such consideration should also extend to owners of processor assets, such as processing plants. The increased efficiency and flexibility of a rationalization program suggests that both consolidation and geographic shifting of the fishery could lead within the processing sector to stranded capital (capital that has no alternative productive use as a result of a change in regulations).

It can be argued that the history of fishery regulations has brought about harvesting and processing overcapacity, a characteristic noted as a precondition to stranded capital. For example, the shoreside whiting fishery operates as a derby that yields large volumes of product that must be processed during highly compacted seasons. For example, an industry member estimates that a rationalization program could extend the shoreside whiting season from three weeks to six months, so that the industry would need only one-eighth the current amount of harvesting and processing capacity to efficiently operate the sector.

To the extent that such excess capacity is non-malleable (i.e. cannot be switched to a different use) and therefore “stranded,” processors propose that both processing and harvesting sectors should be compensated when the fishery is rationalized in order to mitigate the investments’ devaluation from regulatory changes. Processors have cited similarities between the processing sector and the harvesting sector with respect to each sector’s potential for stranded capital; therefore, some advocate that the analysis of stranded capital should expand to also encompass vessel owners, and not just processing plant owners.

Rationale 2: Some say initial allocation to processors and harvesters allows for maintenance of the market power balance between the two groups, so that economic gain from the fishery is not shifted disproportionately to the harvesting sector. The Council has already identified in the trawl rationalization program Goals and Objectives its intention to “[avoid] provisions where the primary intent is a change in marketing power balance between harvesting and processing sectors.” Processors have identified two outfalls of the trawl rationalization program that could lead to the shift of a portion of the rents from processors to harvesters. If this shift occurs because of the

reasons explained below, some point to a danger that the smaller processors will be forced to sell out to their competitors, hastening the consolidation in the processing sector. This could lead unintended impacts on smaller ports and a decrease in competition in the marketplace.

The first way that a trawl rationalization program may lead to a shift in market power could be that without the bargaining power of their own quota to offer for use on a harvester's vessel, processors could be at a disadvantage in setting ex-vessel prices. On the other hand, if processors also held quota, it has been stated that they also would strive for higher ex-vessel prices. This is because the ex-vessel price and the value of quota have been demonstrated to be linked in other quota programs, and so, the argument continues, it is the interest of the common stakeholders to increase the value of quota. Second, processors state that the capacity of the processing sector may no longer match the rationalized fishery, in which seasons may be elongated. This argument continues that processors would attempt to fill their existing daily processing capacity by bidding up the ex-vessel price paid to harvesters. With the protection of their own initial allocation of quota, however, it is contended that the processors would have a better guarantee of product for their plant, which again would allow for a more equitable bargaining platform between the two sectors.

Rationale 3: Some say economic theory suggests that the conservation benefit of a rationalization program is achieved regardless of to whom the quota is allocated. One of the primary drivers in the development of the trawl rationalization program is its ability to provide for better conservation of the resource through its accountability and monitoring requirements. Processors have noted that these elements are innate to the system as a whole, and are not tied to who holds the quota. Therefore, it is argued that the issue of conservation favors neither processors nor harvesters with respect to initial allocation.

Also related to conservation issues, it has been argued that shoreside processors, in particular, are dependent upon a healthy West Coast groundfish stock for the economic viability of their sector, and so they have a greater incentive to be careful stewards of the resource. This is because unlike other capital investments, a shoreside processing facility cannot be moved to another region if, for example, the trawl fishery is closed prematurely due to a bycatch overage.

Rationale 4: Some say that processors should be considered for an initial allocation because they qualify as fishery participants with “investments in, and dependence upon, the fishery,” as described in the Magnuson-Stevens Act. Processors state that, like permit holders, their sector has made longstanding and significant investment in the groundfish industry that earn them a vested interest in the future of the fishery. Processors have made significant contributions to product development and market development for the West Coast groundfish fishery, in addition to their capital investments in processing capabilities. Therefore, some processors have advocated that initial quota allocation should consider the contribution a sector has made to a product's value. This stance is substantiated, it is contended, by the Magnuson-Stevens Act which states that “a Council or the Secretary shall—establish procedures to ensure fair and equitable initial allocations, including consideration of current and historical harvests; employment in the harvesting and processing sectors; investments in, and dependence upon, the fishery; and the current and historical participation of fishing communities.” This Congressional direction may be interpreted to suggest that processors should be considered for the long-term compensation that is derived from initial allocation of QS.

