

NATIONAL MARINE FISHERIES SERVICE REPORT

National Marine Fisheries Service (NMFS) Northwest Region will briefly report on recent regulatory developments relevant to groundfish fisheries and issues of interest to the Pacific Fishery Management Council (Council).

NMFS Northwest Fisheries Science Center (NWFSC) will also briefly report on groundfish-related science and research activities.

Council Task:

1. Discussion.

Reference Materials:

1. Agenda Item I.1.a, Attachment 1: *Federal Register Notices* Published Since the Last Council Meeting.

Agenda Order:

- | | |
|--|------------------------------|
| a. Agenda Item Overview | Kelly Ames |
| b. Regulatory Activities | Frank Lockhart |
| c. Fisheries Science Center Activities | John Ferguson and John Stein |
| d. Reports and Comments of Advisory Bodies and Management Entities | |
| e. Public Comment | |
| f. Council Discussion | |

PFMC
03/21/11

FEDERAL REGISTER NOTICES

**Groundfish and Halibut Notices
2/11/11 through 3/23/2011**

Documents available at NMFS Sustainable Fisheries Groundfish Web Site
<http://www.nwr.noaa.gov/Groundfish-Halibut/Groundfish-Fishery-Management/index.cfm>

76 FR 11381. Pacific Coast Groundfish Fishery. Inseason Adjustments to Fishery Management Measures. Final Rule. This final rule makes inseason adjustments to commercial and recreational fishery management measures for several groundfish species - 3/2/11


76 FR14300. Pacific Halibut Catch Sharing Plan Implementing regulations for 2011 for International Pacific Halibut Commission's Regulatory Area 2A - 3/16/11



UNITED STATES DEPARTMENT OF COMMERCE
National Oceanic and Atmospheric Administration
NATIONAL MARINE FISHERIES SERVICE
Northwest Region
7600 Sand Point Way N.E., Bldg. 1
Seattle, WA 98115

April 4, 2011

MEMORANDUM FOR: The File

FROM: 
William W. Stelle, Jr.
Regional Administrator

SUBJECT: Addition of Mandatory Reporting of Ex-Vessel Value on
Electronic Fish Tickets in the Pacific Coast Groundfish Fishery's
Trawl Rationalization Program

Regulations at 50 CFR 660.113(b)(4)(i) require Individual Fishing Quota (IFQ) first receivers to complete certain fields on an electronic fish ticket (e-ticket). Since the program was implemented in January 2011, NMFS has had mixed reporting of the ex-vessel value on the e-ticket because it is not currently listed in the "required information" section of the regulations.

NMFS has determined that the ex-vessel value of the landing is a mandatory reporting requirement for several reasons. In order for the states to have the option of adopting the Federal e-ticket to cover their state reporting requirements, the e-ticket must include the items required to be reported on the state fish tickets. The ex-vessel prices are a state reporting requirement for the state to be able to collect excise taxes and fees. The ex-vessel value will be also used in the cost recovery program that is currently being developed by the Council and NMFS. The ex-vessel value is not collected through the economic data collection program forms and is necessary information for that program to measure the economic changes in the fishery for the 5-year review of the program and beyond. In other words, if the information is not collected on the electronic fish ticket, the EDC forms may need to be revised to collect the information. The ex-vessel value may also be used by NMFS in required regulatory flexibility analyses for rulemakings.

For these reasons, the ex-vessel value of landings should be a mandatory reporting requirement on the e-ticket. The regulations at 660.113(b)(4)(i) have a clause that the Regional Administrator may deem other information as required to be completed by the IFQ first receiver on the e-ticket.

(i) Required information. All IFQ first receivers must provide the following types of information: Date of landing, vessel that made the delivery, vessel account number, gear type used, catch area, first receiver, actual weights of species landed listed by species or species group including species with no value, condition landed, number of salmon by



species, number of Pacific halibut, and any other information deemed necessary by the Regional Administrator as specified on the appropriate electronic fish ticket form.

In this memo I have determined that the ex-vessel value of the landing is a mandatory field that must be completed by the IFQ first receiver. This determination is effective immediately and the regulations should be updated to reflect this determination as soon as practicable.

NOAA Fisheries Groundfish Science Report to PFMC

April 2011

John Stein, John Ferguson, and Michelle McClure
NOAA Fisheries
Northwest Fisheries Science Center
Seattle, Washington



Trawl Catch Shares Observer Training

- Trainings - 13 day course for trawl catch share observer candidates who did not work for WCGOP in 2010
 - November 29 - December 15
 - January 10 - 26
 - February 7 - 25 ($n = 80$ trained so far)
 - March 14 - April 1 conducted WCGOP training
 - April 11- 27 **Likely combined with May (only 11 signed up so far)
 - May 9 - 25
 - August
 - October (tentative)
- Goal: Was to have 125 observers trained; current goal is to have 175 available to the providers

Status of Catch Share Discard Data Transfer

- NWFSC and PSMFC designed a format and system to transfer discard data from the Observer Program through PSFMC to the NW Region's "Trawl Rationalization Catch Share Program Vessel Accounts & Quota Shares" website; a PSMFC contractor will design the software
- At the March meeting I reported we expected the system to be in place by the end of the month; however, the automated program has not been put in place
- We are implementing a temporary "work around", whereby Observer Program data is being sent to the PSMFC FPT server
- PSFMC will send the discard data XML files to the NW Region website managers manually, or via a script (once it is written)
- Summary: a "patch" is in place; we are working with PSMFC to implement the long term (i.e., automated) solution

2011 West Coast Groundfish Bottom Trawl Survey - Update

- Mobilization in Newport May 21-30
- First Pass (F/V Noah's Ark & F/V Miss Julie)
 - May 21 through July 18
- Second Pass (F/V Raven & F/V Excalibur)
 - August 20 - October 18

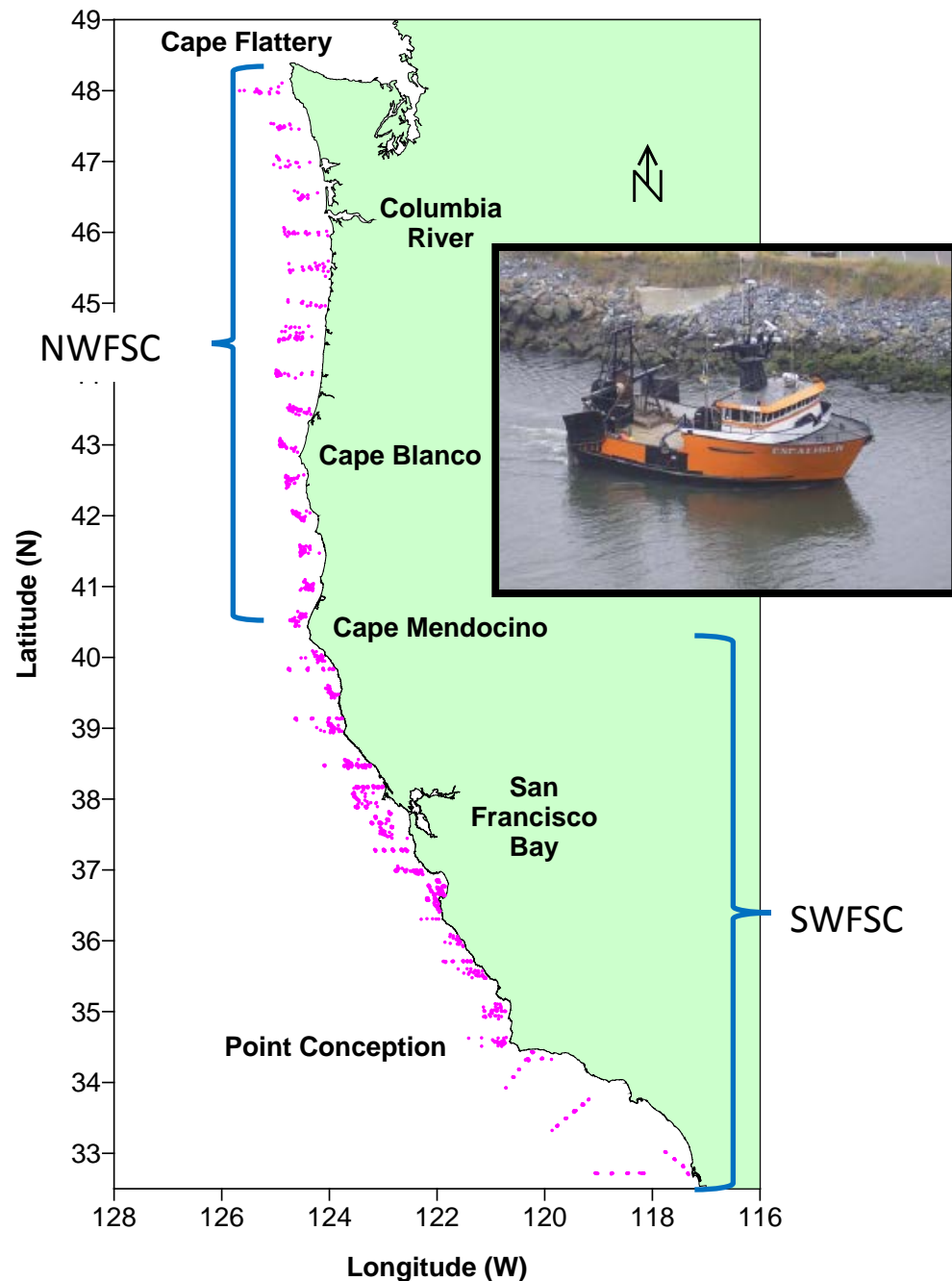


2011 Acoustic Survey - Update

- 70 DAS allocated to the hake acoustic survey on the Bell M. Shimada schedule (~ June 15 - September 7)
- Focus will be on our traditional hake assessment
- Also, given current funding levels, but also our proposal that this be one of our "Big 4" west coast surveys (i.e., potentially a joint hake/sardine survey), we plan to conduct some trials with the hake trawl to test whether it can be used for surface towing for sardines

2011 Prerecruit Survey - Update

- Joint survey effort of the SWFSC and the NWFSC
- Originally to be done aboard R/V Shimada but DAS dropped due to budget cuts
- Presently to be done aboard F/V Excalibur by contract
- SWFSC survey starts in the south on May 1 and ends in Eureka on May 28
- NWFSC survey starts in Eureka on May 30 and ends off Washington around June 19
- An estimated 200 trawls will be done overall.



Assessment-Related Activities

- Pre-assessment workshop held in Newport, April 5-6
 - Covered Sablefish, Petrale sole, Dover sole
 - About a dozen public participants
 - Produced a good exchange of ideas
- Pre-assessment meeting covering mainly sablefish will occur Monday @ 7 PM (room TBD)
- "Review of Methods for Assessing Data-Limited Species" workshop will be held on April 25-29, SWFSC, Santa Cruz facility
- Updated assessments for canary, yelloweye, darkblotched, bocaccio rockfishes (cowcod data report) are scheduled for review by the SSC in June
- Petrale sole and POP STAR, June 20-24, in Seattle

Economic Data Collection (EDC)



- Mailing out EDC forms at beginning of May
 - 2009 and 2010 baseline data due September 1st
 - Vessels (CV, MS, C/P) - each person who operates a vessel (i.e., owner, lessee, and charter)
 - First Receivers and shore-based processors
- We will try to send a form to all those who are required
- One EDC for each operation
- Contact Todd Lee at 1-866-791-3726 or todd.lee@noaa.gov
- http://www.nwfsc.noaa.gov/research/divisions/fram/economic_data.cfm

West Coast Groundfish Catch Share Program



Extra slides....

"Big 4" Vision for Annual Surveys along the West Coast¹

- Groundfish Bottom Trawl Survey (NWC); 2 passes from Canada to Mexico; cooperative with industry
- Juvenile rockfish and hake recruitment survey (joint); Southern California to Mendocino (SWC) and Mendocino to Washington (NWC); cooperative with industry²
- Hake and sardine acoustic survey (joint); Shimada; joint with Canadian vessel (Ricker)²
- Juvenile salmon recruitment (joint); Monterey to La Push; cooperative with industry³

¹ All 4 have ecosystem observation components to aid EBM

² Recommended by 2011 hake STAR panel

³ Recommended by EPDT report to PFMC dated February 2011

PROPOSED PROCESS AND SCHEDULE FOR COMPLETING THE 2013-2014 GROUNDFISH BIENNIAL FISHERY SPECIFICATIONS AND MANAGEMENT MEASURES

Council action under this agenda item is to adopt a preliminary preferred detailed process and schedule for the 2013-14 biennial management cycle for public review. Final Council action on this item is scheduled for the June 2011 meeting.

The groundfish Fishery Management Plan (FMP) describes a process whereby new biennial specifications and management measures are implemented on January 1 of each odd-numbered year. Due to numerous review and implementation challenges after final Council action, the start of the fishery season was delayed beyond January 1 for the last two biennial cycles and, for the two previous cycles, it was necessary to waive part of the Administrative Procedures Act requirements (30 day cooling off period) to achieve a January 1 start date. In an effort to meet the FMP requirement for a January 1 fishery start date and in response to the numerous collateral problems the delays caused, particularly in the last cycle, the Council is investing in advance planning towards the goal of creating a schedule and process with a high likelihood of achieving implementation on January 1, 2013.

In November 2010 the Council created an ad hoc groundfish Process Improvement Committee (PIC) tasked with generating recommendations for a workable detailed process and schedule for the 2013-14 cycle. Subcommittees were charged with reviewing the Council staff white paper and advisory body statements related to the problems surrounding the previous biennial cycles (Agenda Item H.1, November 2010) and making recommendations in three areas: (1) improving the science-related processes and inputs, (2) the development of management measures, and (3) the National Marine Fisheries Service (NMFS) approval review and regulation implementation process. A subcommittee was also charged with investigating whether an FMP amendment should be pursued for long-term solutions to critical problems in implementing biennial specifications and management measures.

The PIC met February 3-4 in Portland, Oregon to review four subcommittee reports and formulate recommendations (see Appendix A in Agenda Item I.2.b, PIC Report). Council staff melded PIC consensus recommendations and general guidance with appropriate calendar dates to develop a detailed draft schedule and process for the 2013-14 cycle for Council consideration (Agenda Item I.2.b, Draft Proposed Schedule). The overarching theme of this draft schedule is to front-load both the Council decision-making process and the NMFS review and implementation process to enable achieving a fishery start date of January 1, 2013 under a more orderly and predictable workload environment than has occurred in recent years.

Highlights of the draft scheduled process include

- Council consideration of new management measures (i.e., those not previously analyzed or implemented in regulation) at the September 2011 meeting, Council action to narrow the range for more detailed analysis at the November 2011 meeting, and restricting the extent of new management measures that could be analyzed after the April 2012 meeting.

- Council adoption of preliminary preferred alternative annual catch limits (ACLs) along with a range of overfished species ACLs at the November 2011 Council meeting to facilitate earlier analysis of the integrated alternatives and a longer review period.
- Initializing internal NMFS review of the draft Environmental Impact Statement (EIS), containing an analysis of the integrated alternatives, beginning in late February 2012, with formal release under the National Environmental Protection Act prior to the June Council meeting. The final EIS would include analysis of the final preferred alternatives from the June Council meeting.
- An enhanced interdisciplinary approach to ensure cross-agency participation in developing the analytical approaches and contents of the EIS used in Council decision-making.
- Determining appropriate process (2013-14 cycle or other) for potential changes to the current groundfish stock complexes, including the possibility of bringing new fish into the FMP.
- Modifying the annual exempted fishing permit process to a two-year process to coincide with the biennial cycle.
- A Groundfish Allocation Committee meeting to consider the preliminary results of the integrated alternatives analysis in late winter and generate recommendations for Council consideration at the April 2012 meeting.

The PIC did not recommend immediately pursuing an FMP amendment to change the biennial process. They recommended further evaluation of the new frontloaded schedule before embarking on changes that would require an amendment. While not shown at the PIC meeting, Council staff has subsequently examined potential timing possibilities should the Council want to entertain substance discussions about our FMP amendment. An FMP amendment in place for the next cycle (2015-2016) might realistically be first entertained by the Council at the November 2011 Council meeting, which would allow over a year of development process in the Council arena while providing NMFS a reasonable amount of time for their approval review process (Supplemental Agenda Item I.2.a, Attachment 1).

Under this agenda item, the Scientific and Statistical Committee (SSC), Groundfish Management Team (GMT), and Groundfish Advisory Subpanel should review the draft proposed schedule and process and provide feedback and recommendations as necessary. The Council should consider the PIC recommendations and frontloaded schedule necessary for achieving a January 1 fishery start date, along with advisory body and public comment, and decide on a preliminary preferred alternative for public review with final action at the June 2012 Council meeting.

Council Action:

- 1. Adopt a preliminary schedule, process, and work plan for developing 2013-2014 groundfish harvest specifications and management measures for public review.**
- 2. Determine whether to task the GMT and SSC Groundfish Subcommittee with conducting the analysis necessary to restructure the existing stock complexes, including whether to bring new fish into the groundfish FMP.**

3. **Consider initiating a process to modify Council Operating Procedure 19 for groundfish exempted fishing permits (EFPs), with the goal of issuing two-year EFPs that coincide with the harvest specifications and management measures process.**
4. **Consider for the need for a long-term solutions, including whether an amendment to the groundfish FMP should be pursued at some point in the future.**

Reference Materials:

1. Agenda Items I.2.a, Supplemental Attachment 1. Possible Schedules for FMP Amendment Considerations.
2. Agenda Item I.2.b, PIC Report: Groundfish Process Improvements Committee Report.
3. Agenda Item I.2.b, Draft Proposed Schedule: Schedule and Process for Developing 2013-2014 Groundfish Harvest Specifications and Management Measures.

Agenda Order:

- a. Agenda Item Overview
- b. Groundfish Process Improvement Committee Report
- c. Reports and Comments of Advisory Bodies and Management Entities
- d. Public Comment
- e. **Council Action:** Adopt a Process and Schedule for Public Review

Kelly Ames

PFMC
03/28/11

POSSIBLE SCHEDULES FOR GROUND FISH FISHERY MANAGEMENT PLAN AMENDMENT CONSIDERATIONS

This report outlines potential development schedules if the Council decides that an amendment to the groundfish fishery management plan (FMP) is needed to address process issues for the groundfish harvest specifications. Council Operating Procedures 11 outlines a minimum of three Council meetings to adopt an FMP amendment. Depending on the level of National Environmental Policy Act analysis required (environmental impact statement or assessment), between 6 and 12 months is needed after Council final action for the amendment and any associated regulations to become effective. The schedule below outlines potential timelines for such an amendment. Option 1 outlines the potential for a four-meeting process, assuming a more complex amendment consideration, while Option 2 outlines a three-meeting process. The objective is to have the amendment implemented in time to be used for the 2015-16 harvest specifications decision-making process, which could begin as early as the September 2013 Council meeting.

Council Meeting	Option 1	Option 2
November 2011	1 st Council meeting	
March 2012	2 nd Council meeting	1 st Council meeting
April 2012		
June 2012	3 rd Council meeting	2 nd Council meeting
September 2012	Possible 4 th Council meeting	3 rd Council meeting
November 2012		
March 2013		
April 2013		
June 2013		
September 2013	Amendment implemented	Amendment implemented

Table 1. Summary of Council Action By Meeting for 2013-14, as Recommended by the Groundfish Process Improvement Committee.

Task	2011			2012		
	June	Sept	Nov	March	April	June
Adopt final process and schedule for developing 13-14 harvest spex and MM	x					
Adopt stock assessment updates (5 spp)	x					
Adopt stock assessments (8 spp) ^a		x				
If Council chooses to restructure stock complexes, adopt PPA restructured complexes ^b		x				
Adopt FPA OFLs, as recommended by SSC ^a (includes data poor workshop results)		x				
Adopt FPA sigmas, as recommended by SSC		x				
Adopt PPA P*s		x				
Adopt PPA ABCs		x				
Adopt prioritized range of management measures for preliminary analysis		x				
Adopt rebuilding analysis and any assessments sent to mop up panel			x			
Adopt FPA P*s			x			
Adopt FPA ABCs			x			
If Council chooses to restructure stock complexes, adopt FPA restructured complexes ^b			x			
Adopt PPA non-overfished species ACLs			x			
Adopt range of overfished species ACLs for analysis, identify PPA			x			
Review allocation alternatives ^c			x			
Adopt the final set of management measures for detailed analysis			x			
Informational briefing on selected items				x		
Adopt FPA non-overfished species ACLs					x	
Adopt FPA overfished species ACLs					x	
Adopt PPA management measures					x	
Adopt PPA allocation ^c					x	
Simple management measures added for analysis (emergency exceptions)					x	
Corrections to the FPA harvest specifications, if needed						x
Adopt FPA allocations ^c						x
Adopt FPA for management measures						x

a For species sent to the mop-up panel or species/complexes that are restructured (if applicable), the decisions would move from September to November.

b The Council should decide whether the GMT will be tasked with exploring potential changes to some or all of the existing stock complexes, including bringing new fish into the FMP, when determining the scope of the action for the 13-14 cycle. If restructured complexes are desired, the PIC recommends the above process for preliminary and final action.

c Includes non-overfished species (e.g., black rockfish), overfished species not included in Amendment 21, and Pacific halibut

Summary of Groundfish Process Improvement Committee Recommendations

Agenda Item I.2.b, PIC Report
Agenda Item I.2.b, Draft Proposed Schedule

Background

The Council created and tasked the groundfish Process Improvements Committee (PIC) with

- Generating an optimal process and schedule for 2013-14
- Exploring long term solutions, including those that require an amendment to the groundfish fishery management plan (FMP)

PIC Discussions

PIC sub-groups developed reports on

- Science related processes and inputs
- Development of management measures
- National Environmental Policy Act (NEPA) document preparation
- National Marine Fisheries Service (NMFS) review and implementation
- Solutions requiring an FMP amendment

Sub-Committee reports are included in
Agenda Item I.2.b, PIC report, Appendix A

PIC Recommendations

Front-load both the Council-decision making process that informs the analysis and the NMFS review and implementation process to enable a fishery start date of January 1, 2013

PIC Recommendations (cont)

- Enhance the interdisciplinary approach to ensure cross-agency participation in the analytical approaches and contents of the environmental impact statement
- Modify the exempted fishing permit process to correspond with the biennial cycle

FMP Language: Section 6.2.c

The Council will develop proposed harvest specifications during the first meeting (usually November). They will finish drafting harvest specifications and develop the management measures during the second meeting (usually April). Finally, at the third meeting, the Council will make final recommendations to the Secretary on the complete harvest specifications and management measures biennial management package (usually June).

For the Council to have adequate information to identify proposed management measures for public comment at the first management measures meeting, the identification of issues and the development of proposals normally must begin at a prior Council meeting.

Past Council Action

	07-08 Cycle	09-10 Cycle	11-12 Cycle
Nov	<ul style="list-style-type: none">• Some PPAs for non-OFS ACLs• 3 PPAs for OFS ACLs (widow, canary, POP)	<ul style="list-style-type: none">• No PPAs for non-OFS ACLs• PPAs for all OFS ACLs	<ul style="list-style-type: none">• No PPA
April	<ul style="list-style-type: none">• All PPA for non-OFS ACLs• Narrowed range of OFS (1-2 alts.)	<ul style="list-style-type: none">• PPAs for almost all species	<ul style="list-style-type: none">• PPA for all species

Council Decision-Making

June 2011

- Adopt final process and schedule for developing 2013-14 harvest specifications and management measures
- Adopt stock assessment updates for 5 species

Council Decision-Making

September 2011

- Adopt 8 stock assessments
- *If Council chooses to restructure stock complexes for 2013-14, adopt preliminary preferred (PPA) restructured complexes*
- *Final preferred alternative (FPA) overfishing limits (OFLs)*
- *PPA P^*_S*
- *PPA ABCs*
- *Prioritized range of management measures for preliminary analysis*

Council Decision-Making

November 2011

- Adopt rebuilding analyses
- Adopt any assessments reviewed at the mop-up panel
- *Adopt FPA P^*s*
- *Adopt FPA ABCs*
- *If Council chooses to restructure complexes for 2013-14, FPA restructured complexes*
- Adopt PPA non-overfished species annual catch limits (ACLs)
- Adopt PPA overfished species ACLs, including a range of ACLs for analysis
- Review allocation alternatives
- *Review preliminary analysis and adopt management measures for more detailed analysis*

Council Decision-Making

2012 Groundfish Allocation Committee Meeting

- Review preliminary results of the integrated alternatives analysis
- *Generate recommendations for Council consideration at their April 2012 meeting*

March 2012 Council Meeting

- Informational Briefing

Council Decision-Making

April 2012

- *Adopt FPA non-overfished species ACLs*
- *Adopt FPA overfished species ACLs*
- Adopt PPA management measures, including season structures and new management measures
- Adopt PPA allocations
- Simple management measures maybe added for analysis

Council Decision-Making

June 2012

- *Corrections to FPA harvest specifications, if needed*
- Adopt FPA allocations
- Adopt FPA season structures and new management measures

PIC-Recommended Council Action by Meeting

Task	2011			2012		
	June	Sept	Nov	March	April	June
Adopt final process and schedule for developing 13-14 harvest spex and MM	x					
Adopt stock assessment updates (5 spp)	x					
Adopt stock assessments (8 spp) ^a		x				
If Council chooses to restructure stock complexes, adopt PPA restructured complexes ^b		x				
Adopt FPA OFLs, as recommended by SSC ^a (includes data poor workshop results)		x				
Adopt FPA sigmas, as recommended by SSC		x				
Adopt PPA P*s		x				
Adopt PPA ABCs		x				
Adopt prioritized range of management measures for preliminary analysis		x				
Adopt rebuilding analysis and any assessments sent to mop up panel			x			
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Adopt FPA ABCs			x			
If Council chooses to restructure stock complexes, adopt FPA restructured complexes ^b			x			
Adopt PPA non-overfished species ACLs			x			
Adopt range of overfished species ACLs for analysis, identify PPA			x			
Review allocation alternatives ^c			x			
Adopt the final set of management measures for detailed analysis			x			
Informational briefing on selected items				x		
Adopt FPA non-overfished species ACLs					x	
Adopt FPA overfished species ACLs					x	
Adopt PPA management measures					x	
Adopt PPA allocation ^c					x	
Simple management measures added for analysis (emergency exceptions)					x	
Corrections to the FPA harvest specifications, if needed						x
Adopt FPA allocations ^c						x
Adopt FPA for management measures						x

a For species sent to the mop-up panel or species/complexes that are restructured (if applicable), the decisions would move from September to November.

b The Council should decide whether the GMT will be tasked with exploring potential changes to some or all of the existing stock complexes, including bringing new fish into the FMP, when determining the scope of the action for the 13-14 cycle. If restructured complexes are desired, the PIC recommends the above process for preliminary and final action.

c Includes non-overfished species (e.g., black rockfish), overfished species not included in Amendment 21, and Pacific halibut (value)

Earlier NMFS and NEPA Process: Internal Review and Publishing

Highlights include

- July 15, 2011: Secure necessary clearance for expedited review
- February 21, 2012: Preliminary DEIS submitted for internal review
- June 15, 2012: DEIS publishes with EPA
- September 9, 2012: FEIS publishes with EPA
- August 31, 2012: Proposed rule publishes
- December 2, 2012: Final rule publishes
- January 1, 2013: Fishery starts

FMP Amendment

- Evaluate the new front-loaded schedule, before embarking on an FMP amendment
 - This evaluation could occur as early as November 2011

Possible Schedule For FMP Amendment to Meet 2015-16

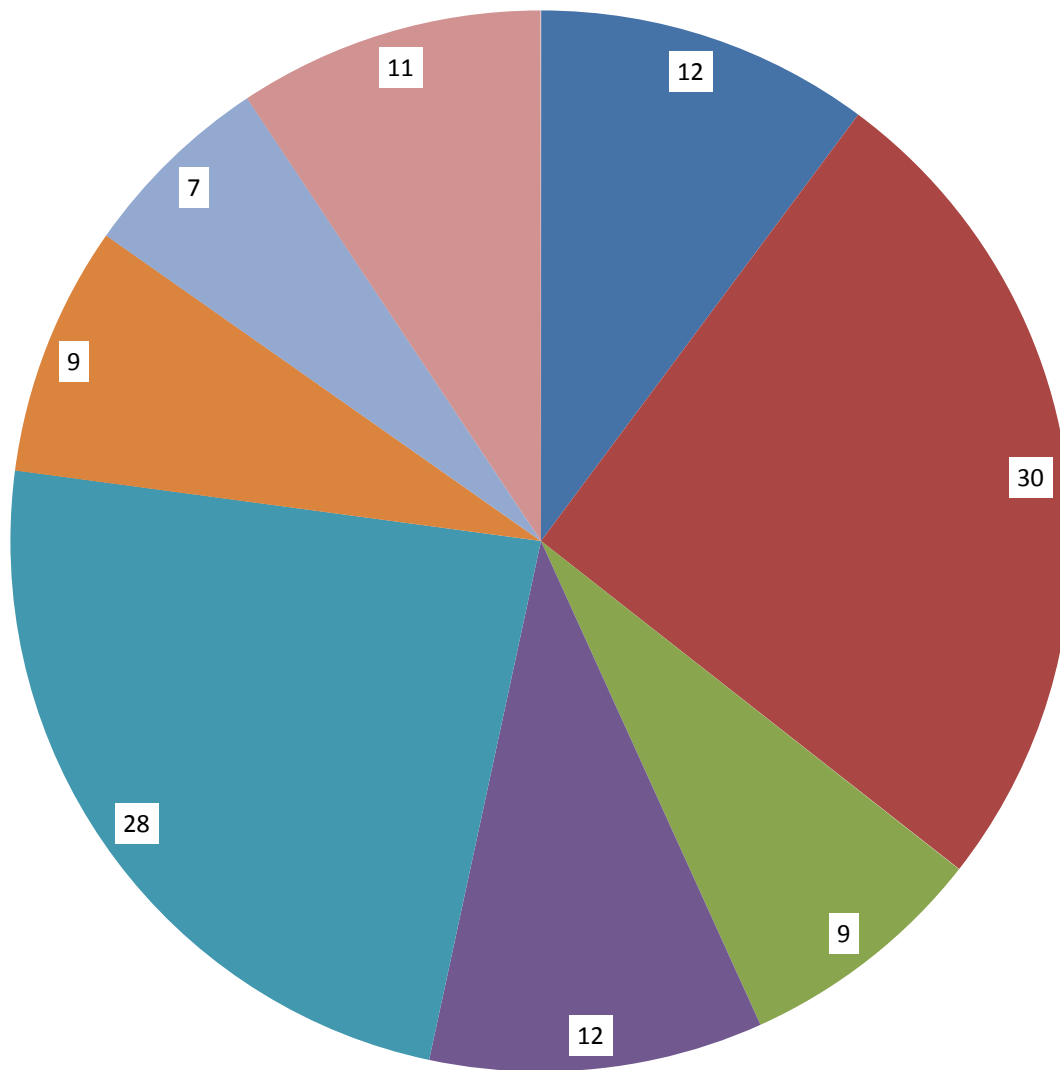
Council Meeting	Option 1	Option 2
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September 2012	Possible 4 th Council meeting	3 rd Council meeting
November 2012		
March 2013		
April 2013		
June 2013		
September 2013	Amendment implemented	Amendment implemented

FMP Amendment

Harvest specifications are recurring actions implemented within a program and policy framework, as such the PIC recommended considering a tiered approach

- Tier 1: Evaluate management policies for multiple (2-3) biennial cycles plus harvest specifications for the first cycle. Includes a long-term strategic view of rebuilding plans
- Tier 2: For subsequent cycles, streamlined analysis that evaluates adjustments relative to the policy framework evaluated in the Tier 1 document

QUESTIONS?



- Minor Nearshore Rockfish North
- Minor Shelf Rockfish North
- Minor Slope Rockfish North
- Minor Nearshore Rockfish South
- Minor Shelf Rockfish South
- Minor Slope Rockfish South
- Other Flatfish
- Other Fish

Minor Slope Rockfish North

Aurora

Bank

Blackgill

Redbanded

Rougheyeye

Sharpchin

Shortraker

Splitnose

Yellowmouth

DRAFT SCHEDULE AND PROCESS FOR DEVELOPING 2013-2014 GROUNDFISH HARVEST SPECIFICATIONS AND MANAGEMENT MEASURES¹

Non-italicized font in the table below represents activities associated with the Council process. Italicized font represents activities associated with the National Marine Fisheries Service (NMFS) review and implementation process, including procedures and public comment periods required by the National Environmental Policy Act (NEPA) and the Administrative Procedures Act (APA). Bold font dates represent Council meeting dates.

This schedule is premised on the preparation of an environmental impact statement (EIS), which has statutorily defined minimum time periods for public comment. If NMFS determines that an environmental assessment (EA) can be prepared, a substantially different and less constrained schedule for the NEPA process could be contemplated. Under regulations, a public comment period is not required on an EA except in certain circumstances.²

Start Date	End Date	Task
April 9, 2011	April 14, 2011	The Council meets and adopts: 1. A preliminary schedule, process, and work plan for developing 2013-2014 groundfish harvest specifications and management measures for public review. Schedule includes detailed timelines for such things as Scientific and Statistical Subcommittee (SSC) meetings, Groundfish Management Team (GMT) meetings, and the NMFS Secretarial review and implementation process. 2. A decision whether to initiate analysis necessary to restructure the stock complexes and bring new fish into the groundfish fishery management plan (FMP). ³ 3. Recommendations for long-term solutions, including whether an amendment to the groundfish FMP should be pursued. 4. A process to modify Council Operating Procedure 19 for exempted fishing permits (EFPs), with the goal of issuing two-year EFPs that coincide with the harvest specifications and management measures process.

¹ As recommended by the Groundfish Process Improvement Committee on 2/24/11 and Council staff.

² The EA would need to be finalized so that a Finding of No Significant Impact (FONSI) can be signed before the Final Rule is published in December 2012. The NMFS determination process of whether to prepare an EA or EIS ends in this schedule on September 28th, 2011. If an EIS is to be prepared, a Notice of Intent (NOI) must be published in the Federal Register.

³ Existing stock complexes include Other Fish, Other Flatfish, and Minor Nearshore, Shelf, and Slope rockfish north and south of 40°10 N. latitude. The task of restructuring the complexes could include 1) regrouping the existing complexes based on productivity and susceptibility scores, and 2) examining existing data sources and determining whether new species should be brought into the groundfish FMP. Analysis of the Other Fish complex is anticipated since spiny dogfish, a component of the Other Fish complex, is scheduled for an assessment in the 2013-2014 cycle.

Start Date	End Date	Task
April 15, 2011	August 25, 2011	Council staff, NMFS Northwest Region (NWR), General Counsel, NMFS NEPA Coordinator, and GMT chair develop draft framework for Magnuson-Stevens Act (MSA) and the NEPA analysis necessary to support Council decision-making. Work products include guidance for the advisory bodies and a detailed outline of the anticipated EIS, and criteria for when a range of alternatives is needed for the NEPA process and Council decision-making.
April 25, 2011	April 29, 2011	Data Poor Methodologies Workshop: Review methodologies for estimating yield for unassessed species including the depletion-corrected average catch and depletion-based stock reduction analysis used for the 2011-2012 cycle (see Agenda Item B.3.a Attachment 7, June 2010), associated productivity and susceptibility assessments, and alternative methods for identifying overfishing levels (OFLs) for tier 2 and tier 3 stocks for use in the 2013-2014 cycle. ⁴ Three GMT members, one from each state, will attend. One Groundfish Advisory Subpanel (GAP) representative to attend.
June 7, 2011	June 9, 2011	SSC meets ⁵ to reach recommendations on: <ol style="list-style-type: none"> 1. Updated assessments. 2. Data report for cowcod. 3. Data poor methodologies for use in the 2013-2014 cycle.
June 8, 2011	June 13, 2011	The Council meets and adopts: <ol style="list-style-type: none"> 1. A final schedule, process, and work plan for developing 2013-2014 groundfish harvest specifications and management measures including the scope and purpose and need of the action. 2. Stock assessment updates for four species: bocaccio, canary rockfish, darkblotched rockfish, and yelloweye rockfish. 3. Data report for one species: cowcod. 4. Methodologies for setting harvest specifications for data poor stocks to be used in the 2013-2014 cycle. 5. Council briefed on EIS development process and staffing.
June 20, 2011	June 24, 2011	Stock Assessment Review (STAR) Panel (Seattle, WA): Pacific ocean perch and petrale sole. One GMT and GAP representative to attend.
July 11, 2011	July 15, 2011	STAR Panel (Seattle, WA): Widow rockfish and spiny dogfish. One GMT and GAP representative to attend.

⁴ If certain criteria are met, a stock may be re-classified from tier 3 to tier 2.

⁵ Dates for the SSC meetings are estimated based on past meeting schedules.

Start Date	End Date	Task
	July 15, 2011	<i>To achieve the necessary frontloading, the NWR Regional Administrator issues all needed approvals to NMFS NWR staff, the NMFS Regional NEPA Coordinator and NOAA General Counsel (GC) for concurrent or expedited reviews proposed in the schedule for harvest specifications NEPA/rulemaking to be adopted by the Council.</i> ⁶
	July 18, 2011	GMT teleconference/webinar to discuss emerging issues.
July 25, 2011	July 29, 2011	STAR Panel (Newport, OR): Sablefish and Dover sole. One GMT and GAP representative to attend.
August 8, 2011	August 12, 2011	STAR Panel (Santa Cruz, CA): Greenspotted rockfish and blackgill rockfish. One GMT and GAP representative to attend.
September 13, 2011	September 15, 2011	SSC meets ⁷ to reach recommendations on: <ol style="list-style-type: none"> 1. OFL values. 2. Stock categories (i.e., tiers 1, 2, and 3). 3. Sigma values. 4. Considerations for the P* decision. 5. Revised or new impact assessment models. 6. Eight full assessments, if all are recommended by the STAR panels. 7. Restructured complexes, if applicable.

⁶ Current procedures now in place for necessary sequential review and written regulatory processing approvals, in combination with other regulatory processes, would not allow for the fishery to begin on January 1 of a given cycle if taken sequentially after final Council action at a June Council meeting.

⁷ Dates for the SSC meetings are estimated based on past meeting schedules.

Start Date	End Date	Task
September 14, 2011	September 19, 2011	<p>The Council meets and adopts:</p> <ol style="list-style-type: none"> 1. Stock assessments for the eight species subject to summer STAR panels.⁸ 2. If Council chooses to restructure the stock complexes, adopt the preliminary preferred alternatives (PPA) for restructured complexes, except the Other Fish complex.⁹ 3. Final preferred alternatives (FPA) for OFLs, as recommended by the SSC, including OFLs derived from data poor methodologies. 4. FPA sigma values, as recommended by the SSC. 5. A range of P* alternatives, including PPA P* values. 6. A range of acceptable biological catch (ABC) alternatives, including PPA ABC levels. 7. Prioritized range of new management measures for preliminary analysis.¹⁰
September 26, 2011	September 30, 2011	The SSC Groundfish Subcommittee meets to review rebuilding analyses prepared for overfished species as well as any stock assessments approved for further review by the Council. One GMT and GAP representative to attend.
	September 28, 2011	NWR, NOAA GC, NEPA coordinator, Council staff, and GMT Chair meet to discuss the determination of the NEPA document category (EA or EIS). NMFS decides on NEPA document category. ¹¹
October 3, 2011	October 7, 2011	The GMT meets in Seattle, Washington to approve impact projection models, review new stock assessments and rebuilding analyses. The GMT, NMFS NWR, NOAA GC, and NMFS NEPA coordinator draft a recommended integrated range of 2013-2014 harvest specifications and preliminary management measures for analysis.
	<i>October 14, 2011</i>	<i>Notice of intent to prepare an EIS filed for Federal Register publication by this date.</i>

⁸ Council action could be postponed from September to November for any stock assessments recommended for further review by a 2011 STAR panel and/or the SSC. I.e., those assessments the Council authorizes to be sent to the September 26-30 mop-up panel.

⁹ If the spiny dogfish assessment is adopted by the Council at the September meeting, the Other Fish complex analysis will need to take the assessment results into consideration. While this could be done by simple subtraction, it is possible the Other Fish complex PPA might need to be moved to November.

¹⁰ New management measures are those management measures that have not been analyzed or implemented in a previous cycle.

¹¹ The balance of this schedule assumes a decision for an EIS.

Start Date	End Date	Task
November 1, 2011	November 3, 2011	SSC meets ¹² to reach recommendations on: 1. Rebuilding analyses. 2. Any stock assessments relegated to “mop-up” reconsiderations completed at the September 26-30 SSC Groundfish Subcommittee meeting.
November 2, 2011	November 7, 2011	The Council meets and adopts: 1. Rebuilding analyses and any assessments sent to the mop-up panel. 2. FPA for P* values. 3. FPA for ABC levels. 4. If Council chose to restructure the stock complexes, adopt FPAs for restructured complexes, including the Other Fish complex. 5. PPA for non-overfished species ACLs. 6. A range of overfished species ACLs and PPA ACLs. 7. A tentative range of allocation alternatives. ¹³ 8. A final set of new management measures for detailed analysis.
November 8, 2011	January 31, 2012 ¹⁴	The GMT, Council staff, and analytical team develop and analyze the integrated alternatives, which are a combination of the harvest specifications and management measures.
November 8, 2011	March 31, 2012	Convene the Ad-Hoc Groundfish Allocation Committee (GAC) for a two day meeting prior to the March Council meeting some time in this interval. The GAC will consider the results of the integrated alternatives analysis and generate recommendations for Council consideration.
	<i>February 21, 2012</i>	<i>Draft DEIS submitted to NMFS for review from interdisciplinary project team.</i>
<i>February 22, 2012</i>	<i>April 30, 2012</i>	<ul style="list-style-type: none"> • <i>Concurrent Sustainable Fisheries Division and Regional NEPA Coordinator review of draft DEIS</i> • <i>EIS project team addresses comments</i> • <i>GC review of DEIS</i> • <i>EIS project team addresses comments</i>

¹² Dates for the SSC meetings are estimated based on past meeting schedules.

¹³ Allocations to be reviewed for tentative adoption include both the trawl and non-trawl allocations as well as the within non-trawl apportionments and accountability measures (e.g., recreational harvest guidelines). Specifically, this includes two-year allocation alternatives for species not allocated under Amendment 21: bocaccio, canary, cowcod, and yelloweye and non-overfished species allocations (e.g., black rockfish in Oregon and California).

¹⁴ February 17, 2012 is the estimated briefing book deadline for the March Council meeting in 2012.

Start Date	End Date	Task
March 2, 2012	March 12, 2012	At the March Council meeting, the Council and advisory bodies receive an informational briefing on the selected results of the integrated alternatives.
November 8, 2011	March 31, 2012	Opportunity for state and tribal agencies to hold constituent meetings to obtain input on final harvest specifications and preliminary management measures.
	March 23, 2012 ¹⁵	Draft DEIS submitted for the April Council meeting advance briefing book.
April 1, 2012	April 6, 2012	The Council meets and adopts: <ol style="list-style-type: none"> 1. FPA non-overfished species ACLs. 2. FPA overfished species ACLs. 3. PPA management measures from the range adopted at the November Council meeting.¹⁶ 4. PPA allocations.
April 7, 2012	May 31, 2012 ¹⁷	Council staff, GMT, and analytical team validate and refine analysis, consequent to the April Council meeting actions, as necessary.
<i>May 1, 2012</i>	<i>May 31, 2012</i>	<ul style="list-style-type: none"> • <i>NOAA Office of Planning and Policy Integration (PPI) review of draft DEIS</i> • <i>EIS project Team addresses comments and prepares DEIS for public release</i> • <i>NWR Clearance of DEIS</i> • <i>PPI Clearance of DEIS</i>
<i>June 1, 2012</i>	<i>June 8, 2012</i>	<ul style="list-style-type: none"> • <i>Prepare DEIS package</i> • <i>File DEIS with Environmental Protection Agency</i>
	<i>June 15, 2012</i>	<i>EPA publishes Notice of Availability starting 45-day public comment period on DEIS¹⁸.</i>
June 20, 2012	June 25, 2012	The Council meets and adopts: <ol style="list-style-type: none"> 1. Corrections to the FPA harvest specifications, if needed. 2. FPA allocations. 3. FPA management measures.
July 9, 2012	July 13, 2012	The GMT meets to finalize analysis of the Council's FPA for the FEIS.

¹⁵ March 23, 2012 is the estimated briefing book deadline for the April Council meeting in 2012.

¹⁶ Additional management measures that require limited analysis could be added, if necessary. Complex management measures considered only under emergency situations. Complex management measures could be added in April; however, the January 1 fishery start date may be compromised.

¹⁷ Estimated briefing book deadline for March 2012.

¹⁸ If an EA is prepared, this comment period is not required.

Start Date	End Date	Task
<i>July 9, 2012</i>	<i>August 5, 2012</i>	<ul style="list-style-type: none"> • <i>NWR initiates iterative process by sending draft regulations to Council staff and GMT for review.</i> • <i>Council and NMFS staffs reach consensus on draft regulation language. Council staff & GMT send draft regulations comments to NWR.</i> • <i>NWR provides Council staff with near complete regulations text for deeming.</i>
	<i>July 30, 2012</i>	<i>45-day NEPA public comment period on DEIS ends.</i>
<i>August 5, 2012</i>	<i>August 26, 2012</i>	<ul style="list-style-type: none"> • <i>NWR sends draft proposed rule package to GC, Issues Advisory to headquarters (HQ)</i> • <i>NWR sends draft proposed rule to Edits Unit for review</i> • <i>NWR makes Edits Unit changes and sends draft proposed rule package to HQ (excluding the FMP Amendment)</i>
	<i>August 24, 2012</i>	<ul style="list-style-type: none"> • <i>Council staff provides draft FMP language to NWR, if necessary</i> • <i>GC & Sustainable Fisheries Division simultaneous review of FMP language</i> • <i>Draft FMP language is sent to HQ</i> • <i>NWR & Council staff reach consensus on rule and FMP language</i>
	<i>August 30, 2012</i>	<i>Council Executive Director transmits final FMP recommendation (if necessary) and final regulations deemed necessary and appropriate for 2013-14 groundfish fisheries.</i>
<i>July 31, 2012</i>	<i>August 29, 2012</i>	<p><i>Prepare FEIS:</i></p> <ul style="list-style-type: none"> • <i>EIS project team organizes public comments and revises DEIS based on public comments and final action by the Council, and prepares draft FEIS</i> • <i>NWR SFD staff, Regional NEPA Coordinator, and GC conduct concurrent and expedited reviews of draft FEIS</i> • <i>EIS project team addresses comments</i> • <i>PPI review of draft FEIS¹⁹</i> • <i>EIS project team addresses comments and prepares draft FEIS for public release</i> • <i>NWR clearance of draft FEIS</i> • <i>PPI clearance of draft</i> • <i>Prepare and send FEIS package to EPA (will need to overnight FEIS or request HQ to hand deliver FEIS)</i> • <i>File FEIS with EPA</i>
	<i>September 9, 2012</i>	<i>EPA publishes FEIS NOA.</i>
<i>August 31, 2012</i>	<i>September 30, 2012</i>	<i>Proposed rule publishes, 30-day proposed rule public comment period required by APA ends.</i>

¹⁹ NMFS will have needed to secure expedited review and clearance processes agreement with PPI well in advance.

Start Date	End Date	Task
<i>October 1, 2012</i>	<i>November 13, 2012</i>	<i>Preparation of Final Rule under APA:</i> <ul style="list-style-type: none"> • <i>SFD drafts final rule and sends package to GC for review</i> • <i>GC completes review and sends to SFD</i> • <i>SFD completes revisions and sends to Edits Unit</i> • <i>SFD completes Edits Unit changes and sends package to HQ</i>
	<i>October 7, 2012</i>	<i>30 day NEPA cooling off period for FEIS.</i>
<i>October 8, 2012</i>	<i>November 13, 2012</i>	<i>NMFS prepares Record of Decision:</i> <ul style="list-style-type: none"> • <i>Review any comments received during 30 day cooling off period and prepare draft record of decision (ROD).</i> • <i>Finalize draft ROD</i> • <i>NWR SFD staff, Regional NEPA Coordinator, and GC conduct concurrent and expedited reviews of draft ROD</i> • <i>Project team addresses comments</i> • <i>NWR clearance of draft ROD</i> • <i>Draft ROD submitted to HQ for review</i> • <i>HQ signs ROD (must be submitted with final rule package)</i>
	<i>December 2, 2012</i>	<i>Final Rule Publishes under the APA.</i>
	<i>January 1, 2013</i>	<i>30-day cooling off period required by APA ends; FMP amendment and regulations effective and groundfish fishery begins under new regulations.</i>

Draft
Groundfish Process Improvement Committee (PIC)
Recommendations

Pacific Fishery Management Council
Large Conference Room
7700 N.E. Ambassador Place
Suite 101
Portland, Oregon
(503) 820-2280

February 3-4, 2011

Committee Members Present:

Dr. Jason Cope, National Marine Fisheries Service Northwest Fisheries Science Center, GMT Member
Ms. Michele Culver, Washington Department of Fish and Wildlife, Council Member
Mr. Kevin Duffy, National Marine Fisheries Service Northwest Region
Ms. Joanna Grebel, California Department of Fish and Game, GMT Member
Dr. Owen Hamel, National Marine Fisheries Service Northwest Fisheries Science Center, SSC Member
Ms. Gway Kirchner, Oregon Department of Fish and Wildlife, Council Member
Ms. Sheila Lynch, National Oceanic and Atmospheric Administration General Counsel
Ms. Lynn Mattes, Oregon Department of Fish and Wildlife, GMT Member
Ms. Shelby Mendez, National Marine Fisheries Service Southwest Region
Mr. Rod Moore, West Coast Seafood Processors Association, Council Member
Mr. Corey Niles, Washington Department of Fish and Wildlife, GMT Member
Mr. Dan Waldeck, Pacific Whiting Conservation Cooperative, GAP Member
Mr. Dan Wolford, Coastside Fishing Club, Council Member

Others Present:

Ms. Kelly Ames, Pacific Fishery Management Council
Mr. Steve Bodnar, Coos Bay Trawlers Association
Mr. Mike Burner, Pacific Fishery Management Council
Mr. John Coon, Pacific Fishery Management Council
Mr. Kit Dahl, Pacific Fishery Management Council
Mr. John DeVore, Pacific Fishery Management Council
Ms. Heidi Happonen, Ocean Gold Seafoods
Dr. Don McIsaac, Pacific Fishery Management Council
Mr. Dale Myer, Arctic Storm Inc., Council Member
Dr. Ed Waters, PFMC Contractor

Introduction

The Groundfish Process Improvement Committee (PIC) met February 3-4, in Portland, Oregon to develop recommendations for an optimal process and schedule for the 2013-2014 biennial cycle and consider whether an amendment to the Groundfish Fishery Management Plan (FMP) should be pursued for long-term solutions. Prior to the February PIC meeting, PIC sub-groups convened and developed reports and recommendations related to science, management, and the National Marine Fisheries Service (NMFS) implementation process (Appendix A). The PIC considered the reports of the sub-groups as well as public comment and made the following recommendations.

Process for the 2013-2014 Biennial Cycle

The PIC recommended that the Council adopt a front-loaded schedule for 2013-2014 (Agenda Item I.2.b, Draft Proposed Schedule) based on the preparation of an environmental impact statement (EIS) as required by the National Environmental Policy Act (NEPA).¹ The overarching theme of the front-loaded schedule is earlier activity for both the Council and NMFS review process. Council decision-making would occur earlier in the process, which changes the timing of science and management inputs into the process occurring at the September Council meeting. The NMFS review process would also occur earlier with substantial activity prior to final Council decision-making at the June 2012 Council meeting. The PIC believes that front-loading is necessary to provide sufficient time for analysis and review, enabling a January 1 fishery start date, a requirement of the FMP. The PIC also recommended that the Scientific and Statistical Committee (SSC) and the Groundfish Management Team (GMT) develop their own detailed schedules necessary to support the PIC-recommended Council decision-making schedule.

Under the PIC-recommended implementation schedule, a draft EIS (DEIS) would be filed with the Environmental Protection Agency and the required 45-day public comment period would commence before the June Council meeting without a Council final preferred alternative (FPA) identified in the DEIS. The Council FPA would be included in the final EIS (FEIS), which would be released after the June Council meeting. This change in approach is necessitated to allow sufficient time for NMFS internal review of the DEIS and FEIS, required public comment periods, and preparation of the record of decision (ROD). As in past biennial cycles, a detailed process and schedule will be adopted by the Council in June 2011. NMFS and General Counsel should agree to the dates related to the implementation process (NEPA, Administrative Procedures Act, etc.).