Rationale 5: Some say initial allocation to processors will lead to maximum efficiency in the fishery, and thus allow for maximized net benefit to the nation. Processors have contended that by receiving an initial allocation, they would have the same incentive as permit holders to maximize

the value and efficiency of the fishery through sustainable and effective quota management. They say communication and business planning between harvesters and processors, both greatly aided when each group holds quota, could likewise allow for greater efficiency. One way that this could take place is through the processors' participation – enabled by their initial allocation – in collective (or “co-op”) management of the quota among groups of harvesters and processors. The vertical integration brought about by this cooperation is suggested to increase the efficient management and economic utilization of the resource.

Rationale 6: Some say that initial allocation to processors will maintain diversity in the processing sector, and that the resulting competition between participants will encourage benefits such as product innovation. In general, it is found that the larger the pool of participants in an industry, the greater the potential for innovation and improvements in productivity due to competition between the participants. It is argued that in order to achieve these benefits in the rationalized trawl fishery, processors should receive an initial allocation of QS. The argument is based on the assertion that most of the larger processors are vertically integrated (because they own many of their catcher vessels or are a catcher-processor), and so would not be significantly adversely affected by a harvester only allocation. Further, some of the larger processors participate in multiple trawl sectors (for example shoreside and mothership). On the other hand, the argument continues, the segment of the processing sector with neither vertical integration nor extensive levels of cross-sector participation would be at a greater risk of going out of business soon after implementation of the rationalization program because of the relative disadvantages. By making an initial allocation to all qualified processors, it is contended that these more vulnerable companies will have a more viable chance at remaining in the fishery.

Rationale 7: Some say that if the initial allocation is perceived to redistribute status quo wealth, and processors are excluded from the system, comprehensive support would be lost and could impede adoption of the trawl rationalization program. It has been put forth that if a given sector or interest group is opposed to the proposed rationalization program, depending upon their political strength they could impede adoption of the program. This argument could be extended to posit that not compensating processors through an initial allocation could threaten the success of adopting the trawl rationalization program. This, in turn, could compromise the achievement of efficiency, conservation, and other goals of the program.

Rationale against an Initial Allocation of Quota Shares to Processors

Rationale 1: Some disagree with the contention that stranded processor capital would occur under the trawl rationalization program, that stranded capital deserves to be protected as a matter of national policy, and/or that such compensation should occur through long-term allocation of quota shares. The concept of stranded capital was introduced during the North Pacific's rationalization processes. Some have argued that characteristics of the North Pacific fisheries – an overcapitalized processing sector that is capital intensive, focused on one or two species over short season, and is often located in a remote area – is not the case for West Coast groundfish fisheries. Rather, some point to trip limit management, and other efforts to maintain a year-round non-whiting groundfish industry, as a reason why stranded capital in the processing sector would not occur from rationalization. Similarly, it has been argued that the processing sector has already undergone substantial consolidation in recent years, and thus much additional

consolidation is unlikely to take place following rationalization.

Even if stranded capital were to be identified within the trawl fishery's processing sector, some question whether compensation would be justified. The following summarizes part of that argument's rationale. First, it is argued that stranded capital reflects inefficiency under a rationalized fishery, and so protecting stranded capital becomes a public policy issue in which efficiency goals are traded off against other social goals, such as innovation and consumer benefits. Second, some say that processors should have made their investments in the fishery with knowledge of its risks and rewards. Changes to fishery regulations that decrease the profits a processor had been receiving should not justify compensating processors. This argument concludes that capital that has been fully depreciated, or has returned a profit many times its cost, is not stranded by a change to fishing regulations.