Interdisciplinary Team Approach for EIS Preparation

During the 2011-2012 biennial cycle, NMFS asserted that the DEIS was not adequate to support decision-making as part of their rationale for disapproving Amendment 16-5 and delaying implementation of harvest specifications for 2011. This emphasizes the need for early and comprehensive involvement in developing analytical approaches and contents of the EIS used in Council decision-making on groundfish harvest specifications and management measures.

¹As noted in Attachment 1, if an environmental assessment (EA) is prepared, a different, more relaxed schedule could be followed. Through internal scoping in the fall of 2011 NMFS will decide whether an EIS or EA is needed.

NEPA section 102(2)(A) directs agencies to “utilize a systematic, interdisciplinary approach which will insure the integrated use of the natural and social sciences and the environmental design arts in planning and in decision-making which may have an impact on man's environment.” The PIC supported enhancing existing approach which employs an “interdisciplinary team,” or IDT, to prepare the EIS. In the Council context the IDT brings together expertise from different disciplines and helps ensure cross-agency participation in decisions on the design of the EIS. The PIC believes that improved coordination and communication within the existing structure would help prevent the type of negative finding that happened relatively late in the 2011-2012 process. The detailed process and schedule (Agenda Item I.2.b, Draft Proposed Schedule) is meant to accomplish that goal.

Science Process

The PIC recommended the tasks and timeline for science-related tasks that were developed by the PIC Science sub-group (Agenda Item I.2.b, Draft Proposed Schedule). The PIC agreed that it was important to front-load the science tasks and attempt to complete as many of the tasks requiring SSC review by the September 2011 meeting. The timing and process for resolving two science issues were discussed in more detail by the PIC – the quantification of scientific uncertainty in consideration of making acceptable biological catch (ABC) decisions (i.e., determination of sigma) and the implications of resolving assessments that go to the late September mop-up review panel. Both of these issues are inter-related in that determination of sigma could be delayed past the September meeting if a new meta-analysis required results of assessments that are reviewed in the mop-up panel. The PIC was apprised that the SSC may not be re-estimating sigma values for the 2013-2014 specifications process. It was thought that the sigma values determined in last year's meta-analysis were unlikely to change significantly by assessments conducted this year. Also there is a logistical problem with redoing the meta-analysis in time for a September decision on sigma values when the final SSC review step of new assessments is scheduled for September. The PIC understands that final adoption of any assessments that are reviewed at the mop-up panel could not be adopted prior to the November 2011 Council meeting.

The PIC also discussed how the overview of new assessments should be conducted at Council meetings this year. Options include providing an overview of all new full assessments at the September Council meeting (assuming none of these assessments go to the mop-up panel) during Council sessions (or in the evening after Council sessions) or providing an overview of select assessments that are deemed the most important and/or controversial during Council sessions (or in the evening after Council sessions). The PIC generally believed the latter course would work best with an overview of select assessments at Council meetings. The timing of these overviews, whether during or after Council sessions, can be decided when final Council agendas are decided.

Management Measures Process

The PIC agreed with the Management Measures sub-group recommendations for greater decision-making early in the process (Agenda Item I.2.b, Draft Proposed Schedule). In order to support a front-loaded schedule, the PIC recommended that the Council first consider new management measures in September instead of November, which is the current schedule. New

management measures are those that have not previously been analyzed or implemented in regulation. Examples of new management measures include complex gear modifications outside the existing regulatory definitions, implementing new groundfish conservation areas (i.e., closures), and creating a new fishery (e.g., recreational yellowtail fishery using long leader gear). At the September meeting, the Council would review a range of new management measures and prioritize those measures for which draft analyses would be provided at the November Council meeting. In November, the Council would adopt new management measures for more detailed analysis. In April, the Council would choose preliminary preferred new management measures. The PIC recommended that the Council restrict the addition of new management measures in April to those measures requiring limited analyses. Complex management measures could be added in April; however the PIC noted that, depending on the implications (e.g., allocative impacts, level of controversy, etc.), such additions could lengthen the schedule and compromise the January 1 fishery start date.

The PIC also recommended that the analysis of the integrated alternatives, which include commercial and recreational season structures composed of existing and new management measures, be conducted between the November and March Council meetings. Further, the PIC recommended a Groundfish Allocation Committee meeting to review the preliminary results of the integrated alternatives and generate preliminary preferred alternative (PPA) recommendations for consideration at the April Council meeting. This meeting would be held between the November and March Council meetings, after sufficient analysis has been completed to inform decisions on PPAs.

Exempted Fishing Permit Process

The PIC recommended that the Council amend the review process for exempted fishing permits (EFPs) to make it completely coincident with the harvest specifications and management measures process.² Rather than the current annual consideration of EFPs, the Council would consider EFPs every 2 years, aligned with the biennial decision-making process.

Under the current procedure, EFP proposals are reviewed and decided annually at the June and November Council meetings. Under the proposed revised process, this decision-making would occur in April and June in even-numbered years (e.g., 2012) for EFPs occurring during the next biennial management period (e.g., 2013-2014).

Fishery Management Plan Amendment

The PIC did not recommend immediately pursuing an FMP amendment to change the biennial process. They recommended further evaluation of the new front loaded schedule before embarking on changes that would require an amendment. It was hoped that the frontloading adjustments to previous cycles would be sufficient to expect a completed Council and NMFS implementation process in time for a January 1 fishery start.

The 2013-2014 EIS IDT should note and compile recommendations on future process fixes (e.g., workability of time intervals for NMFS internal review, science process and schedule) that can

² The current groundfish EFP process is outlined in Council Operating Procedure 19.

be applied to future cycles. This could include recommendations leading to a future FMP amendment, such as a change in the Council harvest specifications decision-making schedule or a later season start date. The IDT should also provide recommendations for how the Council's policy framework for rebuilding plans could be evaluated in future biennial cycles in support of a tiered NEPA approach (see next recommendation).

It can be useful to view groundfish harvest specifications as recurring actions implemented within a program and policy framework, the Groundfish FMP. With this in mind, as a long-term goal, the PIC recommends that the Council consider a NEPA tiered approach to avoid potential delays in a January 1 start of the fishery due to the ramifications of completing an EIS every two years. A Tier 1 ("programmatic") EIS would evaluate management policies applicable for multiple (2 or 3) biennial cycles plus harvest specifications for the first of these cycles. This policy evaluation would include a long-term strategic view of rebuilding plans. For the subsequent cycles (either one or two), a more streamlined Tier 2 Environmental Assessment or EIS could be prepared that evaluates adjustments to harvest specifications consistent with the policy framework evaluated in the Tier 1 document. Under this approach the Council would periodically adjust management measures "inseason" consistent with policies adopted in the Tier 1 document. More investigation is needed to determine whether a Tier 1 document could be prepared for the 2013-14 biennial cycle or would need to be developed during a later cycle. This NEPA tiering approach could be enhanced by an FMP amendment specifying procedural details.

Appendix A: PIC Subcommittee Reports

Proposed Science Tasks and Deadlines for the 2013-2014 Biennial Specifications Process

The Science Subgroup of the Biennial Specifications Process Improvement Committee (PIC) discussed science tasks proposed to support the 2013-2014 biennial specifications process on a January 5, 2011 teleconference.¹ The Science Subgroup recommends a primary objective of early adoption of 2013 and 2014 OFLs and ABCs (ideally by the September meeting and no later than the November meeting). The subgroup also recommends adoption of restructured stock complexes as recommended by the SSC and the GMT at the November meeting. Eight science tasks were identified and deadlines were proposed to meet these objectives (Table 1). Those science tasks requiring SSC endorsement are recommended to be completed in time for final SSC adoption in September. This timing allows the GMT to develop their recommendations and products (e.g., a recommended range of ACLs for analysis) at their October meeting in time for submission in the November briefing book (October 13 deadline). Details on these recommended tasks and deadlines are provided below. The Science Subgroup's recommendations are summarized in the box below.

Recommendations of the Science Subgroup

- A 2013-2014 biennial specifications agenda item should be scheduled for the September 2011 Council meeting;
- Council should adopt 2013-2014 OFLs and ABCs no later than November 2011 (ideally in September);
- Any results from assessments reviewed at the mop-up panel are not used in the SSC's meta-analysis to determine σ ;
- The SSC and GMT should collaborate to develop criteria/considerations for the Council's P* decision by September 2011;
- All impact projection models should be reviewed and endorsed by the SSC by September 2011;
- The PIC should discuss the process and timing of assessment overviews by STATs at Council meeting this year;
- The Council should task the GMT at the March 2011 Council meeting to do the analyses needed to consider restructuring stock complexes;
- The Council should adopt an FPA for restructured stock complexes at the November 2011 Council meeting;
- The PIC should recommend the timing of WCGOP data releases and consider delaying the 2012 data release until after the June 2012 Council meeting (issue not discussed by the Science Subgroup).

¹ The PIC Science Subgroup has the following members who were on the January 5 teleconference: Dan Wolford, Jason Cope, Corey Niles, and John DeVore. Martin Dorn represents the SSC on the Science Subgroup but could not attend the teleconference due to a previous work commitment.

Table 1. Proposed Science Tasks and Deadlines for the 2013-2014 Biennial Specifications Process.

Task	Primary Contributor	SSC Deadline	Council Deadline
Determine OFLs	SSC/GMT	Sept.	Sept.
Determine sigma	SSC	Sept.	Sept.
Considerations for the P* decision	GMT/SSC	NA	Sept.
Adopt all impact assessment models	GMT	Sept.	NA
Adopt assessments	SSC	Sept.	Sept.
Adopt mop-up assessments	SSC	Nov.	Nov.
Adopt rebuilding analyses	SSC	Nov.	Nov.
Restructured complexes	GMT	Sept.	Nov.

Determine OFLs

The SSC has always recommended the MSY harvest level based on application of a proxy MSY harvest rate to the estimated exploitable biomass for assessed groundfish stocks. An average catch metric had typically been used for most of the unassessed west coast groundfish stocks. A change in methodologies for deciding 2011 and 2012 OFLs for most of the unassessed stocks was proposed and adopted. One refinement from using a straight average catch as the basis for the MSY harvest level considered the stock's estimated depletion level during the period the average harvest was calculated (depletion-corrected average catch or DCAC approach). Alternatively, when more information was available, a rudimentary population simulation was conducted to determine the OFL in a depletion-based stock reduction analysis (DB-SRA) approach. While the SSC recommended these two approaches as superior to the status quo average catch approach, there were further refinements the SSC and Council wanted to consider for determining future OFLs. To this end, the Council scheduled a workshop during the last week of April to explore methodologies for determining harvest specifications for data-poor stocks.

One of the problems associated with this task in the 2011 and 2012 process was a delay in reviewing and adopting these new methodologies for determining OFLs. This delay compromised more focused analysis of alternative ABCs and ACLs since these specifications are determined with respect to the OFL. To avoid a similar process delay for the 2013-2014 specifications process, the Science Subgroup recommends all OFLs are adopted by the SSC and the Council at the September meeting. This timing will allow the GMT to develop a recommended range of ACLs for analysis at their October meeting for submission in the November briefing book. Scheduling a review workshop in April to explore new methodologies for determining OFLs should aid the process by enabling a September adoption of new OFLs.

Determine sigma

The reauthorized Magnuson Stevens Act requires the regional councils' Scientific and Statistical Committees (SSCs) to quantify scientific uncertainty in the estimation of overfishing limits (OFLs or MSY harvest levels) in consideration for setting acceptable biological catches (ABCs). The SSC recommended an approach for deciding 2011 and 2012 ABCs for category 1 stocks that incorporates an estimated probability of overfishing (P*) based on the uncertainty of the "true"

OFL. Under the P* approach, scientific uncertainty associated with estimating an OFL (σ) is quantified by the SSC by estimating the general variance about estimates of biomass in a meta-analysis of groundfish and CPS assessments. The percent reduction in OFL is determined by combining the estimated σ with a P* value. A range of P* values, given the scientific uncertainty measure, can be mapped to corresponding OFL reduction buffers.² The Council ultimately chooses the P* that will define the reduction of OFL to ABC. The P* approach was also used for setting 2011 and 2012 ABCs for category 2 and 3 stocks. The SSC determined σ values of two and four times the σ determined for category 1 stocks for category 2 and 3 stocks, respectively.

The timing for determining sigma values is a critical issue for the PIC to consider. Developing new methodologies under the Amendment 23 harvest specification framework created delays in deciding 2011-2012 specifications last year. To avoid similar delays, the Science Subgroup is recommending that the SSC adopt sigma values by stock category by their September meeting. This should allow a pro forma adoption of these values by the Council in September and consideration for deciding 2013 and 2014 ABCs by September as well. One implication of this timing recommendation is that any new meta-analysis for determining a value of sigma cannot use the results of any new assessment that is reviewed by the SSC Groundfish Subcommittee at the late September mop-up panel.

Considerations for the P* decision

As described above, the SSC-recommended process for determining ABCs under the new Amendment 23 harvest specification framework is to separate the SSC's science decision of quantifying scientific uncertainty (i.e., determining sigma) from the Council's policy decision of determining the risk of overfishing (i.e., determining P*). Under the old harvest specification framework, scientific and management uncertainty factored into Council OY decisions. The Council struggled with the new framework where scientific uncertainty considerations are parsed out from management uncertainty considerations in determining ABCs and ACLs/ACTs, respectively. It was difficult for the Council to separate these sources of uncertainty when deciding P* values/ABCs versus ACLs/ACTs. Therefore, the SSC and the GMT recommended development of considerations for deciding P* values and future ABCs to better differentiate these sources of uncertainty as contemplated in the new Amendment 23 harvest specification framework. The PIC Science Subgroup endorses the development of P* criteria and recommends such criteria be developed in a collaborative SSC/GMT effort. Such considerations need to be developed by the September meeting to enable timely specification of ABCs.

Adopt all impact assessment models

The GMT has developed impact projection models for analyzing the potential impacts of alternative management measures by fishing sector. The SSC has reviewed all new impact projection models used in these types of analyses. New models are envisioned by the GMT for analyzing impacts in nearshore and non-nearshore fixed gear fisheries. Additionally, a new economic impact model (IOPAC) is under development and proposed for use in analyzing 2013 and 2014 management measure alternatives. The PIC Science Subgroup recommends all new models requiring an SSC evaluation and endorsement be developed and reviewed by the SSC by

² Since estimated OFLs are median estimates, there is a 50% probability that the OFL is overestimated. Therefore, a P* of 0.5 equates to no scientific uncertainty or, in other words, the ABC is set equal to the OFL.

their September meeting. This will allow initial analysis of management measure alternatives at the November meeting, which may enable Council selection of a more refined suite of management measure alternatives for detailed analysis at the November meeting.

Adopt assessments

The schedule for 2011 stock assessments and stock assessment review (STAR) panels was set last year and is consistent with the process done in the last few assessment cycles. The PIC Science Subgroup has no assessment timing recommendations different than the set schedule.

The Science Subgroup did discuss the process of stock assessment teams (STATs) reviewing assessment results with the Council. In past cycles, STATs would present a brief overview of assessment results to the Council in June and September. This afforded the Council the opportunity to better understand the implications of new assessments and to ask questions to the STATs. While this process does better inform the Council about assessment results, it also takes time out of a busy Council meeting agenda. Alternative options include evening presentations of assessment results by STATs at Council meetings, bundling all presentations into a September session to keep from overloading the June agenda, limiting assessment presentations to those requested by the Council, and eliminating the Council assessment presentations. The Science Subgroup is not recommending any one of these alternatives, but does recommend the PIC discuss this part of the process and offer a solution that may be more efficient than the status quo process.

Adopt mop-up assessments

Any assessments that are not recommended by a STAR panel and/or the SSC qualify for further review at the late September mop-up panel. Due to the timing of the September mop-up panel, any of these “problem” assessments would not be available for final SSC review and Council adoption until the November meeting. Therefore, as discussed above, to avoid delays in making key decision on harvest specifications, the Science Subgroup recommends that the results of any mop-up assessments not be included in any meta-analysis used to determine σ .

Adopt rebuilding analyses

Rebuilding analyses are developed after any assessment of an overfished species has been reviewed and adopted. Typically, the SSC Groundfish Subcommittee has reviewed rebuilding analyses at the mop-up panel and the full SSC has reviewed and adopted rebuilding analyses at their November meeting. While it might be helpful to complete these reviews by the September meeting, any overfished species’ assessment that goes to the mop-up panel will delay adoption of the associated rebuilding analysis until November. Therefore, the Science Subgroup has no recommendation to change the timing of completing the review of rebuilding analyses. However, it will be critical to provide the GMT final versions of rebuilding analyses that are consistent with the recommendations of the SSC Groundfish Subcommittee by their October meeting to allow the GMT time to develop a reasonable range of overfished species’ ACLs for analysis and Council consideration at the November meeting.

Restructure stock complexes

Last year the GMT and the SSC recommended that there be consideration for restructuring the current groundfish stock complexes following the guidance of new National Standard 1

guidelines and the FMP as modified under Amendment 23. The task, as conceptually outlined in the March 2010 GMT statement regarding Amendment 23, may involve adding some new species to the FMP and grouping species with similar distributions and vulnerabilities to overfishing in complexes. This is a significant workload, which is why the GMT recommended delaying this task until the 2013-2014 specifications cycle.

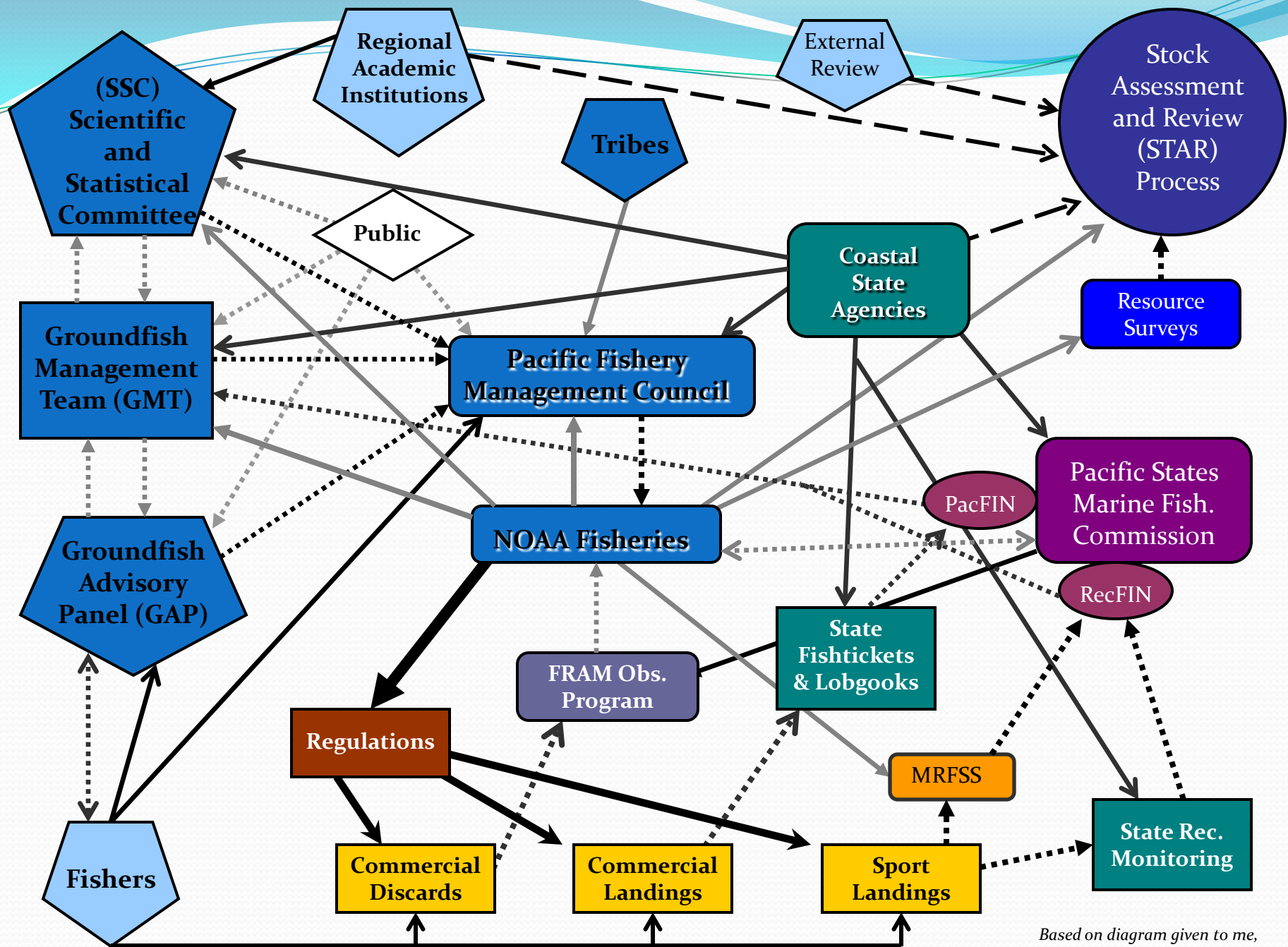
The Science Subgroup discussed the timing of this task and recommended the work be concluded in time for a final SSC review in September and Council adoption in November. Given the lead time the GMT will need to develop the analysis, it will be important for the Council to officially task the GMT in March. The PIC should discuss the magnitude of the task, the recommended timing for completing this task, and make their recommendations to the Council in March.

Schedule for release of new observer data

At their January meeting, the GMT discussed the timing of data releases from the West Coast Groundfish Observer Program (WCGOP). While the PIC Science Subgroup did not discuss this issue on their January 5 teleconference, it is still an important science issue affecting the 2013-2014 specifications process that should be discussed by the PIC. The GMT understands that there could be quarterly data reports from WCGOP that could be used to update GMT impact projection models that inform specifications and inseason management decisions. While the GMT welcomes more timely updates of their models with new discard rates from WCGOP, they did express a concern of a data release late in the 2013-2014 specifications decision-making process making their impact analyses obsolete. The GMT recommends consideration of quarterly releases of data except during even years when the Council is making final specifications decisions. In those years, it may be prudent to delay WCGOP data releases until after the June meeting when a final preferred alternative is decided. This strategic delay should prevent the need for new data and analysis that might delay production of the specifications EIS.

PIC Report: Management Measures Sub-Group

Gway Kirchner
Lynn Mattes
Joanna Grebel
Michele Culver
Kelly Ames



Based on diagram given to me,
note says it originally came from
Hastie

Discussions

- Looked at three separate timeframes:
 - What works for 2013-14
 - What would be long term changes 2015-16 and beyond
 - What would take an FMP amendment
- Separated into two separate actions
 - Harvest specifications
 - Management measures
- Identified that state processes may need to be changed to accommodate adjustments to SPEX cycle
 - State public input process
 - State regulatory process

Council Decision Making Timeline

NOVEMBER

- Adopt rebuilding analysis, mop up
- FPA ABCs for all
- Non-overfished ACL PPA
- Range of OFS ACL, identify PPA
- Allocation alternatives
- Simple analysis provided
- Identify MM for detailed analysis
- Propose EFPs for biennium

JUNE

- Re-affirm FPA for non-overfished
- Re-affirm FPA for OFS
- Allocation FPA
- MM FPA
- EFP FPA

MARCH

- Informational presentation

SEPTEMBER

- Adopt stock assessments
- Methodology review and PPA P* and FPA σ
- OFL FPA
- Review range of MM
- Prioritize MM

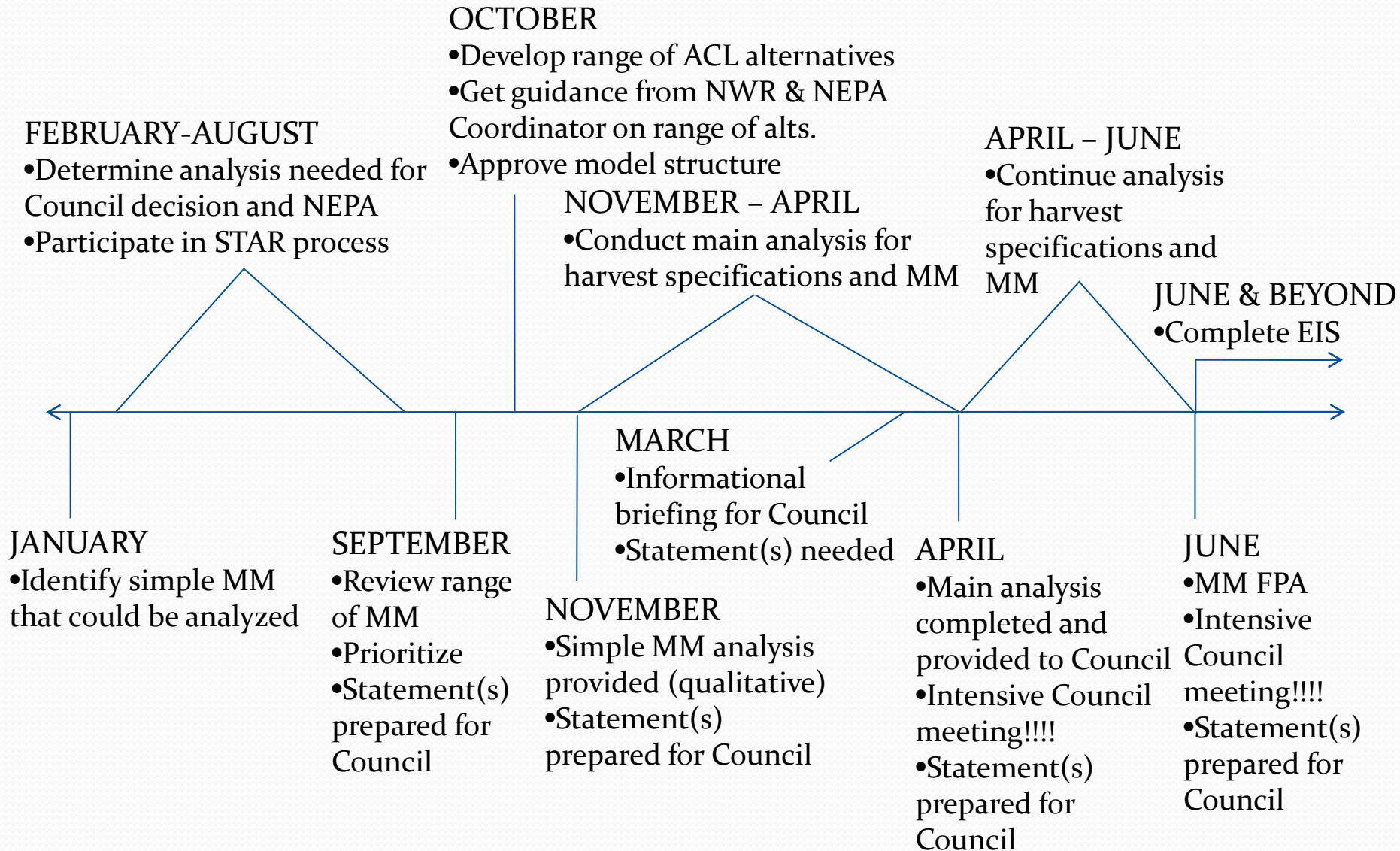
FEBRUARY

- GAC meeting

APRIL

- Non-overfished ACL FPA
- OFS ACL FPA
- Allocation PPA
- Main analysis completed
- MM PPA
- Only “simple” MM introduced for analysis (emergency exceptions)
- Initial approval of EFPs

GMT Workload Timeline



GMT Discussion

- Items that could be considered between the April and June meetings:
 - Simple commercial trip limits
 - Changes to size limits
 - Easy gear modifications such as changes in the number of hooks
 - Adding management lines for use inseason
 - Tweaks to RCA lines
- Items that cannot be analyzed between April and June (emergency exceptions):
 - New YRCAs
 - Complex trip limits (especially with allocative implications)
 - New emerging fisheries (like adding a recreational yellowtail fishery using long leader gear)
 - Complex gear modifications requiring enforcement input
 - New RCA lines (this would be entirely new lines, not tweaks to previous ones)
 - Changes to management areas (so splitting one larger area into two with differing regulations)

GMT Needs

- Clear understanding of what is needed to satisfy NEPA requirements and build the record
 - A better understanding of the NEPA and MSA requirements for alternatives
- Additional staff during SPEX:
 - General Counsel
 - NEPA experts
 - Socio-economic staff
- Workload
 - Council needs to be tuned into the GMT workload and give guidance on priorities to the team
 - What is the GMT's ability to say “no” to Council requests based on workload?

Changes for 2015-2016

- Continue successes from 2013-2014 cycle
- Realistic NEPA Review Timeline
 - Planning for future events (e.g. lawsuits)
- Process for re-configuring stock complexes or removing/adding species to the FMP
 - May be more workload intensive than previously thought
 - What process would this fall under?
- Adjust timing of EFP decisions to coincide with SPEX

Requires FMP Amendment

- Change timing of decision making (allow for increased NEPA review period)
 - Currently November – June
 - Consider September – April
- Change cycle duration (allow for a true “off year”)
 - Currently biennial cycle
 - Consider triennial cycle
- Formalize changes made for 2013-2014 cycle
 - Add informational meetings
 - Timelines and schedules for completion of science and analyses
 - EFP review/approval schedule- coincide with SPEX (set-asides)

Groundfish Process Improvement Committee (PIC) Report of the NEPA/EIS Structure Subcommittee

Introduction

Council staff decided to combine the two proposed subcommittees covering EIS structure and NMFS implementation process. This subcommittee's charge was to consider how the requirements of the National Environmental Policy Act (NEPA) were addressed during development of the 2011-12 harvest specifications and management measures decision-making process with the aim of recommending improvements for the 2013-14 management cycle. In particular, the subcommittee was asked to look at the structure of and process for producing the 2011-12 environmental impact statement (EIS). This subcommittee convened by conference call on January 7. The subcommittee's preliminary recommendations are listed in the box below. The remainder of the report summarizes the subcommittee's major points of discussion.

Preliminary Recommendations of the Subcommittee:

- A. Evaluate the respective roles and responsibilities of NMFS and Council staff in development of the EIS and methods for communication and collaboration. Consider the use of interdisciplinary teams to develop the EIS as in other regions and councils and the role of the Groundfish Management Team (GMT) in producing NEPA analyses.
- B. As a longer-term goal (i.e., beyond the 2013-14 process), give close consideration to using a "programmatic" approach to NEPA that uses a broad EIS focused on the core policies of FMP and then a more narrowly focused Environmental Assessment (EA) or EIS to implement those policies each biennial management cycle.
- C. For the 2013-14 process, consider:
 - (1) Using a Supplemental EIS (SEIS) based on the 2011-12 Final EIS (FEIS); and/or
 - (2) Allowing for more "frontloading" in development of the EIS by either:
 - a) Having the Council choose preliminary preferred alternatives (PPA) for all non-overfished stocks and a range of overfished species ACLs at the November meeting and the PPA for all stocks following at the April meeting; or,
 - b) Releasing the draft (EIS) before the June meeting without a PPA for all stocks.

Note that these recommendations are not mutually exclusive.

The 2011-12 Experience

The subcommittee was unanimous in the view that the process for developing the 2011-12 EIS was less than ideal for all involved. Of most consequence, the NMFS Northwest Region (NMFS NWR) pointed to its judgment that there was "not currently an adequate EIS to support decision-making" as the main grounds for disapproval of Amendment 16-5.¹ At the same time, it was remarked that it remains unclear to many, including to several analysts that contributed to the draft EIS (DEIS), specifically where and how the analysis was inadequate. Whatever the cause, circumstances are such that NMFS and the Council are still addressing the 2011-12 EIS eight months after the Council made its final recommendations in June. This is a situation no one wants to repeat.

¹ December 27, 2010, letter from William Stelle, Jr., NMFS Northwest Regional Administrator, to Mark Cedergreen, Council Chairman.

The Need for Frontloading

The subcommittee recognizes that the EIS process did not work as envisioned in 2011-12 in large part because of the extraordinary workload related to the development and implementation of Amendments 20 and 21, the addition of Amendment 23 to the 2011-12 process, and issuance of the court order in late April 2010. Staff time and resources were stretched thin and opportunity for communication and review in the spring of 2010 was limited. Deadlines were pushed and timelines for review and responding to comments were unreasonable for everybody. More frontloading and communication on expectations between NMFS and Council staff and others involved with the analysis and production of the EIS is something everyone on the subcommittee agrees would improve the process in 2013-14.

One participant on the conference call suggested looking to draft operational guidelines for the development of fishery management actions that NMFS released in 2005. The guidelines list the integration of NEPA into the action “at the earliest possible time” and frontloading are as general principles to follow. The guidelines describe frontloading in the following manner:

All relevant reviewing parties will participate early in the process to ensure that all significant legal and policy issues are identified to the extent practicable. Draft documents will be circulated to all Regional, Science Center, GC, and Council staff in key responsibilities, as well as Headquarters Staff (HQS) as appropriate, for review and comment. When the model is followed, drafts will be circulated prior to [critical feedback points (CFPs)].²

The recommendations listed above as (C)(2)(a) and (b) are intended to allow time in the process for more frontloading of review and comment on some of the key decisions made during the biennial harvest specifications and management measures process. But the subcommittee was unable to resolve the question of whether the time needed for NMFS internal review of the NEPA document and other steps in the implementation process can be realistically accommodated in the approximately six and half months between Council final action (June) and the start of the next biennial period on January 1. Furthermore, NMFS staff persons have suggested that 7 to 14 months is a more realistic time frame for internal review and implementation.

Considering Broader Changes to the EIS Development Process

Although more frontloading and collaboration in 2013-14 would likely improve the process on their own, the subcommittee did not want to overlook “bigger picture” changes to the way the EIS is developed and used in the groundfish biennial process. Ideas discussed by the subcommittee ranged from “who”-type suggestions (e.g., the respective roles and responsibilities of Council staff and NMFS) to fundamental changes in how the EIS is used in relation to the biennial harvest specifications framework in the Groundfish FMP. Importantly, the subcommittee recognized that certain changes are not feasible for the 2013-14 process given that the process is set to begin this fall. Again, although the immediate focus is on improvements for 2013-14, the subcommittee did not want to lose sight of longer-term improvements. These longer-term suggestions inevitably overlap with the work of the FMP Amendment Subcommittee.

² These *DRAFT OPERATIONAL GUIDELINES: For Development and Implementation of Fishery Management Actions* were considered by the Council in March 2006 (Agenda Item B.3.a, Attachment 1). The guidelines define the CFP as:

a step in the decision-making process at which critical decisions are made that could ultimately affect approvability of the action. The number of CFPs applicable to an action varies depending on the NEPA and MSA requirements that apply to that action. The OGs identify a full list of steps and CFPs for each type of action in the model

Roles and Responsibilities

The subcommittee began with the proposition that NMFS should take a larger role, and perhaps the lead role in producing the EIS in future cycles. It was noted that a change of this magnitude would have budget implications for NMFS NWR and the Council that would have to be considered. Some on the subcommittee remarked that the EIS is primarily a Secretarial responsibility. NMFS reviews Council actions for consistency with the Magnuson-Stevens Act and other applicable laws and relies primarily on the EIS to do so. In the lead role, NMFS NWR might be more active and accountable for ensuring the analysis meets all applicable legal and policy standards earlier in the process. In relation to the budget implications noted above, NMFS NWR would need adequate staff or resources to take on this responsibility and those persons would have to actively participate in the Council decision-making process in order to effectively draft the EIS.

It was also suggested that there may be lessons that could be learned from how other regions and fishery management councils operate, and from the draft operational guidelines mentioned above. Other regions employ interdisciplinary teams in the production of NEPA analyses. One subcommittee member raised the point that the interdisciplinary team idea sounded similar to the role the Groundfish Management Team (GMT) is expected to serve in the Council process. The GMT is coordinated by Council staff and includes members from the NMFS NWR, both west coast fisheries science centers, and fisheries management experts from the states and treaty tribes. The overlap between GMT responsibilities and the actual preparation of the EIS document was not resolved by the subcommittee, but in general members agreed that clearly defined roles and responsibilities could aid preparation of the EIS.

Better Integration of the EIS with the Groundfish FMP Management Framework

Some members of the subcommittee thought that “who” questions were important to look at but of lesser importance than the “what,” “when,” and “how” of the EIS (i.e., the structure, timing, and frequency). In the view of these subcommittee members, the key question is how to best marshal staff and analytical resources from all involved in the Council process to produce NEPA documents that truly inform Council decision-making under the Magnuson-Stevens Act.

Better integration of NEPA and the Magnuson-Stevens Act has been a long standing goal of this and other fishery management councils. The Magnuson-Stevens Reauthorization Act of 2006 instructed NMFS to better integrate NEPA “analytical procedures” into the FMP process so as “to provide for timely, clear and concise analysis that is useful to decision makers and the public, reduce extraneous paperwork, and effectively involve the public.” NMFS issued a proposed rule to implement this mandate but has yet to finalize it. Some of the subcommittee noted that it would be unclear on how to integrate NEPA with the Groundfish FMP process until those procedures are finalized. Others on the subcommittee noted that that Congressional direction is clear and that better integration should therefore be the focus of improving the Groundfish process.

Most involved on the conference call were in general agreement that producing a complex, lengthy EIS every biennial cycle is not desirable and may not be necessary. The challenge is determining whether it is possible to produce lengthy EIS documents less frequently, consistent with NEPA, the Council on Environmental Quality’s (CEQ) implementing regulations, NOAA Administrative Order (NAO) 216-6, and other relevant policies of NMFS and NOAA.³

³ Council staff has summarized these regulations in notes prepared for the subcommittee to aid discussion. (These notes have been circulated to the full Committee.)

Considering the Analytical Requirements of NEPA and the Magnuson-Stevens Act

The statutory and policy guidance referenced above indicates that the biennial harvest specifications process needs to incorporate steps for providing and considering public input, an administrative record demonstrating sufficient analysis of the actions, and internal review of document by NMFS and NOAA as part of the implementation process. Integration of NEPA with the framework established by the Groundfish FMP process requires all three of these elements be addressed. A couple of subcommittee members also suggested that a better understanding of how to integrate these requirements with the analytical requirements of the Magnuson-Stevens Act would be productive.

NEPA requires agencies to prepare “a detailed statement” on proposals for “major Federal actions affecting the quality of the human environment” (42 USC §4332). Thus, the analytical requirements for an EIS focus on providing the information necessary to determine whether the action is likely to endanger “significant” environmental impacts. In this sense NEPA requirements are considered “procedural”—agencies must consider environmental impacts, but on its own, NEPA does not specify the threshold defining significant environmental impacts. The Magnuson-Stevens Act, on the other hand, does specify conservation mandates and thresholds (as implemented through National Standard 1 Guidelines, for example). It is a “substantive law” that prescribes specific parameters for how the fishery management councils are to conserve and manage fisheries and the marine environment. The requirement to “prevent overfishing” as a prerequisite to achieving optimum yield is perhaps the best known example. The definitions of “optimum” and “conservation and management” also incorporate the protection of the marine ecosystem and the prevention of irreversible impacts into the factors that the Council must consider.

Similarly, consistent with NEPA, the Council uses the analysis of alternatives to compare and contrast various options based on the relevant factors in the FMP as a vehicle to implement specific provisions of the Magnuson-Stevens Act. While NEPA requires agencies to “rigorously explore and objectively evaluate all reasonable alternatives” (40 CFR 1502.14) this should be done within the context of the substantive conservation mandates of other applicable law, particularly the Magnuson-Stevens Act. For example, with respect to rebuilding species the alternatives are meant to help the Council determine which alternative best rebuilds the stock within a time period that is as short as possible and takes into account the needs of fishing communities and the other factors specifically mentioned in the Magnuson-Stevens Act.

In addressing applicable law, before arriving at a decision the Council must consider analysis and explain its rationale. Doing so involves a demonstration that the Council considered all relevant factors and then rationally and consistently applied its legal authorities and policies to the facts at hand. NMFS policies and procedures favor the use of NEPA to integrate mandates in all applicable law but that does not mean that NEPA establishes conservation mandates or other mandates and thresholds that are somehow substantively different than the Magnuson-Stevens Act or other applicable law (e.g., the Administrative Procedures Act, the Endangered Species Act). The individual voicing this concern believes that the emphasis on NEPA tends to obscure the bigger picture framework set by the Magnuson-Stevens Act. The subcommittee did not have time to explore this point of view in detail.

Looking at Supplemental and Programmatic Approaches

The subcommittee agreed that close consideration should be given to using a Supplemental EIS (SEIS) for the 2013-14 process and that serious consideration be given to moving to a programmatic framework afterwards, even if each member of the subcommittee may have different reasons for doing so (e.g., workload, review timelines, better integration of NEPA with the Magnuson-Stevens Act).

Supplemental Environmental Impacts Statements

In relation to preparation of an SEIS CEQ regulations (40 CFR 1502.9(c)) state that agencies:

(1) Shall prepare supplements to either draft or final environmental impact statements if:

(i) The agency makes substantial changes in the proposed action that are relevant to environmental concerns; or

(ii) There are significant new circumstances or information relevant to environmental concerns and bearing on the proposed action or its impacts.

(2) May also prepare supplements when the agency determines that the purposes of the Act will be furthered by doing so.

(3) Shall adopt procedures for introducing a supplement into its formal administrative record, if such a record exists.

(4) Shall prepare, circulate, and file a supplement to a statement in the same fashion (exclusive of scoping) as a draft and final statement unless alternative procedures are approved by the Council.

However, NOAA GC remarked that a determination of whether preparation of an SEIS in this context is appropriate will depend on a broader set of considerations than just the wording of this section of the regulations. Along with NMFS they would need to closely consider the CEQ regulations, relevant NOAA policies, and the relevant facts before determining whether an SEIS would be feasible in 2013-14. A key issue is whether 2013-14 harvest specifications can be reasonably construed as a continuation of the same proposed action (within the FMP framework) or must be treated as separate, new proposed action.

The general idea behind the SEIS concept is that the 2011-12 FEIS will have analyzed many of the questions that will be at issue in the 2013-14 process. The SEIS would keep the 2011-12 EIS structure largely intact and focus new analyses on how circumstances have changed. Some subcommittee members see a benefit in this approach in that the impacts disclosed in the 2011-12 EIS form part of the “environmental baseline” affected by future decision-making. Focusing only on those actions and related environmental impacts that differ from what is described in the previous EIS could improve the cohesiveness and clarity of the SEIS in relation to previous Council groundfish harvest management actions. The contents of such an SEIS will need further thought to ensure sufficiency.

By itself the SEIS would not help to shorten statutory timelines (e.g., a draft SEIS would likely still need to be circulated for public comment) nor NMFS internal review requirements. But to the degree it may reduce the length and complexity of the EIS document it could expedite internal review.

A Programmatic EIS and Tiering

The thinking behind the programmatic approach is very similar. The general idea of a Programmatic EIS is that it takes a broad look at a program that involves multiple related actions. This broad look provides a framework from which more narrowly focused analyses can be “tiered off.” As described in the CEQ regulations:

Whenever a broad environmental impact statement has been prepared (such as a program or policy statement) and a subsequent statement or environmental assessment is then prepared on an action included within the entire program or policy (such as a site specific action) the subsequent statement or environmental assessment need only summarize the issues discussed in the broader

statement and incorporate discussions from the broader statement by reference and shall concentrate on the issues specific to the subsequent action.⁴

One purpose of this approach is “to focus on the issues which are ripe for decision and exclude from consideration issues already decided or not yet ripe.”⁵ The programmatic approach is also thought to better achieve many of the other goals embodied in the CEQ regulations, such as cutting down on redundancy and reducing the bulk of NEPA documents by incorporating more analysis by reference and better aligning the purpose of NEPA with the purpose of the program as whole. To some, the programmatic approach seems like a natural fit for the adaptive management principles on which the Groundfish FMP is based.

Two members of the subcommittee expressed the view that tiering off a broader programmatic EIS could allow a less detailed evaluation of environmental impacts in subsequent biennial cycles. Their view is that the biennial management cycle is meant to apply the policies of the FMP to the best available scientific information on status of stocks and the performance of the fisheries; that is, to adaptively manage and evaluate how well the policies, goals, and objectives of the FMP are being achieved. As long as the “context and intensity” of these environmental consequences do not change substantially from one cycle to the next, subsequent NEPA documents could rely the analysis and disclosure of impacts in the previous NEPA document. Put another way, the FMP reflects the Council’s judgment on how stocks and the marine environment should be impacted and on how the goals and objectives of the Magnuson-Stevens Act should be balanced and achieved. Therefore, if the range and intensity of impacts of possible management decisions have been evaluated, subsequent decisions with effects equivalent to those previously analyzed could rely on a tiered analysis to satisfy NEPA.

The programmatic approach has been considered by the Council in the past. Some on the subcommittee asked how a programmatic approach might integrate with the Council’s developing ecosystem planning effort. The subcommittee expects that a programmatic approach will have to be explored carefully. The use of the programmatic approach is said to be increasing across agencies, yet the approach is not without its pitfalls.⁶ Some agencies report not achieving the benefits that were expected from the programmatic approaches. In addition, programmatic documents can become outdated quickly and lose their usefulness or be too vague and simply put off difficult analyses that will need to be done when a particular action is taken as part of the program.

⁴ Sec. 40 CFR 1502.20

⁵ Sec. 1508.28

⁶ Chapter 3 in *The NEPA Task Force Report to the Council on Environmental Quality on Modernizing NEPA Implementation*. September 2003.

FMP Amendment Subcommittee Groundfish Process Improvement Committee Report

Introduction

The Groundfish Process Improvement Committee (PIC) is charged with making recommendations for the next biennial cycle (decision-making and implementation for the 2013-2014 period) and considering whether an FMP amendment may be needed to implement more far reaching changes to the biennial process over the long term. In support Council staff organized several subcommittees to focus on particular topics and prepare materials for a PIC meeting on February 3-4, 2011

FMP Amendment Subcommittee members Sheila Lynch, Corey Niles, Dan Waldeck, and Sarah Williams participated in a conference call on Monday, January 10 to develop recommendations; Frank Lockhart, Kevin Duffy, and Dan Wolford were unable to participate. Kelly Ames, Kit Dahl, Mariam McCall, and Shelby Mendez also participated in the call.

Based on the draft Council Staff White Paper (Agenda Item H.1.a, Supplemental Attachment 2, November 2010) and other sources the Subcommittee discussed the following ideas on the call:

- A 5-6 year cycle or programmatic EIS with revised harvest specifications (based on new stock assessment results) and management measures considered every 2 years.
- Changing the fishing year start date from January 1 to later in the year to provide more time for the NMFS implementation process.
- Separating the harvest specifications decision from the management measures decision.
- Although unable to participate in the call, Dan Wolford recommended that the issue of inseason adjustments to harvest specifications be an issue considered as part of an FMP amendment (the so-called “red light/green light” issue).

Summary of Recommendations

- Tiered NEPA documents: Prepare a “programmatic” (Tier 1) EIS evaluating policies applicable for several biennial cycles. Subsequent “tiered” NEPA documents (Tier 2) could be more streamlined. An FMP amendment may not be necessary unless changes to the Council decision-making process are adopted to strengthen this approach.
- Changing the season start date: A later season start date, such as March 1, would give more time for implementation. While the change would allow more time for implementation, a transition to a new fishing year could be difficult and the added time may be taken up by higher expectations for internal review.
- Breaking decision-making into separate processes: Decisions on overfished species harvest specifications could be separated from decisions for non overfished species and/or harvest specifications decisions separated from management measures decisions. While adopting these methods within the current decision-making and implementation process has advantages, instituting completely separate decision-making/NEPA/regulatory processes would be difficult
- Inseason adjustment of harvest specifications: The Subcommittee did not take a position on whether an FMP amendment should address the current policy.

Subcommittee Findings

Two interrelated issues have prompted reevaluation of the biennial process: 1) The complexity and attendant quality of analyses and documentation supporting decision-making as required by applicable law (principally the Magnuson-Stevens Act and the National Environmental Policy Act) and 2) The amount of time needed to address these mandates versus the time available for decision-making, analysis, and implementation.

The Subcommittee found that the Groundfish FMP allows considerable flexibility in terms of the timing of decision-making so that the process is bound by just a few constraints:

- Three Council meetings and full notice and comment rulemaking are required to implement biennial harvest specifications and management measures. These include (1) management action developed through the biennial specifications process; (2) management measures being classified as routine; or (3) trip limits that vary by gear type, closed seasons or areas, and in the recreational fishery, bag limits, size limits, time/area closures, boat limits, hook limits, and dressing requirements the first time these measures are used. The three Council meetings “usually” start with the November meeting in odd-numbered years. The FMP states “The process normally occurs biennially between November and June, but can occur under specified circumstances at other times of the fishing year” (p. 57). However, the FMP does not specify the circumstances, implying that the Council could modify the timing of the process without an FMP amendment as long as an explicit rationale is provided. The FMP also states “In the absence of an approved recommendation at the beginning of the biennial fishing period, the current specifications in effect at the end of the previous biennial fishing period will remain in effect until modified, superseded, or rescinded” (p. 61).
- The fishing year is January 1-December 31. Harvest specifications are established for each calendar fishing year in the biennial period. Amendment 23, implementing revised National Standard 1 Guidelines, introduces the concept of an annual catch limit (ACL), a key management objective. The amended FMP states “The annual catch limit (ACL) is a level of annual catch, which counts all sources of annual fishing-related mortality, including discard mortalities, and is the harvest threshold used to manage west coast fisheries.” Although not stated explicitly in the FMP, ACLs are established for the calendar year.

A key factor in the biennial decision-making and implementation process is the establishment of harvest specifications (OFL, ABC, ACL, etc.) for each calendar year in the period. The Council has considerable flexibility to adjust routine management measures inseason to address various constraints such as ACLs, harvest guidelines, and allocations. In the biennial process the Council thus establishes the harvest specifications and an initial set of management measures with the promise to adjust the measures adaptively in relation to these constraints. NEPA requires decision-makers to take a “hard look” at environmental impacts and identify and mitigate those that are potentially “significant.” Therefore, various secondary effects of the management measures (aside from the primary objective of constraining fishing mortality) need to be evaluated (distributional socioeconomic impacts, for example). The resulting complexity of the decisions and related analysis is major factor in the current biennial process.

The “programmatic EIS” concept derives from NEPA regulations: “Whenever a broad environmental impact statement has been prepared (such as a program or policy statement) and a subsequent statement or environmental assessment is then prepared on an action included within the entire program or policy (such as a site specific action) the subsequent statement or environmental assessment need only summarize the issues discussed in the broader statement and incorporate discussion from the broader statement by reference and shall concentrate on the issue specific to the subsequent action” (40 CFR 1502.20). An alternative terminology that may be more useful in the context of rethinking the biennial

specification process is a “Tier 1” EIS (the “broad” EIS) and one or more “Tier 2” NEPA documents (on an action “within the entire program or policy,” which may be an EA or EIS).

In 2009 new harvest specifications were not implemented until March 1. In 2011 they will not be implemented until April. The indicative schedule in the White Paper shows that NMFS internal review of the DEIS should start in early June, preceding Council final action; Shelby Mendez, NMFS NEPA Coordinator for the west coast, outlined an “ideal” schedule for EIS review that requires 14 months from the start of DEIS internal review to the final rule effective date. This suggests that from purely a process perspective—the time needed by NMFS for internal review of the EIS, development of regulations, and complying with statutory timelines—the 5-6 months allotted for this process in past cycles is insufficient. (In the past Council staff submitted the DEIS to NMFS in mid-July for a January 1 start date.)

With respect to inseason adjustment of harvest specifications, call participants were unsure of the history of this issue or the constraints placed on the Council by the current FMP text. Section 5.5 discusses inseason procedures for establishing or adjusting specifications. The FMP as amended states “If the Council determines that any of the OFLs, ABCs, ACLs or OYs set in the prior management process are not adequately conservative to meet rebuilding plan goals for an overfished species, harvest specifications for that overfished species and/or for co-occurring species may be revised for the second fishing year of the then current biennial management period.” The FMP further states that the only other reason for such adjustment is to address “incorrect data” or “computational errors.” However, the next section provides additional circumstances for inseason adjustment of “ACLs, OYs, ACTs, and HGs or quotas” based on evaluation under the points of concern or socioeconomic frameworks described in Chapter 6 of the FMP. Subsequent to the call, the history of the issue was researched based on Council documents. The Council framed the issue as follows in September 2004: “While the policy for considering a mid-process check on OYs, including the thresholds for triggering this decision, has yet to be developed, there has been some confusion as to (1) whether the mid-process check would allow consideration of both decreases and increases of OYs (i.e., red light/green light) or only decreases in OYs (i.e., red light only) and (2) what species are eligible for potential adjustment. The transmittal letter for the proposed FMP amendment referred to ‘altering harvest levels’ in light of new science, implying either direction and for any species. However, the FMP amendatory language, that spoke to the mid-process check of OYs and was approved by the Secretary of Commerce when Amendment 17 was approved, only considered downward adjustments to OYs and only for overfished stocks” (Agenda Item C.4.a, Situation Summary, citations omitted). Subsequently the Ad Hoc Groundfish Information Policy Committee was formed to develop recommendations on this and other situations where new scientific information enters the Council process during a biennial management period. In March and April 2005 the Council considered a policy recommendation relating to adjusting management measures but ultimately did not adopt it. Flexibility in adjusting harvest specifications inseason appears to have been less of an issue in subsequent biennial cycles.