If the Council's intention is to compensate for lost capital assets, short-term compensation mechanisms have been suggested to be more appropriate than the long-term allocation of QS. The following theoretical scenario has been posited to support this suggestion. If processors are not included in the initial allocation, then in the short-term some processors may lose part of the value of their capital. However once this transition period is over, remaining processors might be better in the long-term than they were prior to the introduction of the IFQ program.

Rationale 2: Some say that as the amount initially allocated to processors increases, an imbalance of power between harvesters and processors will be created. A guiding principle for the trawl rationalization program states that provisions should be avoided "where the primary intent is a change in marketing power balance between harvesting and processing sectors." There is a perception among some that there is a current power imbalance in favor of the processors and that a 100 percent initial allocation to permit owners would not create an imbalance in favor of harvesters. Conversely, it is contended that issuing fishing QS for processing history would guarantee that certain processors would have access to product, above and beyond the QS they may also receive as permit owners. This increased access to product could reduce a processor's need to compete in the marketplace for an independent harvester's fish. In sum, it is contended that this change in market power would skew price negotiations and reduce ex-vessel prices.

Rationale 3: Some argue that as the distance between the quota owner and the vessel operator increases, the conservation benefit is degraded. Bycatch reduction – particularly of overfished species – is a primary driver in the development of the trawl rationalization program. Meanwhile, it is recognized that the very low levels of quota for constraining overfished species present the possibility of overages due to disaster tows. These overages could lead to early closures of the trawl fishery, or potentially the entire groundfish fishery. Amid this discussion, it has been posited that a vessel fishing quota pounds (QP) provided by processors might not have the same incentive to minimize bycatch as it would for its own quota. This less precautionary behavior could lead both to such overages and to shortages of available QP for constraining overfished species. These shortages, in turn, could restrict opportunities to access target species QP, particularly for those with lesser purchasing power.

Rationale 4: Some say that processors should not be given QS because this would take away QS from permit owners. Permit owners are deserving of QS because the limited entry permit would be the one asset in the system for which the market value is directly reduced as the result of the creation of QS. Additionally, there is no alternative use for a surplus groundfish trawl permit. It is argued that decreasing the QS allocated to permit owners could lead to bankruptcy for some permit owners

if the value of their permit declines and results in debt that is greater than their remaining equity.

Rationale 5: Some point to legislation and precedence as indication that fishing privileges should not be allocated to the processing sector. National Standard 4 has been used to indicate a Congressional intention that fishing privileges should be allocated to those who have been granted the right to fish (as a permit owner): “If it becomes necessary to allocate or assign fishing privileges among various United States fishermen, such allocation shall be fair and equitable to all such fishermen...” In addition, it has been noted that fishing shares have not been issued to processors thus far under any implemented IFQ program.

Rationale 6: Some suggest that an allocation to processors would bring about increased consolidation among permit owners not affiliated with processors, due to the smaller portion of QS each would receive. If fishing QS are allocated to processors in this program, it is contended that permit owners would have to acquire additional quota (on top of their initial allocation) in order to prosecute a viable fishing operation. In this scenario, it is expected that one of the main sources of this additional quota would be processor-owned QP. Some believe, however, that processor-owned quota would be accessible primarily to processor-affiliated vessels, and thus this argument concludes that permit owners not affiliated with a processor could find continued participation difficult, particularly given their competitive disadvantage relative to those who are given that access.

Rationale 7: Some say that initial allocation to processors will consolidate the processing sector and/ or make new entry more difficult, and that this will reduce competition and lead to less innovation and fewer buyers. It is generally anticipated under a rationalization program that consolidation will occur. Some argue that if processors are included in the initial allocation of QS, the processing sector will likewise consolidate as the least efficient companies exit the fishery. Furthermore, it is argued that if current processors receive the advantages associated with an initial allocation, it will be difficult for a new processor to enter into the fishery. Fishermen have stated that processors currently will not buy the amount of product that regulations allow to be harvested, and that if instead there were more processors then more fish could be made available to consumers. Under this argument, it has been asserted that the fishery would best be served by a greater number of processors, and that the rationalization program could encourage new entrants best by not allocating to processors.