Subcommittee Recommendations

Tiered NEPA Documents

Using this approach a broad Tier 1 EIS would be prepared comprehensively evaluating harvest specifications, allocations, and management measures for a 6 year period (a 6-year period would encompass three biennial cycles). The Tier 1 EIS would evaluate both general policies, such as stock rebuilding objectives, and a broad range of environmental impacts, including cumulative impacts such as effects on trophic structure, stock genetic structure, and socioeconomic changes in coastal communities in response to groundfish management. Tier 2 NEPA documents would evaluate periodic changes in harvest specifications during the 6-year period. It is important to note that changes in harvest specifications are most often in response to new stock assessments. Of the 30-odd groundfish

management units (stocks and stock complexes) a relatively small subset is frequently assessed (principally overfished species and commercially important species such as sablefish). Other stocks are assessed infrequently or not at all and as a result their specifications are only occasionally adjusted. Tier 2 NEPA documents could thus focus on the effects of the subset of specifications resulting from assessments in any given year.

For this strategy to be effective, there would need to be some assurance that the Tier 2 NEPA documents could be simpler and more streamlined than the Tier 1 EIS. This would depend on several factors: 1) The Council committing, and clearly articulating, a set of policies to guide management during the 6-year period and not making decisions inconsistent with these policies during the period. (Whether decisions made during the period engender significant impacts is a separate question. As long as these impacts are reasonably anticipated in the Tier 1 EIS this should not affect the level of analysis in the Tier 2 documents.). 2) Specifying thresholds for significant impacts to determine the level of analysis in Tier 2 documents. 3) Recognition that the Council adaptively manages through inseason adjustment of management measures so that the Tier 1 EIS need only evaluate the impacts of the range of management measures the Council would apply to meet harvest specification objectives while Tier 2 NEPA documents would only substantiate that the effects of adjusted management measures are not substantially different from the secondary effects described in the Tier 1 document.

This strategy may not need an FMP amendment if it is confined only to reconfiguring how NEPA is applied to the biennial process. In other words, over 6 years—under the current biennial framework—one Tier 1 EIS and two Tier 2 NEPA documents would be prepared. On the other hand, the Council may want to consider process changes requiring an FMP amendment in line with the general objectives of moving to a longer-term framework. For example, Council decision-making might be abbreviated (e.g., two meetings) for cycles 2 and 3. A different process for classifying management measures as routine might also be considered. One option, possibly not requiring an FMP amendment, would be a commitment to only establish new routine measures (i.e., those that can be adjusted inseason) at the start of the 6-year period. If the Council expected to adopt new routine measures during the period it may be advisable to specify how this would be done in an FMP amendment.

In considering the approach outlined here it is important to recognize that NEPA (and other mandates such as the APA) require adequately documented evaluation of decisions whenever they are made. From a process perspective, this represents a tradeoff between sticking to a course of action over the long term (a single “big” decision and related analysis) versus the flexibility to regularly make substantive changes in that course (with each decision requiring new analysis and documentation).

Changing the Season Start Date

With implementation of the shore-based IFQ program, the importance of a January 1 start date to industry planning may be less crucial. Changing the season start date to March 1 would add 2 more months to the time between Council final action and the start of the next biennial period. Given the amount of time NMFS needs to implement an action (somewhere between 7 and 14 months) it would seem extra time is needed. Changing the start date of the fishing year and related biennial cycle would likely require an FMP amendment. The Subcommittee raised a number of concerns about changing the start date:

- The transition from a January 1 to March 1 start date could be complicated because specifications and management measures during the “stranded” 2 months of the transition period would have to be addressed. One option would be to roll over the previous year’s specifications, which is essentially what was done in 2009 and 2011.

- The implications for science provision (particularly stock assessments) would have to be considered. Would there need to be a change in the statistical year for data provision and would this delay finalization of stock assessments in some way? If so, any gains could be nullified.
- The added time might not have much of a beneficial effect if it only results in more extensive review without an attendant improvement in product quality.
- Additional time might be provided without a change in the season start date by advancing the Council decision schedule, for example by changing the current November to June schedule to a September to April schedule. However, the implications for science provision would need to be considered.

Breaking Decision-making into Separate Processes

The Subcommittee discussed both separating decisions on harvest specifications for overfished species versus non overfished species and harvest specifications from management measures. However, the Subcommittee didn't really get beyond discussing separating decisions within the current decision-making schedule, because no one had a clear idea of how establishing wholly separate processes (e.g., separate NEPA and rulemaking) would work or what efficiencies would be gained. It was agreed that determining non overfished species harvest specifications first in the current process (e.g., at the November meeting) followed by finalizing overfished species specifications second (e.g., in April) could streamline both decision-making and supporting analyses. Also, the biennial process could be simplified by limiting the types of management measures to be considered. In the past a panoply of management measures have been brought forward, from adjusting existing measures (trip limits, RCAs, bag limits, etc.) to address new harvest specifications to measures that might be better considered regulatory amendments to codified regulations (e.g., requiring new types of landing reports). Criteria for the types of management measures to be considered during the biennial process could be established without an FMP amendment but an amendment would provide a firmer policy platform for limiting what is considered. The Subcommittee also noted it may be difficult to draw a bright line between measures necessarily related to harvest specifications and other types of measures.

Inseason Adjustment of Harvest Specifications

The Subcommittee took no position on revisiting this issue. At this point it is unclear how directly this relates to the overall charge of process improvement. However, if the Council were to decide to develop an FMP amendment to modify the current biennial process they should decide whether to include this issue in such a redesign.

GROUND FISH ADVISORY SUBPANEL REPORT ON THE
PROPOSED PROCESS AND SCHEDULE FOR COMPLETING THE 2013-2014
GROUND FISH BIENNIAL FISHERY SPECIFICATIONS AND MANAGEMENT
MEASURES

The Groundfish Advisory Subpanel (GAP) received a presentation from Mr. John DeVore and Ms. Kelly Ames regarding the recommendations of the Groundfish Process Improvement Committee (PIC) concerning improvements in the process to develop 2013-2014 harvest specifications and management measures. The GAP also discussed longer term changes to the process for developing groundfish harvest specifications and management measures that may require a fishery management plan (FMP) amendment. The GAP offers the following comments and recommendations regarding both the short-term (i.e., 2013-2014) and long-term modifications to the process for making these decisions.

2013-2014 Specifications Process

The GAP recommends the schedule and process described in Agenda Item I.2.b, Draft Proposed Schedule. The GAP notes that this process and schedule does not depart from the biennial process codified in the FMP and represents an improvement in that important science decisions are made earlier in the process. This allows a better and earlier focus on the harvest specifications and management measures decisions that the GAP typically addresses. Specifically, if overfishing limits (OFLs) and acceptable biological catches (ABCs) are decided earlier in the process, then the GAP can refine their deliberations on recommended annual catch limits (ACLs) and management measures that can be considered earlier in the decision-making cycle.

The GAP recommends economic analyses need to be provided earlier in the process for GAP review. An increase in the depth and quality of socioeconomic analysis informing the specifications process needs to be provided commensurate with the level of biological analysis that is currently provided. While the GAP still expects to provide some insights into the economic impacts observed in their ports, they do not believe these insights should substitute for the robust socioeconomic analysis needed to understand the community impacts that are predicted under alternative harvest specifications and management measures.

The GAP also considered a change to the annual exempted fishing permit (EFP) process. Currently, there is a disconnect between the specifications process of setting aside yield for EFPs for two years without knowing the EFPs that will be proposed during the biennial management cycle. There are two problems with the current process: 1) the yield set aside to accommodate EFPs does not match the proposed EFP activities, and 2) when there is a mismatch, there is no mechanism to redistribute the yield originally set aside for EFPs. The remedy to address this latter issue is contemplated at this meeting under Agenda Item I.6.a, Attachment 5. The GAP recommends that the former issue be addressed through a change in COP 19 to change the EFP process from an annual one to a biennial one that is closely synchronized with the biennial specifications process. That is, EFP set-asides should be decided based on actual EFPs that are recommended for the biennial management cycle. A biennial EFP also is more likely to provide

a robust evaluation of the EFP objective and somewhat relieves the process of considering, recommending, and approving EFPs. The GAP would like to see this change in the EFP process in time for the 2013-2014 management cycle. ∴, the GAP recommends a Δ 2 the EFP COP ASAP.

Long-term Specifications Process

The GAP has concerns about the current biennial specifications process. For one, the GAP is concerned about the inherent delay in using new science to inform management decisions. Specifically, there is a quick reaction to new science that raises a conservation concern (i.e., the “red light” process), yet there is no mechanism that allows greater fishing opportunities when an optimistic assessment result is realized (i.e., a “green light” process). Further, the biennial specifications process is overly burdensome forcing continual reconsideration of the same narrow range of overfished species’ harvest specifications and management measures. Notwithstanding the newly implemented trawl rationalization program, the GAP notes that there has been little change in west coast groundfish management. Despite that, the process has evolved into a drawn out and needlessly contentious one that produces more angst and delays in implementing new regulations than is reasonable. Therefore, the GAP recommends consideration of an FMP amendment to develop a more rational groundfish management process that allows a quicker assimilation of new science and a less burdensome NEPA process to implement new regulations.

PFMC
04/10/11

GROUND FISH MANAGEMENT TEAM REPORT ON THE PROPOSED PROCESS AND SCHEDULE FOR COMPLETING THE 2013-2014 GROUND FISH BIENNIAL FISHERY SPECIFICATIONS AND MANAGEMENT MEASURES

The Groundfish Management Team (GMT) reviewed the materials submitted under this agenda item and offers the following comments for consideration. We would like to thank all involved with the groundfish Process Improvements Committee (PIC) for their thoughtful work, including our GMT members that represented the team on the committee. We note also that this is adoption of a proposed revised schedule for public review and would appreciate Council direction on particular areas of GMT focus for June.

We have structured this statement around the four Council actions identified in the Situation Summary, taking them in order:

1. General Comments on the PIC's Proposed Schedule (see Attachment 1)

- **Frontloading and GMT workload**—The PIC's proposed schedule appears to be achievable from our end, yet the schedule certainly presents challenges. The general thrust of the proposed schedule is that the team would need to start and complete many analyses earlier in the process than in previous cycles, with the bulk of our work completed by the April 2012 meeting. We would also need to produce analysis of impacts for a preliminary draft EIS (DEIS), with a deadline somewhere in early to mid December of 2011. There are also a lot of items, discussed below, that have to be analyzed and given consideration for September 2011, which may require Council input here at this meeting and/or in June.
- **Setting priorities and gauging workload capacity**—Meeting the schedule will require taking on a "manageable" workload, which raises the usual need to set priorities, and also begs the question of what is and what is not "manageable." When considering priorities and workload, the Council is helped if the GMT and other analysts and reviewers are able to provide a "budget" of their available time. For our part, we have already begun discussing how we might improve in this area for this cycle. We hope to help the Council identify trade-offs that might exist between the many different analyses and issues that could be taken on for implementation in 2013-14, some of which we start discussing below. We have begun this type of evaluation and aim to provide the Council with more information in June.
- **Post-June 2012 milestones and deadlines**—Under the National Marine Fisheries Service (NMFS) and PIC recommended schedules, the final rule will be published on December 2, 2012. Therefore, if deadlines are missed during the review and implementation stage (post June 2012), and the 30-day cooling off period is not waived, then the January 1, 2013 fishery start date will be missed. This underscores the need to closely evaluate and stick to the milestones and deadlines that are agreed upon in the final schedule. Most of the GMT's work is completed before the Council takes final action in

June 2012, yet we are still involved in the review and implementation process (i.e., finalizing the FEIS, deeming regulations, etc.).

- **The importance of structuring the analysis**—Meeting the PIC’s proposed schedule will require careful consideration of how the 2013-14 analysis is structured. As discussed by the PIC, we see the need for a thorough discussion on expectations for analysis among all those involved early and often in the process. Development of the biennial specifications and management measures involves many connected decisions and analyses. A delay in some can cascade into others, which puts pressure on the Council to make certain decisions earlier in the process. At the same time, there may be ways to structure alternatives to help the Council maintain as much flexibility in the schedule as possible. The many connected decisions also raise the potential permutations, too many of which makes the analysis unmanageable and our job more difficult.
- **Interdisciplinary team (IDT)**—The GMT supports increased communication and additional expertise that are at the center of this recommendation of the PIC. We see April 15-August 25 timeframe and October 3-7 GMT meeting as two critical places for such an approach because the critical decisions on the structure of the analysis that we emphasize above are made at these times.
- **The change in the DEIS schedule and data availability**—Again, one of the more substantial changes in the PIC suggested schedule would involve an earlier submission of the preliminary DEIS for internal review by NMFS. For the GMT, this means that that much of our bycatch impact modeling and analysis would need to be produced in early to mid-December. One consequence of the revised process would be that Oregon and California’s recreational impact models could not incorporate data from the 2011 fishery, since data for the full year is required and this data would not be available until after February 2012. The proposed PIC schedule would not change Washington’s ability to incorporate data from the majority of the 2011 fishery into the analysis. The situation is similarly mixed for the analyses focused on commercial fisheries. The nearshore fishery could also not incorporate data from the 2011 fishery since data may not be available until March or April of 2012. Analyses that require an evaluation of total commercial catch have been on a lag because of the need to estimate discards. If the lag remains similar, we might not even have the data for 2010 to inform our projection models by this deadline. We have not brought the matter up with the NWFSC, yet might be able to look into it more for June.
- **The following issues and analysis would potentially involve GMT workload over the summer, in preparation for the September Council Meeting:**
 - > *Potential Scientific and Statistical Committee (SSC) review of impact and projection models:* The SSC recommends a review of the recreational models and anticipated trawl model by a sub-committee of the SSC just prior to the September Council meeting. That will require the models and documentation to be completed by mid- to late-August.

- > *Update of the depth dependant mortality:* We implemented new estimates of depth dependant mortality rates for the 2009-2010 process. These estimates of depth dependent mortality provided mortality rates for each 10 fm depth interval to be applied to the impacts in the recreational fishery and the rod and reel component of the commercial nearshore fishery using catch estimates and the proportion of catch by depth. The method currently uses the Oregon Recreational Boat Survey and California Recreational Fishery Survey onboard observer data from 2004-2007. We envisioned refreshing that information every biennial cycle, but did not do so for 2011-12 because of competing workload. An update would include incorporation of additional data from 2008-2010, improving estimates of depth dependent mortality rates especially for uncommon species under represented in the existing data analysis. The front loaded schedule for 2013-14 means that the update will have to occur over the summer, in time for implementation in modeling the range of season lengths and depth restrictions to be provided at the September 2011 Council meeting. The ability for the GMT to produce depth dependent mortality rates by August, for use in the recreational and commercial nearshore projection models, will be contingent on other staff workload and may have to be forgone if other priorities prohibit adequate time dedications. In the event that mortality rates cannot be updated, the existing rates can be utilized until the 2015-2016 regulatory specification development process.
- > *Evaluating the short-term vs. long-term conservation performance of the Council's rebuilding plans and economic framework:* Last June we commented on the long-term conservation performance of the Council's rebuilding plans but did not have opportunity to engage with the SSC on the methods or assumptions we used to make those comments. We also offered suggestions for gauging changes in estimates of stock status and biology that occur every stock assessment cycle. **We recommend that GMT present these to the SSC in this cycle for discussion.** This discussion might not have to occur over the summer, and instead might be able to occur on the timeline on which the SSC and Council evaluate rebuilding analyses, prepared for Council consideration in November 2011. We see important questions and assumptions on which the Council would benefit from SSC input. Some of these questions and assumptions underpin the analysis framework used by the Council in the setting of rebuilding plans.
- > *Considerations for setting P-star:* We understand that the SSC's report on this agenda item considers advising the Council on how to evaluate the choice of a P-star. The GMT expects to be involved with this discussion in some form given that the evaluation ultimately raises questions of policy.
- > *The "in the fishery" stock complex evaluation:* discussed immediately below.

2. Determining whether to task the GMT and SSC Groundfish Subcommittee with conducting the analysis necessary to restructure the existing stock complexes, including whether to bring new fish into the groundfish Fishery Management Plan (FMP).

The GMT reviewed the PIC proposed timeline and Amendment 23 and developed a diagram (Attachment 2) of steps required to align the stocks within the FMP and the configuration of the complexes with National Standard 1 and develop management measures for the coming biennial cycle.

- **Determining “in the fishery”**—The GMT will have to determine whether a species is vulnerable to the groundfish fishery, and if so, whether or not it is subject to other regulatory authorities. For example, there are species caught in the same market categories as fish in the Other Fish complex, such as giant grenadier, which is not currently in the FMP. We note that all *Sebastes* species that occur off the west coast are currently included in the groundfish FMP, but there appear to be rockfish species listed that should not be included.
- **Need to align/evaluate the complexes with the National Standard 1 guidelines as reflected in Amendment 23**—The species in a complex need to have similar vulnerability and geographic distribution, or we should identify “indicator stocks” for existing complexes. Complexes can either be restructured without adding species to the FMP or after adding species identified as “in the fishery”, but not currently included in the FMP; however, we note that if species that are vulnerable to the fishery are not included prior to reconfiguring a complex then that work may need to be repeated in a subsequent cycle. For species for which sufficient information is not available to determine an OFL, they can be included in the appropriate complex and a place holder zero value can be included to reflect its membership in the complex based on its similar productivity and susceptibility. Barring full alignment of the complexes with National Standard 1 this cycle, it is our understanding that we will likely need to articulate a path forward.
- **Next steps for June**—The GMT had some discussion relative to the workload associated with restructuring complexes. Although the GMT did not reach consensus on whether analyzing other complexes would be an additional workload, this is something that could be further investigated for June. If the Council would like the GMT to provide some guidance on prioritizing stock complexes for restructuring, the GMT has previously identified the Other Fish complex as one that will likely have to be revisited during 2013-14 due to the upcoming spiny dogfish assessment, their level of vulnerability, and the lack of justification for harvest specifications. However, the GMT also discussed the idea that if an analysis of the Other Fish complex was undertaken, additional analysis of the other complexes may not be a lot of additional work.

3. Modifying the Exempted Fishing Permit (EFP) Approval Process – Potential Modifications to Council Operating Procedure (COP) 19

The GMT supports the PIC's recommendation of considering making EFP approval a biennial process.

The GMT sees several benefits to aligning the EFP approval process with the biennial spex process. Integration with the Council's decision on establishing set asides, would allow the Council to establish the set aside for EFPs knowing the full set of applications, and their requests. With the adoption of Amendment 21, there is less flexibility to adjust set asides during the cycle, and we see this alignment potentially helping with this aspect. This alignment might also free up Council agenda time in mid-cycle, which the Council and advisory bodies might use to consider additional management measures. However, we would still recommend a mid-cycle evaluation of EFP performance by the Council in November of the odd year in order to determine whether sufficient set-aside is available for the following year. A biennial process may also increase the likelihood of timely permitting (meaning the permits may get issued by January 1 instead of later in the year). Additionally a 2-year EFP might be able to provide more data than a one year EFP. These are questions that can be considered more thoroughly if the Council decides to pursue the recommendation.

At the same time, the GMT does have some concerns with taking on EFPs during development of the biennial harvest specifications and management measures. Consideration of EFP applications will add to the GMT's workload, as well as the NMFS NWR's during an already busy and complicated time in the process with EFPs potentially competing with other Council and NMFS NWR priorities. We also note that the biennial EFP cycle reduces flexibility to submit new proposals mid-cycle, and thereby may delay research and implementation of new management measures that are evaluated with EFPs.

If the Council were to consider changing COP 19 we would suggest looking at one or two additional schedule options in addition to the PIC's suggested option (e.g., taking advantage of the relatively light March 2012 schedule instead of April 2012, or even having EFP applications submitted in November). We would recommend beginning discussion of COP 19 in June 2011 to have the necessary modifications done in time for the frontloaded 2013-14 schedule.

4. Considering the need for a long-term solutions to the setting of harvest specifications and management measures

The GMT is in favor of a closer look at long term changes to the process for setting harvest specifications and management measures, including those that may require an FMP amendment.

The GMT again appreciates the thought put into this matter by the PIC and recognizes that long-term solutions are being sought for 2015-16 and beyond because there is not enough time to make substantial changes for 2013-14. Because of this constraint, the primary focus of the PIC was to develop a schedule and process to ensure that the 2013-2014 regulations are finalized and implemented on January 1, 2013.

As we highlighted above, the recommended frontloaded schedule may limit what the Council is able to consider in the 2013-14 process more so than in past cycles. In the past, the Council has been advised that priority should be given to management measures that have immediate conservation impacts (e.g., measures to prevent overfishing). To the extent that the Council holds to this advice, less attention is given to proposals that are designed to gain or improve access to underutilized species or new fishing areas and to other proposals meant to further the multiple goals and objectives of the groundfish FMP. If a longer term fix is necessary to do so, the process should be developed to allow the Council opportunity to adaptively manage the groundfish fisheries with the full suite of goals and objectives in mind.

We note that the biennial schedule depends in large part on internal review and rulemaking requirements at NOAA, requirements that are outside of the Council's control. The deadlines that these requirements set do create potential trade-offs to both the quality and quantity of analyses that inform Council decision-making. The ideal schedule from the GMT's perspective would actually involve more time for analysis, later in the process, than is proposed by the PIC for 2013-14. The main reason for this is that it would allow for analysis based on more timely data in many cases, and hence to better adaptive management between cycles. These types of tradeoffs can be looked at closely in the evaluation of long-term options for modifying the biennial process or switching to something other than a biennial process.

As part of this, we would recommend further exploration of a programmatic FMP framework designed around the adaptive management principles employed in the groundfish FMP. The goal of this framework would be to best focus analysis and other administrative resources on those factors that change substantially from cycle to cycle.

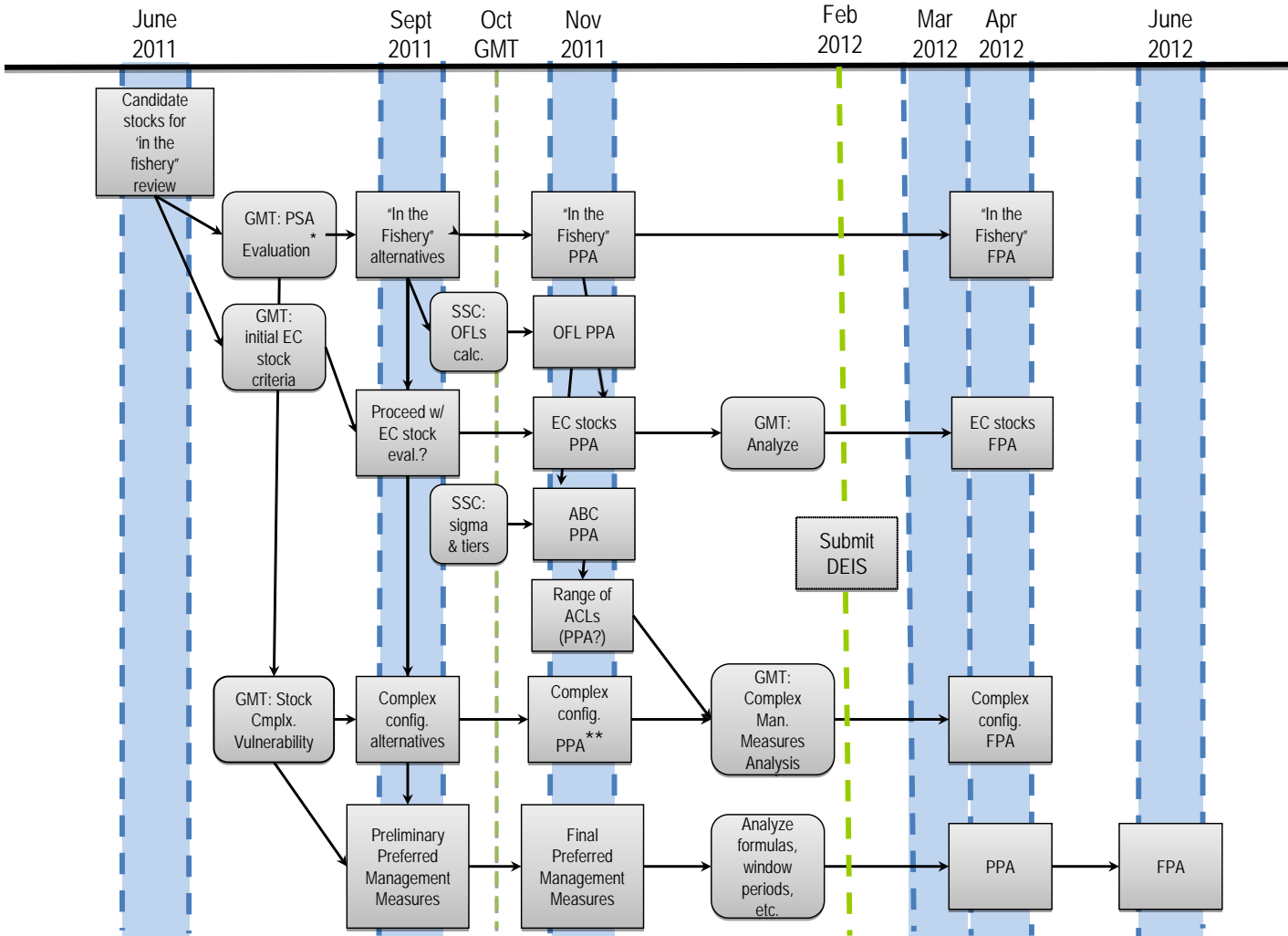
Past performance also speaks to the need to consider fundamental changes to the biennial process. Regulations have been in place on January 1 start only for 2005-06 and 2007-08, and only because an administrative 30-day cooling off period was waived.

Lastly, if longer-term changes are to be considered then the Council has to consider the how, when, and who of doing so. This process would too have to be planned for and prioritized against other Council priorities so as to fit in between the implementation of the 2013-14 harvest specifications and management measures and development of those for 2015-16.

Attachment 1. Draft GMT combined calendar of PIC proposed deadlines and tasks; including Harvest Specifications and Management Measures deadlines, and Council, GMT and SSC tasks.

Month	Harvest Specifications Decision Point Deadlines	Management Measures Decision Point Deadlines	Council Decision Making	GMT Workload/Tasks			SSC Tasks		Month
Jan				-identify simple MM -provide guidance on the SPEX timeline(s) -update models					Jan
Feb							-hake STAR		Feb
Mar							-hake ABC and OY		Mar
Apr							-hake final management		Apr
May				-determine analysis needed for Council decision and NEPA -participate in the STAR process -analysis of stock complexes			-data poor workshop		May
Jun			-adopt final process and schedule for 13-14 spex -adopt stock assessment updates				-adopt data poor methods -review/adopt updates -first look at restructured complexes	STAR panels	Jun
Jul									Jul
Aug									Aug
Sep	-methodology review of P* and σ		-methodology review of P* and σ -adopt PPA on restructured complexes -adopt stock assessments -adopt range of ABC alts including PPA	-review range of MM -provide updated impact models			-mop-up and rebuilding panel -adopt assessments and rebuilding analysis -OFLs determined (except for mop-up species)		Sep
	-target species ACL	-review range of MM	-target species OFL	-prioritize MM			-final standard σ and exceptions		
	-range of OFS ACL	-prioritize MM	-range of OFS OFL	-statement(s) prepared for Council			-considerations for P*		
	-EFP		-review range of MM -prioritize MM				-impact models done -adopt complex structure		
Oct				-develop range of ACL alternatives					Oct
Nov	-Target Species ACL PPA	-simple analysis provided	-FPA for ABC levels -adopt rebuilding analysis and mop-up assessments -Range of OFS ACL and identify PPA	-simple MM analysis provided (qualitative)					Nov
	-Range of OFS ACL and identify PPA		-PPA for non OFS ACLs -FPA restructured complexes -Allocation alternatives	-develop allocation alternatives			-ABCs and any final OFLs		
	-Allocation alternatives	-identify MM to move forward	-P* FPA -identify MM to move forward	-introductory (qualitative) analysis of MM provided	-conduct main analysis for harvest specifications and management measures				
Dec									Dec
Jan									Jan
Feb	-GAC meeting		-GAC meeting						Feb
Mar	-informational presentation		-informational presentation	-informational briefing for Council -statement(s) needed					Mar
Apr	-target species ACL FPA	-main analysis completed	-target species ACL FPA -OFS ACL FPA -Allocation PPA -main analysis completed -MM PPA	-main analysis completed and provided to Council					Apr
	-OFS ACL FPA	-only "simple" MM introduced for analysis	-only "simple" MM introduced for analysis	-Intensive Council Meeting	-continue analysis of harvest specifications and management measures				
May	-Allocation PPA	-initial approval of EFPs	-initial approval of EFPs	-statement(s) prepared for Council					May
Jun	-Re-affirm FPA for target species	-MM FPA	-Re-affirm FPA for target species	-MM FPA					Jun
	-Re-affirm FPA for OFS	-EFP FPA	-Re-affirm FPA for OFS -allocation FPA -MM FPA -EFP FPA	-Intensive Council Meeting -statement(s) prepared for Council					
Jul	-allocation FPA				-complete EIS				Jul
Aug									Aug
Sep									Sep
Oct									Oct
Nov									Nov
Dec									Dec

Attachment 2. Draft diagram of steps likely required to align the stocks within the FMP and the configuration of the complexes with National Standard 1 and develop management measures for the coming biennial cycle.



*PSA evaluation would require reviewing current PSA analysis so that it aligns with management area breaks and is accurate. New PSA would have to be done for any species being brought into the fishery.

**This is a break from the PIC recommended timeline. It adds a step (consideration of complex configuration alternatives in September) and pushes the OFL and ABC (and maybe ACL) PPA decision a meeting later in November, but this would still allow for completion of the rest of the schedule.



UNITED STATES DEPARTMENT OF COMMERCE
National Oceanic and Atmospheric Administration
NATIONAL MARINE FISHERIES SERVICE
Sustainable Fisheries Division F/NWR2
7600 Sand Point Way N.E., Bldg. 1
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April 1, 2011

Mr. Mark Cedergreen, Chair
Pacific Fishery Management Council
7700 NE Ambassador Place
Portland, OR 97220

Dear Mr. Cedergreen:

The National Marine Fisheries Services (NMFS) appreciates the opportunity to be a member of the Groundfish Process Improvement Committee (PIC). NMFS believes many of the PIC's recommendations will help to improve the Groundfish Harvest Specifications and Management Measures process while increasing the likelihood of issuance of a final rule in time for a January 1 start date of the groundfish fishery. NMFS believes some portions of the proposed schedule for the 2013-2014 Groundfish Harvest Specifications and Management Measures (Agenda Item I.2b) will help to ensure a January 1 start date.

NMFS has identified several key issues to address in this letter, and we will also provide additional comments during the Council discussion. Our first comment is to highlight the importance of collaboration between council staff and agency staff during the early stages of the specification process. Without sufficient collaboration and resolution of issues at the early stages, there will inevitably be delays at the later stages in the process during the agency deliberations on the action. The agency is encouraged that the process indicates the importance of frontloading and collaboration in order to generate improved documents, and we are committed to working collaboratively with council staff.

In addition, and somewhat related, as NMFS has stated during a number of the PIC meetings, we remain concerned with the timeline for the Environmental Impact Statement (EIS). The proposed timeline allows for just 32 days to prepare the FEIS and file the FEIS with the Environmental Protection Agency (EPA) to publish the Notice of Availability of the FEIS. During this 32 day period a number of tasks must be completed including: addressing public comments received on the DEIS; revising the FEIS; and review and clearance of the FEIS by the NMFS Northwest Region, NOAA General Counsel Northwest, and the NOAA NEPA Coordinator. The proposed timeline of 32 days is not a realistic timeframe to complete these tasks. Even with frontloading and early involvement by NMFS this schedule is not feasible.

A similar timeline was proposed for the last two harvest specifications cycles and we were unable to meet those timelines. The schedule for the 2009-2010 Groundfish Harvest Specifications and Management Measures EIS had 24 days allocated to prepare the FEIS. During implementation of this schedule it took 95 days to prepare the FEIS. The schedule for



2011-2012 Groundfish Harvest Specifications and Management Measures EIS had 31 days allocated to prepare the FEIS. In actuality it took 144 days to prepare the FEIS.

NMFS believes that with sufficient frontloading during the preparation of the FEIS, 60 days between the end of the public comment period on the DEIS and the submittal of the FEIS to EPA is a more realistic timeframe. To accomplish this, the Notice of Availability of the DEIS would need to be published on May 18, 2012 rather than June 15, 2012, as currently proposed. This will allow 60 days from July 3, 2012-August 31, 2012 to prepare the FEIS for submittal to EPA. The Notice of Availability for the FEIS would publish on September 7, 2012.

Sincerely,



Frank Lockhart
Assistant Regional Administrator

Cc: Barry Thom (NWR), Mariam McCall (GCNW)



NWFSC Proposal for Inclusion of “Enhanced” Data-Limited Assessments in the PFMCI Biennial Specification Process for 2013-2014

April 2011

**NOAA
FISHERIES
SERVICE**



PURPOSE / RATIONAL

- **Increase the number of species with ACLs based on NMFS-approved assessments, including those with an index of abundance**
- **The STAR process provides outstanding, in-depth review of full assessments; but is limited by cost, time and through-put, and insufficient data for many species**
- **A review of methods assessing data-limited stocks will be conducted in April (25-29):**
 - “enhanced” methods – includes at least one index of abundance
 - Panel-endorsed methods will allow thorough evaluation of issues for assessments that may improve results for 2 species



PROPOSED TIMELINE THROUGH JUNE

- **April meeting:**
 - SSC and Council review issues
 - If sufficient merit, final vote scheduled for June meeting
- **Review Panel endorses at least one enhanced method**
- **June meeting (based on the review):**
 - SSC crafts TOR for contents, followed by expedited review of two species by September PFMC meeting
 - SSC determines if/how/when this would fit into workload
 - NMFS and SSC agree on species, methods, dates
 - Council adopts initial TOR and schedules incorporation by the September meeting



TIMELINE AFTER JUNE

- **NMFS conducts assessments over summer, using the TOR adopted in June**
- **Groundfish SSC sub-committee conducts review**
 - Between mid-August and scheduled STAR review but prior to September Council meeting
- **SSC provides Council with recommendations in September**
 - Determine if “enhanced” data limited results can be used for management
 - If yes, SSC provides OFL amount (or contribution) and other information needed by the Council to establish ABCs

SCIENTIFIC AND STATISTICAL COMMITTEE REPORT ON PROPOSED PROCESS AND SCHEDULE FOR COMPLETING THE 2013-2014 GROUNDFISH BIENNIAL FISHERY SPECIFICATIONS AND MANAGEMENT MEASURES

The Scientific and Statistical Committee (SSC) discussed the schedule and process for the 2013-2014 groundfish biennial specifications and management measures, as proposed by the Process Improvement Committee (PIC) (Agenda Items I.2.b.). The PIC developed a timetable for tasks that should be accomplished to achieve implementation of 2013-2014 harvest specifications and management measures on January 1, 2013.

Mr. John Devore, Ms. Kelly Ames and Dr. Kit Dahl were present to discuss SSC science tasks related to the harvest specification process and their deadlines. In September 2011, the SSC will need to determine overfishing limits (OFLs) and scientific uncertainty (σ) associated with those OFLs, provide consideration for the probability of overfishing (P^*) decision, as well as adopt assessments (except for mop-up assessments) and economic impact assessment models. In November 2011, the SSC will need to adopt mop-up assessment and rebuilding analyses.

Harvest Specification and Stock Assessment Considerations

For the 2013-2014 management cycle, the SSC recommends using the current value of σ derived from meta-analysis of groundfish and CPS species. This value will be updated for the 2015-2016 cycle. The SSC encourages further exploration of methods for estimating scientific uncertainty associated with OFLs, which could be done for individual stocks during the current assessment cycle, as well as more comprehensive analysis during off years.

The SSC discussed what information could be provided to the Council to assist with P^* decision-making. The choice of P^* could reflect both the vulnerability of the species and socioeconomic factors associated with the fishery. The choice of P^* results in different types and levels of impacts over time, and the SSC is willing to provide to the Council qualitative examples of the trade-offs associated with different values of P^* .

The SSC also discussed the need to re-structure groundfish stock complexes. The GMT identified a specific concern with the “Other species” and “Other rockfish” complexes as they include both high and low vulnerability species. The SSC agrees with the GMT that these complexes should be re-examined based on productivity-susceptibility analysis as well as information on species co-occurrence. The SSC will review any analyses that restructure stock complexes during September 2011.

Finally, the SSC discussed the Northwest Fisheries Science Center (NWFSC) proposal to conduct several “enhanced” data-poor assessments this summer. The review of assessment methods for data-poor stocks will be held on April 25-29, 2011, and the report from this review will be considered by the SSC at the June Council meeting. The viability of the NWFSC proposal depends on an “enhanced” data-poor method being endorsed by the review panel and the SSC. The SSC discussed two approaches to select species for “trial” data-poor assessments. One approach is to select stocks that have not been previously assessed, while the other is to select stocks for which full assessments already exist. The SSC will provide further evaluation of

both approaches at the June Council meeting. The SSC would be prepared to review these “enhanced” data-poor assessments, potentially at a meeting of the Groundfish Subcommittee of the SSC prior to the September Council meeting, and would provide terms of reference for their review at the June Council meeting.

Socioeconomic Considerations

The SSC proposes a review of data and methodologies that will be used to evaluate socioeconomic effects of management alternatives in the 2013-14 groundfish harvest specification process. There are a large number of analyses, data and inputs that could potentially be reviewed by the SSC this year. The SSC has attempted to compile a comprehensive list of these analyses and information, provided below. Given time and resource constraints, the SSC has made a recommendation for each, regarding whether a review by the SSC should be completed this year.

- Commercial and recreational fishery harvest projections developed by the Groundfish Management Team (GMT) and Council staff are important inputs into the Council process and almost all of the socioeconomic analyses. These models are:
 - California Recreational Model
 - Oregon Recreational Model
 - Washington Recreational Model
 - Non-nearshore Fixed Gear Model
 - Limited Entry Fixed Gear Sablefish Daily Trip Limit Model north of 36 N. latitude Open Access DTL Sablefish north and south of 36 N. latitude Limited Entry Fixed Gear Sablefish Daily Trip Limit Model South of 36 N. Latitude Commercial Nearshore Fixed Gear Model
 - Commercial harvest projections to port regions
 - Trawl rationalization model (will be developed this year by the GMT).

Recommendation: The SSC would review the three recreational harvest and effort projection models (California, Oregon and Washington), the commercial geographic harvest allocation model, and the new trawl rationalization model. These models have not been previously reviewed by the SSC. The review would require the availability of documentation that fully specifies the methodologies and the data used for both projection and allocation. The Economics Subcommittee would also expect to see the results of model validation runs (such as applications to past years) as well as measures of uncertainty in the predictions.

- GMT harvest and effort projections are used by the NWFSC to project recreational angler expenditures and commercial harvesting cost, revenue and operating profit. The recreational angler expenditures and harvesting costs are also key inputs into IO-PAC. Recommendation: The SSC recommends that it is not necessary to review this data update for the 2013-2014 harvest specifications, given that the data collection was reviewed previously.
- IO-PAC – a model developed by the NWFSC using the software package IMPLAN – was reviewed by reviewers from the Center for Independent Experts (CIE) and the SSC in 2009. The model was used in the 2011-12 groundfish harvest specification process to

estimate regional economic impacts (i.e., impacts on fishery region-level employment and income) of management alternatives that affect commercial harvesting and processing sectors. The data for the commercial impacts is expected to be updated in two ways. First, the vessel cost of operations data will rely on the NWFSC's most recent 2008 data, rather than the 2004 data used previously. Second, the base IMPLAN data will also be updated from 2004 to 2008. IO-PAC capability is also currently being expanded to include regional economic impacts as they relate to the charter vessel and recreational angler sectors. The ability to estimate charter vessel impacts is due to the availability of new charter vessel survey data and creation of a charter sector module within IO-PAC that closely follows the general methodology of the existing module for the commercial harvesting sector (as reviewed by the CIE and SSC in 2009). The ability to estimate recreational angler impacts is due to the availability of new angler expenditure data and does not require any changes to IO-PAC, as the IMPLAN software that forms the basis of IO-PAC already allows for the estimation of recreational impacts. Recommendation: Because the expanded capabilities of IO-PAC reflect the availability of new data rather than fundamental changes to the model, review of IO-PAC is best characterized as an update. The SSC recommends that it is not necessary to review the IO-PAC model for the 2013-2014 harvest specification process, given that is an update and it was reviewed in 2009.

- In addition to considering regional economic impacts on fishing communities (as derived from IO-PAC), the 2011-2012 harvest specification EIS also includes a description of fishing communities in terms of community vulnerability – measured in terms of community engagement in fishing, dependence on groundfish fisheries, and socioeconomic resilience.

Recommendation: The lack of guidance or even common understanding of concepts such as community vulnerability and resilience, how to measure them, and how to predict the effects of management alternatives on communities would make it difficult for the Economics Subcommittee to consider community effects according to any commonly accepted standard. Nevertheless, the SSC would like to include community effects in the review, with a primary focus being the extent to which the community indicators used can be directly related to Council actions.

All model reviews would be conducted by members of the Economics and Groundfish Subcommittees at a two-day meeting immediately preceding the September 2011 SSC meeting. The timing of the review is intended to be congruent with the expected timing of SSC recommendations regarding assessment models and rebuilding analyses for the 2013-14 harvest specifications. Complete documentation of data and methods that would be reviewed would need to be received at least two weeks in advance of the meeting. Terms of reference for the review would be provided by the SSC at the June Council meeting.

The SSC also recognizes the need for further guidance on socioeconomic analysis beyond the 2013-2014 groundfish harvest specifications. The need is particularly great for evaluation of community effects. To this end, the Economics Subcommittee would like to prepare a white paper that provides such guidance for socioeconomic analysis for all Fishery Management Plans (FMPs). Topics that would be addressed in the white paper include:

- Community impact assessment: The Economics Subcommittee will work with Council staff to get a clearer idea of the ways in which community analysis are or could be useful to the Council. The white paper would include a review of the literature on community effects and how such effects (e.g., resilience, vulnerability) are commonly characterized, provide examples of how community effects have been evaluated by various Regional Fishery Management Councils, consider the feasibility of devising measurable and replicable methods for predicting community effects associated with Council actions, and identify types of data needed to apply such methods.
- Regional economic impacts: The Council relies on IO-PAC to assess regional economic impacts for the commercial groundfish fishery. IO-PAC capabilities are currently being expanded to include charter and recreational groundfish fisheries and will eventually be expanded to cover all fisheries associated with the Council's four FMPs. Among other things, the white paper would provide guidance regarding what constitutes an update versus a major change to IO-PAC and the level of review needed for each.
- Net economic value: Net economic value is measured as the difference between economic benefits and costs. The white paper would specify procedures for reviewing the specialized models and data used to assess benefits and costs of management alternatives – as well as guidance regarding what constitutes an update versus a major change to such models and data.

In preparing the community impact section of the white paper, the Economics Subcommittee may find it helpful to consult intermittently with experts in areas such as economic geography, sociology, and port management. Work on the white paper would begin in September 2011 (after the socioeconomic review for the groundfish harvest specifications) and be completed by March 2012.

PFMC
04/10/11

PERIODIC GROUND FISH ESSENTIAL FISH HABITAT REVIEW PROCESS

Essential fish habitat (EFH) for Pacific Coast groundfish was established in 2006 as part of Amendment 19 to the Pacific Coast Groundfish Fishery Management Plan. In September 2010, the Council directed the ad hoc Groundfish EFH Review Committee (EFHRC) to develop recommendations for a review of groundfish EFH in accordance with the Magnuson-Stevens Act and National Marine Fisheries Service (NMFS) regulatory guidance.

The EFHRC met in December 2010 and again in February 2011 to consider the five-year periodic review of groundfish EFH. Council staff developed a revised Council Operating Procedure (COP) 22 to help guide the review process (Agenda Item I.3.a, Attachment 1). A strikethrough version of that document (Agenda Item I.3.a, Attachment 2) is included as well. Members of the EFHRC developed and issued a call for data and information (Agenda Item I.3.a, Attachment 3) which was issued in March 2011 via direct emails and web postings on several websites, including the Council's. The full EFHRC reviewed both documents.

The EFHRC also discussed substantive and procedural issues relative to the review process, including a new call for information, and the following:

Schedule. The EFHRC expressed concern about being efficient, but not rushing the review process and possibly missing opportunities to avail itself of important information. The EFHRC agreed with the schedule proposed in amended COP 22 (Attachment 1), which would allow sufficient time to develop and review data during the first year (phase I), and then solicit, review, and refine proposals to amend EFH in the second year (phase II).

Grant award and contractor. The NMFS Northwest Region, with the assistance of members of the EFHRC, submitted a proposal to NMFS Headquarters Office and was successful in obtaining a \$100,000 grant to assist with the EFH review. The EFHRC agreed that an excellent use of the award would be to hire one or two contractors. However, because there is no Federal budget yet for this year, it is not clear when, or if, the money would become available.

Development and review of proposals to modify existing EFH. The EFHRC expressed a desire to have the latitude to generate proposals to modify groundfish EFH, especially in cases where an obvious potential modification is not proposed by any outside entities. Depending on the scope of issues to be addressed, the EFHRC could serve strictly as a review body, or as a workgroup to develop information and proposals. Attachment 1 proposes that the EFHRC would be authorized to develop its own proposals, if warranted.

Council Action:

- 1. Consider and adopt changes in COP 22 to guide the periodic EFH review, including the proposed two-phase process.**
- 2. Consider issuing call for data and information.**

Reference Materials:

1. Agenda Item I.3.a, Attachment 1: Draft Proposed Changes to COP 22 – Process for Groundfish Essential Fish Habitat Review and Modification.
2. Agenda Item I.3.a, Attachment 2: Strike-through version of Draft Proposed Changes to COP 22.
3. Agenda Item I.3.a, Attachment 3: Call for data and information.

Agenda Order:

- a. Agenda Item Overview Kerry Griffin
- b. Reports and Comments of Advisory Bodies and Management Entities
- c. Public Comment
- d. **Council Action:** Review and Approve the Proposed Process Changes to Council Operating Procedure 22

PFMC

03/29/11

Draft Proposed Changes

COUNCIL OPERATING PROCEDURE

Process for Groundfish Essential Fish Habitat Review and Modification

22

Approved by Council: 6/13/07

Revised: 9/11/08

Revised: April 2011

PURPOSE

To guide the Council's review and modification of groundfish essential fish habitat (EFH), especially the implementation of those portions of Amendment 19 to the Groundfish Fishery Management Plan (FMP) which identify requirements to:

1. Modify existing or designate new areas closed to bottom trawling for the protection of EFH (FMP Sections 6.2.4 and 6.8.5).
2. Modify existing or designate new Groundfish EFH and habitat areas of particular concern (HAPC) (FMP Sections 7.3.2 and 6.2.4).
3. Conduct an overall review of the EFH description, HAPC designations, and information on fishing and non-fishing impacts included in the FMP which is to be initiated within no more than five years since approval of the previous review (Section 7.6).

OBJECTIVES

To assist in keeping the Council's identified EFH and HAPC responsive to and updated by changing knowledge of marine habitat and fishery and non-fishery activities that affect it by:

1. Establishing the membership and operating guidelines for an EFH Review Committee (EFHRC) charged with reviewing and making recommendations to the Council for proposed changes to EFH and HAPC.
2. Establishing a process for efficiently reviewing proposed changes to Groundfish EFH and HAPC, including an overall review at intervals of no more than five years.

GROUND FISH ESSENTIAL FISH HABITAT REVIEW COMMITTEE

Duties

When requested by the Council Chair or Executive Director, the Groundfish EFHRC shall review proposals or information with regard to modifying groundfish EFH and specifically:

1. Review groundfish EFH designations and areas currently closed to bottom contact fishing gear to protect groundfish habitat and recommend to the Council the elimination of existing

areas, addition of new areas, or modification of existing areas. In making its recommendations, the EFHRC should, as a minimum, consider the best scientific information regarding the items listed in Section 6.2.4 of the Groundfish FMP. The EFHRC may also include recommendations for modifying HAPCs consistent with the proposed modification of the location and extent of areas closed to bottom trawling or other benthic contact fishing gear. These proposed changes to EFH designations, HAPCs, adverse effects, or other EFH-related may be based on proposals solicited from interested parties, and/or developed by the EFHRC.

2. Review proposals for modifying or designating new HAPC.
3. Assist the Council and provide oversight of the five year review of the EFH descriptions, HAPC designations, information on fishing and non-fishing impacts, and other EFH-related information included in the FMP.

Composition

The Groundfish EFHRC is established as a Council advisory body under section 302(g)(3) of the M-S Act and will follow the ad hoc committee administrative procedures of COP 8 (members appointed by the Council Chair with advice from Council members and advisors, etc.).

The specific members of the EFHRC may vary, depending on the review assignment and geographic area of the proposed changes. The committee will include a representative from the Enforcement Consultants and may include appropriate representatives from the Groundfish Advisory Subpanel, Groundfish Management Team, Scientific and Statistical Committee, Habitat Committee, and other individuals with familiarity and expertise in the fisheries and marine habitats of the areas proposed for changes (e.g., commercial bottom trawl representatives, NMFS scientists, professionals involved in marine habitat research and mapping, etc.). The original Groundfish Habitat Technical Review Committee that was a key review group for identifying the initial EFH and HAPC was composed of two NMFS scientists (NW and SW Science Centers) familiar with Pacific marine habitats, two bottom trawl representatives knowledgeable about fisheries and trawling practices on the West Coast, two scientists representing conservation entities, and two University professors intimately involved and expert in mapping of marine habitats off the Pacific Coast.

In selecting members to review a particular proposal(s), the Council Chair will also consider the need for some consistency in membership. If the appointed EFHRC lacks expertise to adequately review a proposal or proposals, the EFHRC may request additional assistance through the Council Chair.

Member Terms, Alternates, and Officers

As described in COP 8, *Ad Hoc Committees*.

Meetings

As described in COP 8, *Ad Hoc Committees*.

Staff Responsibilities

As described in COP 8, *Ad Hoc Committees*.

EFH REVIEW PROCEDURES

The EFH designated for groundfish covers an extensive area identified through inclusive, intensive, and collaborative assessment processes that required FMP amendment and incorporation in the groundfish fishery regulations. Any significant changes to EFH require a deliberative process and NEPA review; therefore, the Council will generally follow a cycle of five years between each complete review. Changes to EFH in the interim periods between the full reviews will only be contemplated in unusual cases in which significant harm might result by inaction. If significant new information or EFH issues emerge prior to a planned five year review, the Council may contemplate advancing the beginning of the next full review to something less than a five year period. The Council may request the EFHRC review interim proposals to provide its recommendations on how imperative it may be to act on the new information.

Periodic Five Year Review Process

The periodic five year review of the Council's EFH and HAPC designations is a major task that requires special expertise and planning. The review process, based on the initial five year review, is expected, to the extent practicable, to proceed as follows in the table below. The actual timing of some actions may vary, depending on Council workload, level of new information being reviewed, and complexity of the modifications being considered. The table in this COP will be modified for each five-year review to reflect the realities of the process and the updated Council workload.

Timing/Due Date	Action
April 2011	Council approves the process, and solicits for information and data (deadline: July 1, 2011)
Summer 2011	NMFS Science Center (or contractor) compiles and synthesizes data and information, initiates review. EFHRC starts reviewing interim products
Dec 31, 2011	NMFS Science Center (or contractor) product due
Jan-March 2012	EFHRC drafts report summarizing new data and information; including how it compares with existing information, maps, etc.
April 2012	Council adopts interim report and issues RFP for any changes to existing GF EFH, HAPCs, etc. (END PHASE I)

Sept 2012	EFHRC drafts final report, including recommendations for potential changes to EFH
November 2012	Final Action by Council (END PHASE II)
Post November 2012	If Council final action warrants additional activity, that would initiate Phase 3. Additional work could be in the form of an FMP amendment or other non-FMP product such as a chapter in the SAFE document. At that point, the EFHRC would be adjourned, because the review will have been completed. Any further work would require delegation to or establishment of an appropriate workgroup (e.g., GMT, amendment committee, etc.)