Rationale 8: Some say that an initial allocation to processors does not take into account appropriately the loan repayment fees that have been levied on fishermen from the trawl buyback program. Under the buyback program, fishermen agreed to assume debt responsibilities for a loan in anticipation that they would receive access to more fish. It is argued that the more QS allocated to processors, the greater likelihood that permit owners would have to pay for that increased access to fish both through the already agreed upon loan repayment fees and through payments or concessions to gain access to processor-owned QP. (This assumes that vessel responsible for paying the loan fees and the permit are owned by the same individual.)

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Appendix E: Halibut Individual Bycatch Quota

The following are excerpts and notes from previous reports to the Council and discussion pertaining to halibut individual bycatch quota (IBQ), also known as transferable prohibited species caps (TPSC).

Groundfish Management Team (GMT) Report To The Council: March 2007

1. Sideboards

A rationalized trawl fishery may have an effect on other West Coast fisheries. For example, bycatch of Pacific halibut is likely to increase and so negatively impact Pacific halibut fisheries; disaster tows can lead to exceeding the trawl allocation, which could lead to a closure of all sectors to avoid exceeding the ABC. Therefore, the GMT suggests the following protection measures. The GMT does not recommend, however, that the Council adopt sideboards to address the possibility of effort spill-over into other fisheries.

Sideboards to protect fisheries that target Pacific halibut

GMT recommends that transferable prohibited species caps (TPSC) be developed for Pacific halibut bycatch in the LE trawl fishery. Fishing opportunities are likely to increase under rationalization which would likely lead to increased incidental catch of Pacific halibut. Unless there are controls on the incidental catch of Pacific halibut, other sectors will have fishing opportunities taken away by the likely increase in Pacific halibut catch in the trawl fishery. Pacific halibut TPSC could be developed based on a proxy, or bycatch rate.

Trawl Individual Quota Committee (TIQC) Report To The Council: March 2007

Sideboards. The TIQC disagrees with the GMT premise that halibut bycatch will increase under a TIQ program; however, the TIQC concurs with the GMT recommendations for trawl-prohibited species caps (TPSCs) for halibut. While at present there is no pressure on the trawl fishery to reduce bycatch, if the halibut biomass or trawl allocations decline, there may be a need to provide incentives to individuals to reduce their halibut bycatch.

Additional Notes From Discussions

1. The recently proposed stock assessment model from the International Pacific Halibut Commission (IPHC) would result in an allowable catch for area 2A that is roughly equivalent to the amount of Pacific halibut caught in the LE trawl fishery (landings, discard mortality, and alive discards).
2. Trawl fishery bycatch of Pacific halibut used to be a lot higher. According to Northwest Fisheries Science Center, the 1998 mortality of Pacific halibut in the trawl fishery was 1.04 million pounds. In 2005, it was 357,000 pounds.
3. The GMT believed that the directed halibut fishery could have fishing opportunity taken away if trawl effort increased under a rationalization program and this resulted in more halibut bycatch.
4. The initial allocation could be done on a bycatch rate (proxy)

From The Council's June 2005 Scoping Results Document On Trawl Rationalization

When the Council originally rejected IBQ for halibut, under consideration were various options that would have allowed for some retention, as well as a nonretention option. In the British Columbia (BC) IFQ system, IBQ is provided for trawl caught halibut but retention is not allowed. Excerpt:

IBQ Options - Halibut

Creation of IBQ for Pacific halibut would require prior consultation with the IPHC. In the BC IFQ system, IBQ for trawl caught halibut has substantially reduced halibut bycatch. The IFQ program being considered here [in the June 2005 scoping document] includes an option that would allow the retention of halibut when covered with IBQ [issued for the trawl fishery, but] . . . caught with legal halibut gear. . .

If the system were designed such that IBQ for halibut were converted to IFQ for the trawl fishery (i.e., trawl vessels would be allowed to retain halibut caught with trawl gear), the halibut catch sharing plan would need to be modified and approval would be required by the IPHC. A June 30, 2004 letter to the Council from IPHC Executive Director Bruce Leaman observed "Recent proposals to the Commission requesting trawl retention of halibut have not been approved, so it is unlikely that the Commission would adopt this proposal."