Agenda Item I.3.a
Attachment 1
April 2011

Draft Proposed Changes

COUNCIL OPERATING PROCEDURE

Process for Groundfish Essential Fish Habitat Review and Modification

22

Approved by Council: 6/13/07

Revised: 9/11/08

Revised: April 2011

PURPOSE

To guide the Council's review and modification of groundfish essential fish habitat (EFH), especially the implementation of those portions of Amendment 19 to the Groundfish Fishery Management Plan (FMP) which identify requirements to:

1. Modify existing or designate new areas closed to bottom trawling for the protection of EFH (FMP Sections 6.2.4 and 6.8.5).
2. Modify existing or designate new Groundfish EFH and habitat areas of particular concern (HAPC) (FMP Sections 7.3.2 and 6.2.4).
3. Conduct an overall review of the EFH description, HAPC designations, and information on fishing and non-fishing impacts included in the FMP which is to be ~~accomplished at least once every~~ initiated within no more than five years since approval of the previous review (Section 7.6).

OBJECTIVES

To assist in keeping the Council's identified EFH and HAPC responsive to and updated by changing knowledge of marine habitat and fishery and non-fishery activities that affect it by:

1. Establishing the membership and operating guidelines for an EFH Review Committee (EFHRC) charged with reviewing and making recommendations to the Council for proposed changes to EFH and HAPC.
2. Establishing a process for efficiently reviewing proposed changes to Groundfish EFH and HAPC, including an overall review at ~~least once every~~ intervals of no more than five years.

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GROUND FISH ESSENTIAL FISH HABITAT REVIEW COMMITTEE

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Duties

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When requested by the Council Chair or Executive Director, the Groundfish EFHRC shall review proposals or information with regard to modifying groundfish EFH and specifically:

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1. Review groundfish EFH designations and areas currently closed to bottom contact fishing gear to protect groundfish habitat and recommend to the Council the elimination of existing areas, addition of new areas, or modification of existing areas. In making its recommendations, the EFHRC should, as a minimum, consider the best scientific information regarding the items listed in Section 6.2.4 of the Groundfish FMP. The EFHRC may also include recommendations for modifying HAPCs consistent with the proposed modification of the location and extent of areas closed to bottom trawling or other benthic contact fishing gear. These proposed changes to EFH designations, HAPCs, adverse effects, or other EFH-related may be based on proposals solicited from interested parties, and/or developed by the EFHRC.

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2. Review proposals for modifying or designating new HAPC.

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3. ~~Conduct an overall~~ Assist the Council and provide oversight of the five year review of the EFH ~~description~~ descriptions, HAPC designations, ~~and~~ information on fishing and non-fishing impacts, and other EFH-related information included in the FMP ~~at least every five years.~~

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Composition

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General

The Groundfish EFHRC is established as a Council advisory body under section 302(g)(3) of the M-S Act and will ~~be an~~ follow the ad hoc committee ~~following the~~ administrative procedures of COP 8 (members appointed by the Council Chair with advice from Council members and advisors, etc.).

The specific members of the EFHRC ~~will~~ may vary, depending on the review assignment and geographic area of the ~~proposals~~ proposed changes. The committee will include a representative from the Enforcement Consultants and may include appropriate representatives

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from the Groundfish Advisory Subpanel, Groundfish Management Team, Scientific and Statistical Committee, Habitat Committee, and other individuals with familiarity and expertise in the fisheries and marine habitats of the areas proposed for changes (e.g., commercial bottom trawl representatives, NMFS scientists, ~~professors involved in marine habitat research and mapping, etc.). In selecting members to review a particular proposal(s), the Council Chair will also consider the need for some consistency in membership from ad hoc committee to ad hoc committee~~professionals involved in marine habitat research and mapping, etc.). ~~The~~~~If the appointed EFHRC lacks expertise to adequately review a proposal or proposals, the EFHRC may request additional assistance through the Council Chair.~~

Short Term EFH Reviews

~~To address new information received between the five year comprehensive reviews, the Council Chair will appoint an ad hoc EFHRC with a composition tailored to deal effectively with the unique new information at hand. This ad hoc EFHRC will meet in accordance with the schedule described in the short term review portion of this COP, and disband at the conclusion of that process.~~

Five Year Review and Extensive Modifications

~~To address the overall five year review or proposals for major modifications requiring special expertise, the Council Chair will appoint an ad hoc EFHRC with a composition similar to the original Groundfish Habitat Technical Review Committee that was a key review group for identifying the initial EFH and HAPC. That committee~~ was composed of two NMFS scientists (NW and SW Science Centers) familiar with Pacific marine habitats, two bottom trawl representatives knowledgeable about fisheries and trawling practices on the West Coast, two scientists representing conservation entities, and two University professors intimately involved and expert in mapping of marine habitats off the Pacific Coast.

In selecting members to review a particular proposal(s), the Council Chair will also consider the need for some consistency in membership. If the appointed EFHRC lacks expertise to adequately review a proposal or proposals, the EFHRC may request additional assistance through the Council Chair.

Member Terms, Alternates, and Officers

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Meetings

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Staff Responsibilities

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EFH REVIEW PROCEDURES

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~~Review procedures utilized by the Council will vary depending on the purpose or type of review.~~

Short Term EFH Reviews

~~Within a 5 year period, to allow for an orderly and efficient process for considering proposed changes to areas closed to fishing by various gear types (e.g., bottom trawl and bottom contact gear) to protect EFH, the review of proposals by the EFHRC and final determination by the Council will be coordinated with the groundfish biennial management specifications process to the degree possible. [Some exceptions to the schedule may be necessary in the initial review] The normal process will be as follows:~~

Timing	Action
June Council Meeting of Odd Numbered Years	Final deadline for Council to request the EFHRC to review a proposed modification to areas closed to bottom trawl or bottom contact gear for the next biennial groundfish season (complete proposals must be received at the Council office no later than three weeks prior to the Council meeting).
November Council Meeting of Odd Numbered Years	Council considers recommendations of EFHRC and makes recommendations for considering modifications in ongoing biennial management process (implementation in following odd year).
April Council Meeting of Even Numbered Years	Council may include proposed modifications among a range of alternatives prepared for the next biennial groundfish management period for public review.
June Council	Council makes its final recommendations for implementation by NMFS in

Meeting of Even Numbered Years	January of next odd year.
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The EFH designated for groundfish covers an extensive area identified through inclusive, intensive, and collaborative assessment processes that required FMP amendment and incorporation in the groundfish fishery regulations. Any significant changes to EFH require a deliberative process and NEPA review; therefore, the Council will generally follow a cycle of five years between each complete review. Changes to EFH in the interim periods between the full reviews will only be contemplated in unusual cases in which significant harm might result by inaction. If significant new information or EFH issues emerge prior to a planned five year review, the Council may contemplate advancing the beginning of the next full review to something less than a five year period. The Council may request the EFHRC review interim proposals to provide its recommendations on how imperative it may be to act on the new information.

Periodic Five Year Review Process

The ~~complete periodic five year~~ review ~~every five years~~ of the Council's EFH and HAPC designations is a major task that requires special expertise and planning. The review process, based on the initial five year review, is expected, to the extent practicable, to proceed as follows in the table below. The actual timing of some actions may vary, depending on Council workload, level of new information being reviewed, and complexity of the modifications being considered. The table in this COP will be modified for ~~the next each~~ five-year review to reflect the realities of the process and the updated Council workload.

<u>Timing*/Due Date</u>	<u>Action</u>
June <u>April</u> 2011 Council Meeting	Council Chair appoints adequate EFHRC to complete comprehensive five year review of EFH and HAPC. Any proposals for modifications to be included in the review from outside entities must be submitted to the Council office no later than three weeks prior to the June Council meeting. To help plan the June Council meeting agenda, the Council may request a notice of intent for any proposals to be provided in June no later than the April 2011 Council meeting. <u>Council approves the process, and solicits for information and data (deadline: July 1, 2011)</u>
July <u>Summer</u> 2011 through May 15, 2012	EFHRC meets to review the FMP EFH and HAPC descriptions and proposals for any extensive modifications; then develops recommendations for the Council. <u>NMFS Science Center (or contractor) compiles and synthesizes data and information, initiates review. EFHRC</u>

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	<u>starts reviewing interim products</u>
<u>Dec 31, 2011</u>	<u>NMFS Science Center (or contractor) product due</u>
<u>Jan-March 2012</u>	<u>EFHRC drafts report summarizing new data and information; including how it compares with existing information, maps, etc.</u>
<u>June/April 2012 Council Meeting</u>	<u>Council considers recommendations of the EFHRC and adopts proposed interim report and issues RFP for any changes for public review.</u>
	<u>to existing GF EFH, HAPCs, etc. (END PHASE I)</u>
<u>Sept 2012</u>	<u>EFHRC drafts final report, including recommendations for potential changes to EFH</u>
<u>November 2012</u>	<u>Final Action by Council (END PHASE II)</u>
<u>September/Post November 2012 Council Meeting</u>	<u>Council adopts final recommendations for changes to be incorporated in the FMP and become effective in the next biennial management specifications.</u>
	<u>If Council final action warrants additional activity, that would initiate Phase 3. Additional work could be in the form of an FMP amendment or other non-FMP product such as a chapter in the SAFE document. At that point, the EFHRC would be adjourned, because the review will have been completed. Any further work would require delegation to or establishment of an appropriate workgroup (e.g., GMT, amendment committee, etc.)</u>

*This table describes the initial five year review beginning in 2011; subsequent reviews would follow five years after final approval of the previous five year review.

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Date: February 28, 2011

From: NMFS NW and SW Science Centers and Regions

To: All Interested Parties

Re: Request for information in support of 5-year review of Pacific coast groundfish essential fish habitat (EFH)

Dear Interested Parties,

Background: The implementing regulations to the Magnuson-Stevens Fishery Conservation and Management Act (MSA), as amended in 2007, require regional fishery management councils and the National Marine Fisheries Service (NMFS) to periodically review the essential fish habitat (EFH) provisions of their fishery management plans (FMPs), and to revise or amend those provisions as warranted, based on available information (50 CFR 600.815(a)(10)). A complete review should be conducted at least once every five years. The review should include, but not be limited to, evaluating published scientific literature and unpublished scientific reports; soliciting information from interested parties; and searching for previously unavailable or inaccessible data. The result of a 5-year review should be a report that summarizes changes in underlying EFH information and a letter from NMFS that documents the completion of the review and makes recommendations for further action. The 5-year review does not necessarily result in FMP amendments. Should the Pacific Fisheries Management Council (Council) undertake a change in EFH that warrants an amendment to an FMP, that amendment should outline the procedures the Council will follow to review and update EFH information in the future as recommended by the EFH regulatory guidance.

Essential fish habitat for Pacific coast groundfish was first established and incorporated by the Council into the groundfish FMP through Amendment 11 in 1998. An environmental impact statement (EIS), completed in 2005, evaluated the effects of alternatives for a comprehensive strategy to conserve and enhance EFH for fish managed under the groundfish FMP. Following the EIS, the current designations of EFH for Pacific coast groundfish were approved by NMFS in May 2006. Currently, discussions on the first 5-year review for the EFH provisions of the groundfish FMP have been initiated by the Council, the Science Centers, and the NMFS Regions. As an important component of the review process, the Science Centers and Regions are entering a phase of identifying, gathering, summarizing, and reporting on information that has become available since the EFH designation in 2006.

What is being requested: Information relevant to EFH for the 90+ species of Pacific coast groundfish covered by the groundfish FMP (see attached species list), including the five categories listed below. ***Please note** that we are not at this time seeking proposals for changes in description or location of existing groundfish EFH. Rather, we are in an information-gathering stage, and will solicit proposals for revised EFH at a later date.*

1. New and updated information on the distribution and extent of seafloor maps, seafloor data, and interpreted Pacific coast groundfish habitat types. This information and data will enhance and refine existing spatial datasets.

2. New and updated information or data on the distribution of biogenic habitats, including new information on associations of groundfishes with these habitats.
3. New and updated information or data on existing and emerging threats to Pacific coast groundfish EFH. Emerging threats include, but are not limited to, climate change, ocean acidification, hypoxia, changes in ocean productivity cycles, and anthropogenic activities such as alternative energy development.
4. New and updated information or data on potential habitat components (e.g., prey species, dissolved oxygen, water temperature) and specific habitat types (e.g., rocky banks, soft-bottom, deep corals) utilized by Pacific coast groundfishes that can be used to revise the descriptions of EFH.
5. New and updated information or data on the importance of specific types of habitats to the life history of Pacific coast groundfishes, which can be used to designate Habitat Areas of Particular Concern (HAPC).

Information obtained from this data call will be used to develop products and a report, representing one important step in the 5-year review of Pacific coast groundfish EFH. Your assistance in identifying and providing new and updated information and data will be critical to this report. Note: we are interested in identifying both data sets that are in a finished form for application and integration, and those that may require additional effort or time to make them accessible.

NMFS staff from the Science Centers and Regional Offices will review preliminary documents, products, and the report that incorporate information from this data call. Further review, including final stakeholder and public involvement, will occur through the normal Council review process and specifically the Groundfish EFH Review Committee, Habitat Committee, and Scientific and Statistical Committee. The Council review provides an opportunity to solicit information from other sources, per the EFH implementation regulations, and includes a public review process for the final report.

Timing: Relevant and *emerging* information is being solicited during the period March through July 1, 2011, and can be submitted either through email or postal service at (*early submissions are encouraged*):

Email: groundfishEFH@noaa.gov

Mail: "Groundfish EFH data call"
NOAA Fisheries NWFSC
2032 SE OSU Drive
Newport, OR 97365

Questions about this solicitation should be directed to:

Waldo Wakefield, NOAA Fisheries NWFSC, 541-867-0542, email: waldo.wakefield@noaa.gov

Mary Yoklavich, NOAA Fisheries SWFSC, 831-420-3940, email: mary.yoklavich@noaa.gov

Pacific Coast Groundfish

Flatfishes

Arrowtooth flounder, *Atheresthes stomias*
Dover sole, *Microstomus pacificus*
English sole, *Parophrys vetulus*
Petrale sole, *Eopsetta jordani*

Other flatfishes

Butter sole, *Isopsetta isolepis*
Curlfin sole, *Pleuronichthys decurrens*
Flathead sole, *Hippoglossoides elassodon*
Pacific sanddab, *Citharichthys sordidus*
Rex sole, *Glyptocephalus zachirus*
Rock sole, *Lepidopsetta bilineata*
Sand sole, *Psettichthys melanostictus*
Starry flounder, *Platichthys stellatus*

Rockfishes

Black rockfish, *Sebastes melanops*
Blackgill rockfish, *Sebastes melanostomus*
Bocaccio, *Sebastes paucispinis*
Canary rockfish, *Sebastes pinniger*
Chilipepper, *Sebastes goodie*
Cowcod, *Sebastes levis*
Darkblotched rockfish, *Sebastes crameri*
Longspine thornyhead, *Sebastolobus altivelis*
Pacific ocean perch, *Sebastes alutus*
Shortbelly rockfish, *Sebastes jordani*
Shortspine thornyhead, *Sebastolobus alascanus*
Splitnose rockfish, *Sebastes diploproa*
Widow rockfish, *Sebastes entomelas*
Yelloweye rockfish, *Sebastes ruberrimus*
Yellowtail rockfish, *Sebastes flavidus*

Other rockfishes

Aurora rockfish, *Sebastes aurora*
Bank rockfish, *Sebastes rufus*
Black-and-yellow rockfish, *Sebastes chrysomelas*
Blue rockfish, *Sebastes mystinus*
Bronzespotted rockfish, *Sebastes gilli*
Brown rockfish, *Sebastes auriculatus*
Calico rockfish, *Sebastes dallii*
California scorpionfish, *Scorpaena guttata*
Chameleon rockfish, *Sebastes phillipsi*
China rockfish, *Sebastes nebulosus*
Copper rockfish, *Sebastes caurinus*
Dusky rockfish, *Sebastes ciliatus*
Dwarf-red rockfish, *Sebastes rufinanus*
Flag rockfish, *Sebastes rubrivinctus*
Freckled rockfish, *Sebastes lentiginosus*
Gopher rockfish, *Sebastes carnatus*
Grass rockfish, *Sebastes rastrelliger*
Greenblotched rockfish, *Sebastes rosenblatti*

Greenspotted rockfish, *Sebastes chlorostictus*
Greenstriped rockfish, *Sebastes elongates*
Halfbanded rockfish, *Sebastes semicinctus*
Harlequin rockfish, *Sebastes variegatus*
Honeycomb rockfish, *Sebastes umbrosus*
Kelp rockfish, *Sebastes atrovirens*
Mexican rockfish, *Sebastes macdonaldi*
Olive rockfish, *Sebastes serranoides*
Pink rockfish, *Sebastes eos*
Pinkrose rockfish, *Sebastes simulator*
Puget Sound rockfish, *Sebastes emphaeus*
Pygmy rockfish, *Sebastes wilsoni*
Quillback rockfish, *Sebastes maliger*
Redbanded rockfish, *Sebastes babcocki*
Redstripe rockfish, *Sebastes proriger*
Rosethorn rockfish, *Sebastes helvomaculatus*
Rosy rockfish, *Sebastes rosaceus*
Rougheye rockfish, *Sebastes aleutianus*
Semaphore rockfish, *Sebastes melanosema*
Sharpchin rockfish, *Sebastes zacentrus*
Shortraker rockfish, *Sebastes borealis*
Silvergray rockfish, *Sebastes brevispinis*
Speckled rockfish, *Sebastes ovalis*
Squarespot rockfish, *Sebastes hopkinsi*
Starry rockfish, *Sebastes constellatus*
Stripetail rockfish, *Sebastes saxicola*
Swordspine rockfish, *Sebastes ensifer*
Tiger rockfish, *Sebastes nigrocinctus*
Treefish, *Sebastes serriceps*
Vermilion rockfish, *Sebastes miniatus*
Yellowmouth rockfish, *Sebastes reedi*

Other groundfishes

Cabazon, *Scorpaenichthys marmoratus*
Lingcod, *Ophiodon elongatus*
Pacific cod, *Gadus macrocephalus*
Pacific hake, *Merluccius productus*
Sablefish, *Anoplopoma fimbria*
Big skate, *Raja binoculata*
California skate, *Raja inornata*
Kelp greenling, *Hexagrammos decagrammus*
Leopard shark, *Triakis semifasciata*
Longnose skate, *Raja rhina*
Pacific flatnose, *Antimora microlepis*
Pacific grenadier, *Coryphaenoides acrolepis*
Spiny dogfish, *Squalus acanthias*
Spotted ratfish, *Hydrolagus collicie*
Tope, *Galeorhinus galeus*

SUGGESTED REVISION TO DATA REQUEST

Potential Data Request from the Essential Fish Habitat Review Committee to West Coast Fisheries Agencies and Organizations That Maintain Fisheries-Dependent Data for West Coast Groundfish Fisheries

April 2011

Background: This data request from the Essential Fish Habitat Review Committee (EFHRC) is intended to complement the recent request for information in support of the 5-year review of Pacific coast groundfish EFH released by NOAA Fisheries on February 28, 2011. Here the EFHRC request is focused on data categories 2 and 3 in the broader NOAA Fisheries request: new and updated information or data on the distribution of biogenic habitats; and new and updated information or data on existing and emerging threats to Pacific coast groundfish EFH. The EFHRC request is ultimately directed toward the regional agencies and organizations that maintain fisheries-dependent data for west coast groundfish fisheries (e.g., NMFS NWFSC, PacFIN, and the state fisheries agencies). The EFHRC is seeking endorsement of this request by the Pacific Fisheries Management Council.

Gear type categories:

- Midwater (whiting) trawls
- Bottom trawls (non-whiting)
- Bottom longline
- Groundfish pots/traps

Geographic scope: West Coast Exclusive Economic Zone

Time period: 2000 to 2010.

Spatial footprint of commercial fishing gear by gear type

The intent is to update the spatial extent of the use of each fishing gear type used off the U.S. west coast. This information will be used in the fishing effects section of the EFH review, and help inform potential minimization measure consistent with EFH regulatory guidance. The EFHRC recognizes that minimization measures must be “practicable” which is a determination that would be made later in a fishery management plan amendment process. The following information may be helpful:

- Where available and at the appropriate spatial and temporal scales, the spatial footprint for mobile bottom tending and midwater trawl gear.
- Where available and at the appropriate spatial and temporal scales, the spatial footprint for each fixed gear type.
- The spatial footprint of total effort by gear type aggregated at appropriate scales, in order to estimate the area that encompasses most of the effort.

Bycatch data in the commercial fishery of biogenic organisms

The intent is to gather new and newly-available information on the distribution of habitat-forming biogenic species and identify areas where continued interactions with commercial fishing gear occurs for these groups of organisms. The EFHRC seeks information on the spatial occurrence of biogenic habitat (e.g., cold water corals and sponges) by gear type, location, and weight/quantity, in west coast commercial groundfish fisheries.

PFMC

04/07/11

GROUND FISH ADVISORY SUBPANEL REPORT ON PERIODIC GROUND FISH ESSENTIAL FISH HABITAT REVIEW PROCESS

The Groundfish Advisory Subpanel (GAP) was given a presentation by Mr. Kerry Griffin. Most of the concerns voiced by GAP members were related to the entire essential fish habitat (EFH) process.

The GAP wishes to express those concerns to the Council as it is believed the issues can be incorporated into this review process. Our current EFH areas were established quickly and under duress, driven by legal mandates. The Council should want to see the impacts of the areas established during the review process. There is a need to verify and validate the areas that were set aside as EFH.

What are the goals of each of these areas? What was the baseline data informing these EFH areas? Before expanding areas as new EFH, we need to understand what has been established in our EFH inventory. Evaluation of our established EFH should be the main focus of the first review process. It is believed that clear direction and understanding is lacking in the EFH process overall with the following issues:

1. Socioeconomic impacts must be an equal priority consideration when reviewing any progress involving EFH and when considering changes to any closures.

2. Have the concerns of the Scientific and Statistical Committee (SSC) indicated in its report (Agenda Item C.3, Situation Summary, June 2005) been addressed? Those are:

“1. There remains scientific uncertainty as to whether or not sponge and corals are essential fish habitat for the species in the groundfish FMP,

5. Given these caveats and data limitations, the SSC considers the Oceana methodology to be a reasonable first attempt at identifying invertebrate distributions. However, the SSC cautions that if this approach is used to designate EFH these designations should be reviewed and modified, if necessary, as data from more appropriate surveys become available.”

3. What are the outcome objectives of EFH gear impact area closures and what progress has occurred, if any toward those desired results?

4. What legal mandates exist today? Is management operating under any further court mandate and if so what is required?

In the COP:

The references to fishing gears needs to be consistent. Trawl gear and others should be referred to as bottom contact fishing gear throughout.

The composition section needs to be clarified. The GAP encourages and supports formalizing the tribal position on the Essential Fish Habitat Review Committee (EFHRC).

Overall, the GAP approves of the proposed schedule.

The EFHRC should work with appropriate entities on information relevant to EFH review in lieu of the information request stated in Agenda Item I.3.a, Supplemental Attachment 4.

PPMC

04/11/11

HABITAT COMMITTEE REPORT ON PERIODIC GROUND FISH ESSENTIAL FISH HABITAT REVIEW PROCESS

The Habitat Committee (HC) discussed the groundfish essential fish habitat (EFH) review process and reviewed the proposed changes to Council Operating Procedure (COP) 22. The HC had the following comments regarding the COP:

- The HC wonders if it is necessary to include the description of the membership of the original committee in the composition section of the COP.
- The EFH Review Procedures section needs to be clarified. In the section below, there is confusion about whether the three sentences are linked. In addition, the word “significant” is used three times in this paragraph, possibly with different meanings. The term “significant harm” has regulatory implications and should be clearly defined if used in the COP.

Any significant changes to EFH require a deliberative process and NEPA review; therefore, the Council will generally follow a cycle of five years between each complete review. Changes to EFH in the interim periods between the full reviews will only be contemplated in unusual cases in which significant harm might result by inaction. If significant new information or EFH issues emerge prior to a planned five year review, the Council may contemplate advancing the beginning of the next full review to something less than a five year period.

- The COP should state that if proposals are submitted during an interim period, and if the Council believes they have merit, they will be reconsidered during the five-year review.

EFH 5 Year Review

Setting the Standards

NWIFC on behalf of our Member Tribes



Essential Fish Habitat

- MSA defines EFH as, “those waters and substrate necessary to fish for spawning, breeding, feeding or growth to maturity.”
- 4 levels of habitat detail for analyzing EFH from the regulations (50 CFR 600.815):
 - Level 1 – distribution (presence/absence)
 - Level 2 – habitat-related density
 - Level 3 – growth, reproduction, or survival rates within habitats
 - Level 4 – production rates by habitat

Summary of Original Action

- Council's original action was both comprehensive and precautionary (Hourigan 2009) – closures protected 42% of the EEZ.
- It included known coral and sponge habitat in trawl and bottom-tending gear closures due to their vulnerability until their role as habitat could be better understood.
- Included a provision to review EFH every 5 years and amend the FMP as necessary based on new scientific information .

Coral/Sponge Information

- Little to no information is available on the role of coral/sponge as groundfish habitat on the west coast (Harding et al. 1994, Whitmire and Clarke 2007).
- In a 2010 coral/sponge workshop of leading scientist and resource managers identified and prioritized the leading critical information gaps as:
 1. Determining the distribution and abundance
 2. Determining their ecological role



But. . .

Despite the lack of information on the role of coral/sponge in the ecosystem, the conversation since the original action seems to have (erroneously) shifted toward coral and sponge protection rather than protection of EFH.

Managing Coral/Sponge

- Through MSA reauthorization, Congress mandated the Coral Reef Conservation Program (CRCP) work with the Regional Councils to explore, study and manage deep-sea coral ecosystems (NOAA, CRCP 2010).
- The CRCP is currently (2010-2012) focused on collecting data on the west coast.
- Product is expected in the near future to inform coral/sponge management by Council.
 - Tribes continue to stress the need to work with SSC and other ABs to develop necessary information (Agenda Item, E.2.c, Supplemental Tribal Comment, November 2010).

5 Year Review

- This first review presents an opportunity to set clear standards for review now and in the future.
- EFHRC is presenting available data sources and recommendations on the scope of review.
- Council should use those in conjunction with the original policy to set standards that will clearly delineate how it will judge proposals and measure adequate protection of EFH.
- Coral and sponge management should not be part of the Council's consideration until they are shown to be important components of groundfish EFH.

Recommended Standards

- The data gaps identified in the original risk analysis are filled such that we can update our understanding of EFH for one or more FMU species:
 - Data are collected that document the importance of a habitat type for groundfish
 - Data quality is updated and changes our understanding of the distribution of habitat types

Recommended Standards (cont.)

- Data are collected that update our understanding of habitat use from Level 1 (presence/absence) to Level 2 (density) or higher:
 - This might be accomplished by inclusion of CPUE from surveys into the habitat use database
 - Visual surveys are developed that provide insight into habitat use in areas that are currently unsurveyed or under surveyed

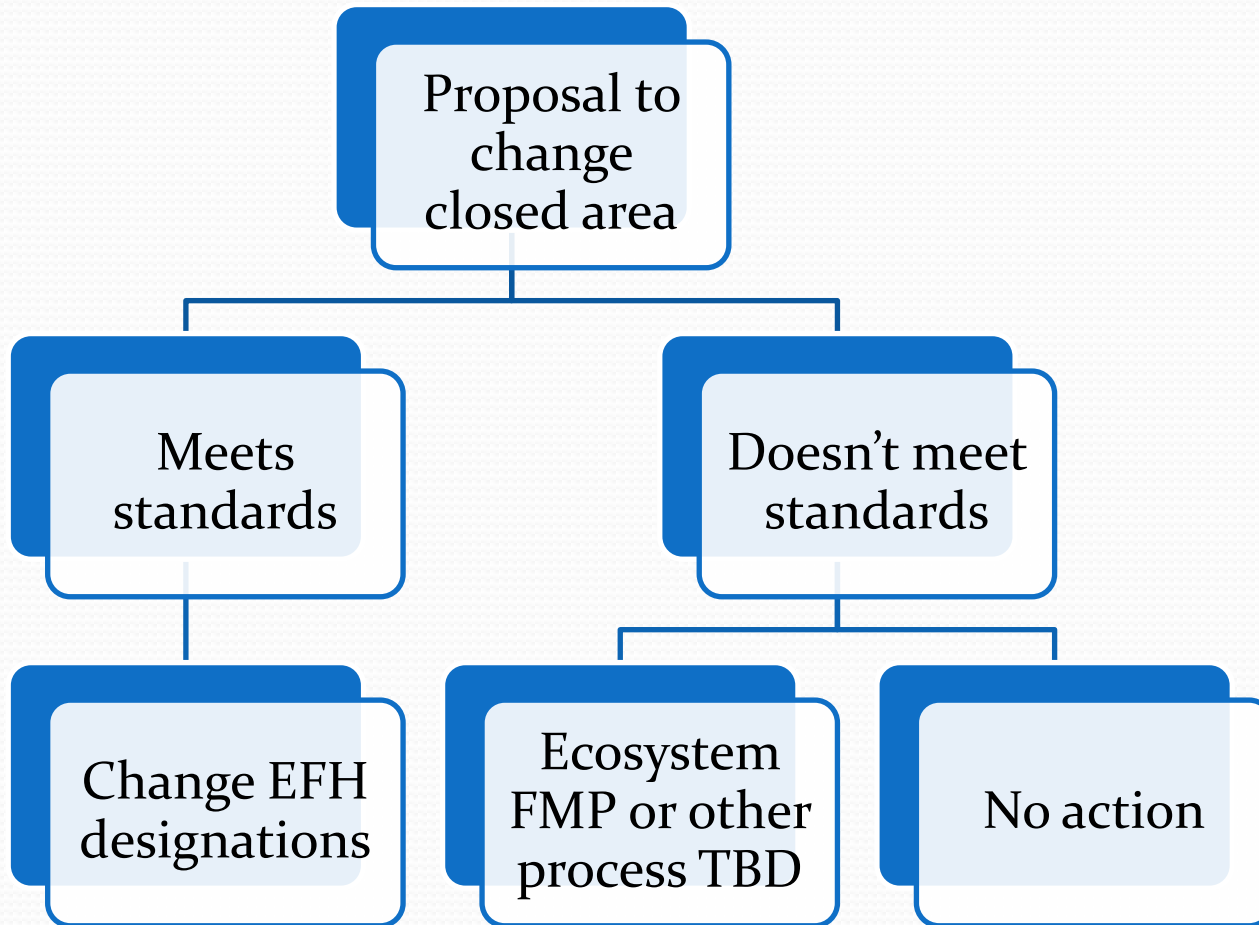
Recommended Standards (cont.)

- Some other level of scientific understanding that demonstrates that original action may no longer be considered precautionary and comprehensive:
 - Distribution/density information on habitat types that indicate that closures are misspecified
 - New life-history stage specific information on habitat requirements shows that essential habitat types are not protected
 - Updated information on recovery times shows a habitat type is more/less sensitive than previously thought

Review Process

- Standards would be used to decide whether a given proposal was best suited for regulation as groundfish EFH or some other process.
 - If yes, then EFHRC could provide recommendations on how to change EFH designations or management measures.
 - If no, then determine whether action is needed and how best to accomplish - one alternative vehicle could include the Ecosystem FMP (if it has regulatory authority).

Review (example)



Conclusions

- Standards are needed to inform management and the public of the expectation of what is needed to trigger amendments to EFH designations
- The need to revise designations should correspond to our understanding of groundfish habitat needs (e.g. along the 4 levels of habitat detail)
 - Resources should be focused on understanding habitat and ecosystem interactions rather than modifying designations every five years
- Data on coral/sponge distribution and role in the ecosystem are being compiled by NOAA (under CRCPP) and information will be available for appropriate management action through a yet-to-be-determined Council process

References

- Harding DD, Toal J, Parr T, Wilde P, Dorsey K (1994) Spatial variation in hard bottom epifauna in the Santa Maria Basin, California: the importance of physical factors. *Marine Environmental Research* 37:165-193
- Hourigan, Thomas (2009) Managing fishery impacts on deep-water coral ecosystems of the USA: emerging best practices. *Marine Ecology Progress Series* 397:333-340
- Whitmire CE, Clarke ME (2007) State of deep coral ecosystems of the U.S. Pacific Coast: California to Washington. In: Lumsden SE, Hourigan TF, Bruckner AW, Dorr G (eds) *The state of deep coral ecosystems of the United States*. NOAA Tech Memo CRCP-3, Silver Spring, MD, p 109-154
- National Oceanic and Atmospheric Administration, Coral Reef Conservation Program. 2010. *NOAA Strategic Plan for Deep-Sea Coral and Sponge Ecosystems: Research, Management, and International Cooperation*. Silver Spring, MD: NOAA Coral Reef Conservation Program. NOAA Technical Memorandum CRCP 11. 67 pp.

SCIENTIFIC AND STATISTICAL COMMITTEE REPORT ON THE PERIODIC
GROUNDFISH ESSENTIAL FISH HABITAT REVIEW PROCESS

In September 2010, the Council directed the ad hoc Groundfish Essential Fish Habitat Review Committee (EFHRC) to develop recommendations for a review of groundfish essential fish habitat (EFH) established in 2006. Mr. Kerry Griffin briefed the Scientific and Statistical Committee (SSC) on a revised Council Operating Procedure (COP) 22 and requests for information.

The SSC supports the efforts by the National Marine Fisheries Service, Northwest and Southwest Fisheries Science Centers and the EFHRC to gather new and updated information or data in support of the groundfish EFH review process. The SSC recommends the EFHRC also request research results on the impacts of fishing gears on groundfish EFH.

PFMC
04/08/2011

Groundfish EFH Review: Data Needs

Geoff Shester, Ph.D

April 11, 2011



Image from Oceana Monterey Expedition 2010

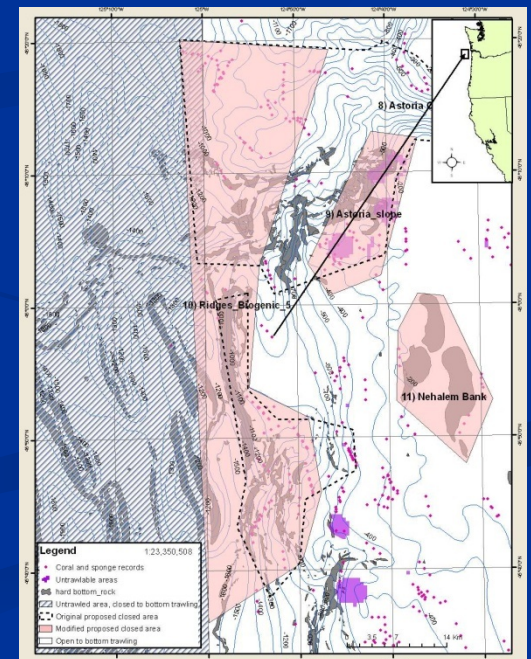
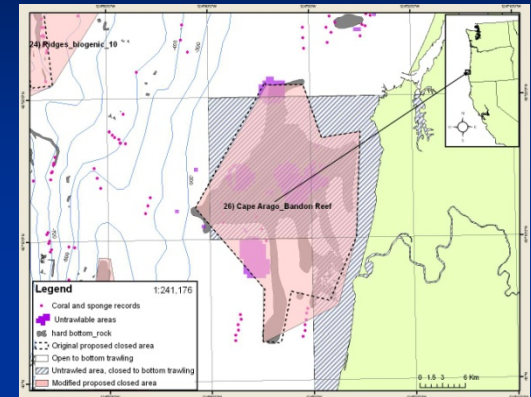


MSA Mandate on EFH

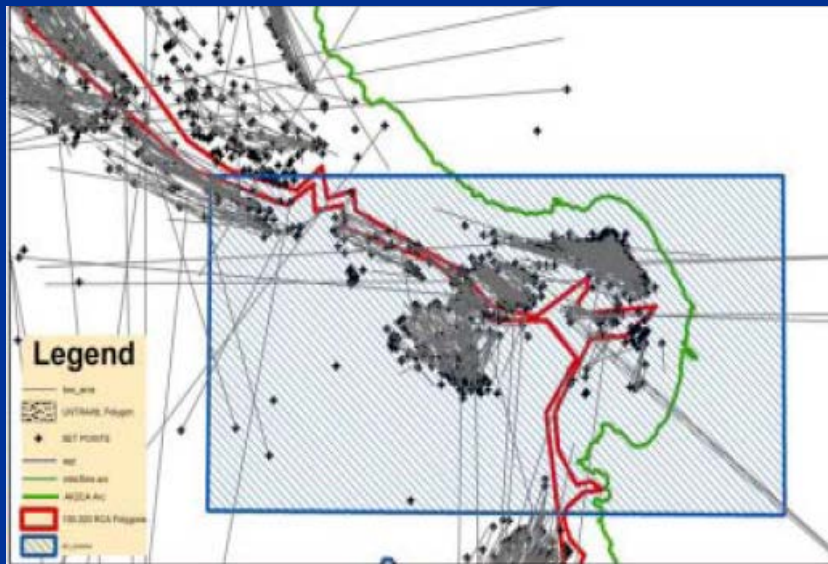
- “Minimize to the extent practicable adverse effects on essential fish habitat caused by fishing”
16 U.S.C. 1802(10)
- In 2005: PFMF took final action on EFH to:
 - “Freeze the footprint” of bottom trawling
 - Establish EFH Conservation Areas to protect seafloor habitats from bottom trawling

Criteria for 2006 Area Closures

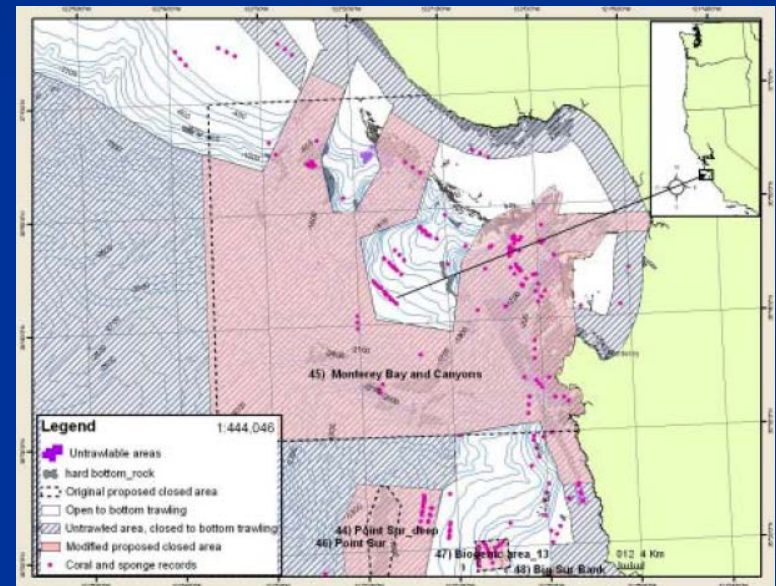
1. Trawl footprint
2. Hard substrate (*NOAA Habitat Database*)
3. Untrawlable areas (*Zimmerman 2003*)
4. 20% HSP for overfished groundfish
5. High density biogenic habitat (*NWFSC database, MCBI database*)
6. Other areas as determined by scientific research, existing designations, and local knowledge (*i.e. seamounts, canyons, ridges, etc.*)



Example: Monterey Bay

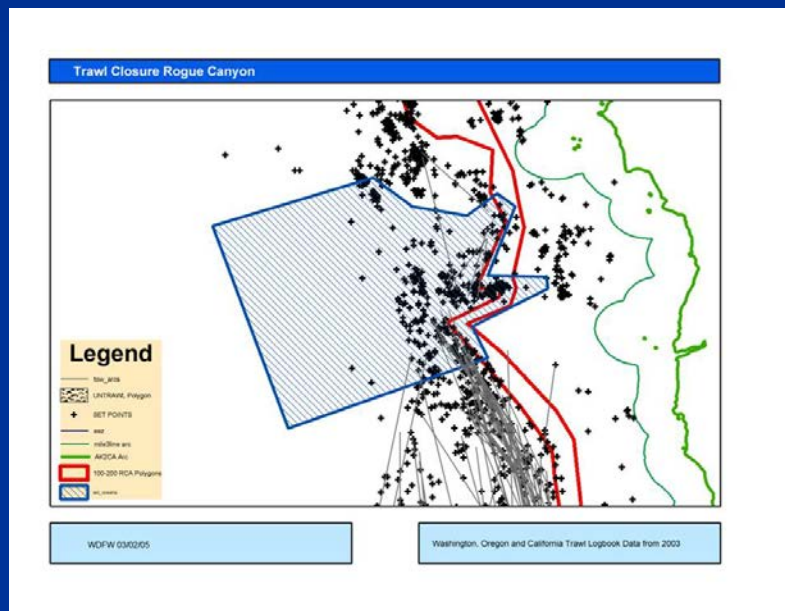


Original C.12 (Oct 04)

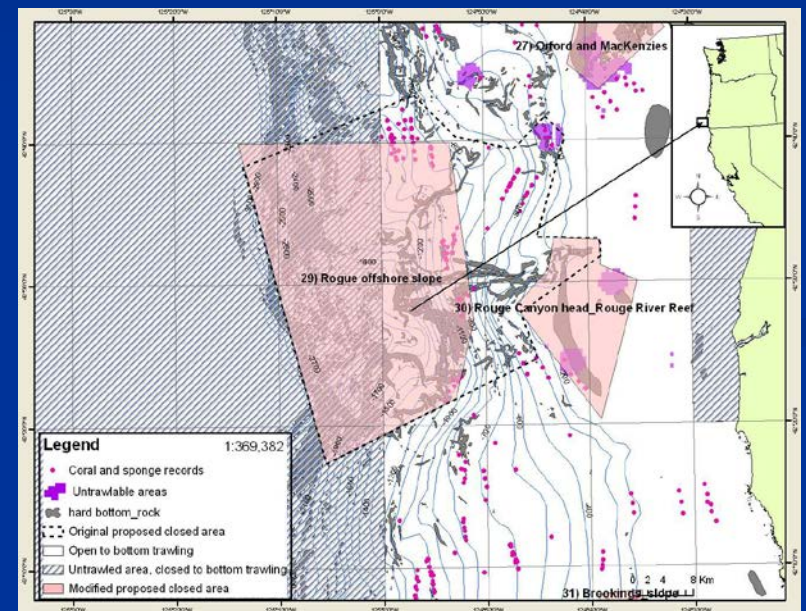


Revised C.12 (May 05)

Example: Rogue Canyon

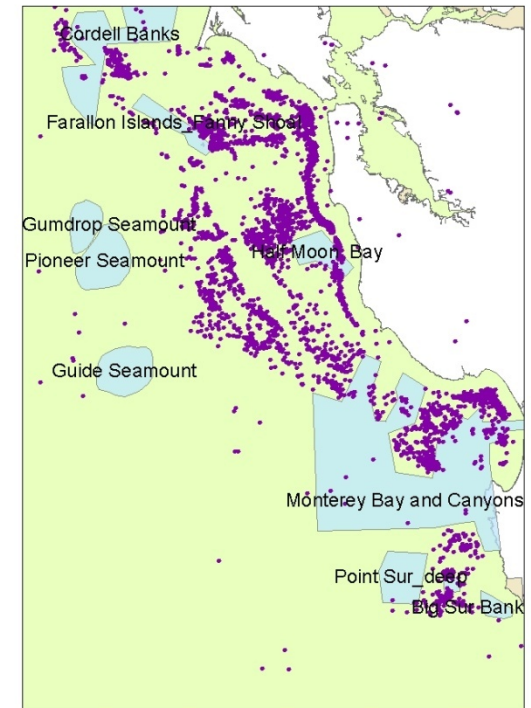
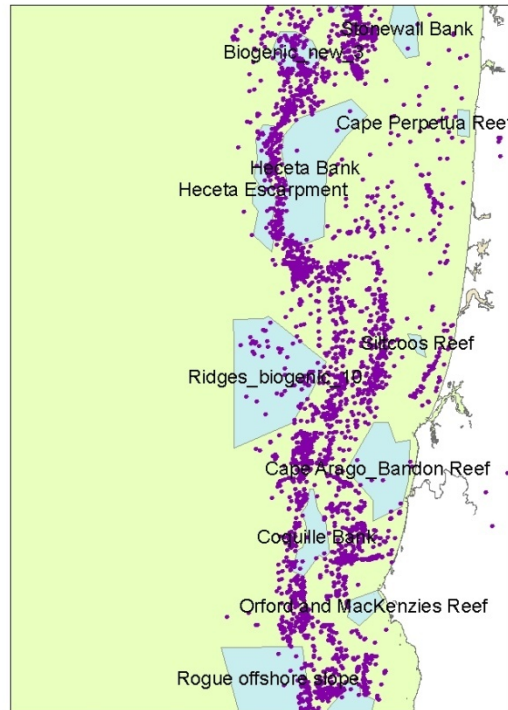
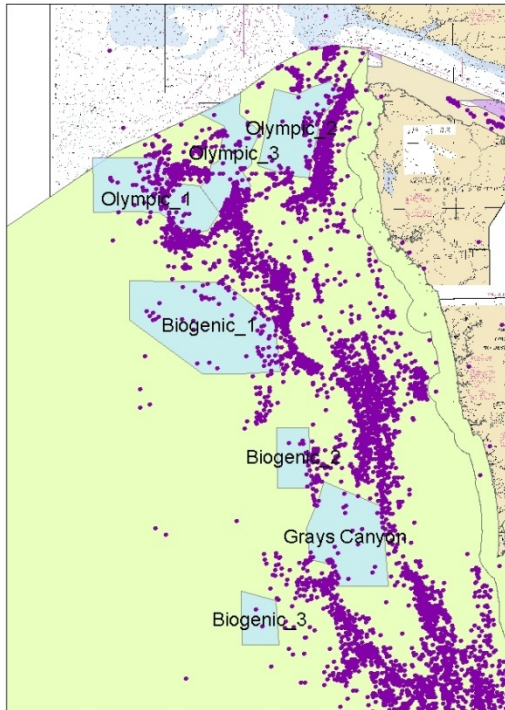


Original C.12 (Oct 04)

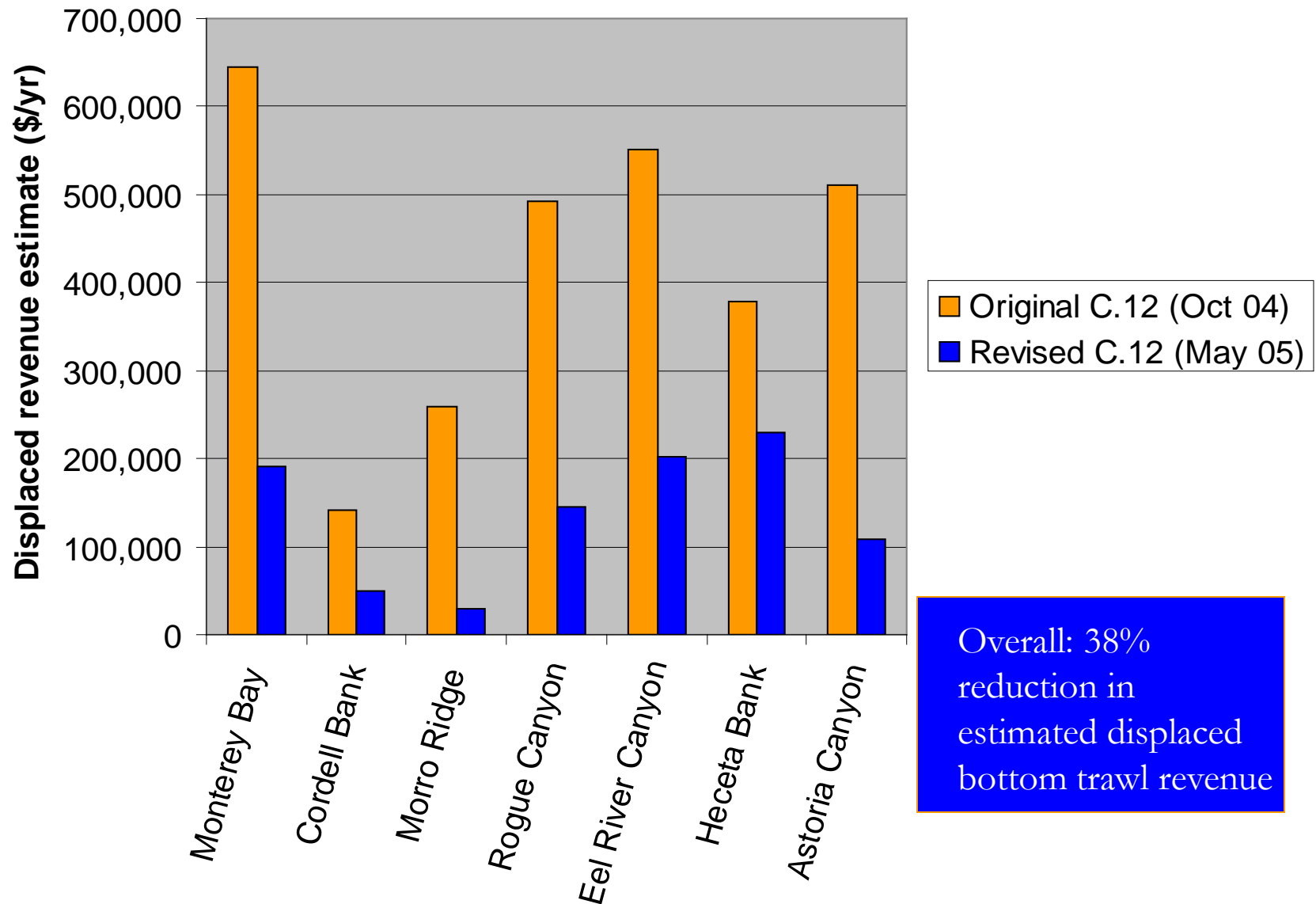


Revised C.12 (May 05)

More Examples...



Improved Practicability



Improved Cost-Effectiveness

	Original C.12 (Oct 04)	Revised C.12 (May 05)	Change
Total Open Area	~89,000 km2	~70,000 km2	21% Reduction
Displaced Revenue	5,463,659	3,408,709	38% Reduction
Coral/Sponge Protected	1553 records	1624 records	+71 records

Key Data Sources

A Council request today will facilitate EFH Review Committee access to these datasets at the highest possible resolution:

- Spatial footprint of fishing gear
- Bycatch of habitat-forming organisms

“Agenda Item I.3.a. Suppl. Attachment 4”

EFH Final Rule: Prey Species

- 600.815(a)(7) *Prey species*.
- Loss of prey may be an adverse effect on EFH and managed species because the presence of prey makes waters and substrate function as feeding habitat, and the definition of EFH includes waters and substrate necessary to fish for feeding.
- Therefore, actions that reduce the availability of a major prey species, either through direct harm or capture, or through adverse impacts to the prey species' habitat that are known to cause a reduction in the population of the prey species, may be considered adverse effects on EFH if such actions reduce the quality of EFH.



INFORMATIONAL BRIEFING ON RISK POOLS UNDER THE TRAWL
RATIONALIZATION PROGRAM

The Council is working on a number of trailing actions pertaining to its trawl rationalization program. One of these is the consideration of providing risk pools with a safe harbor from quota share (QS) control rules. Risk pools are a new type of entity being created on the West Coast, primarily to help fishery participants voluntarily manage the limited amount of overfished species and Pacific halibut quota pounds (QP) available in a collective way so as to provide insurance to obtain more QP than their individual contributions in emergency situations. By their nature, risk pools may need to coordinate the disposition of amounts of QP that are in excess of the QS limits (when those QP are converted to the QS limits). There are questions about how these risk pools are being organized and whether the nature of their activities coordinating the distribution of QP would constitute control of the underlying QS and a potential violation of the control rules.

If a determination is made that a violation of control rules could potentially occur, then the Council will need to assess the benefits to the fishery and public from providing an exception for risk pools compared to concerns that may exist related to the granting of such an exception. If a decision is made to provide for a QS control rule exception for risk pool entities, decisions would also be needed on the degree to which such entities would be allowed to exceed limits.

Under this agenda item, groups developing risk pools are being given an opportunity to provide the Council an informational briefing on their activities. There will be an opportunity for a question and answer period between the Council members and the presenters but no comment from the public or advisory bodies; no decisions by the Council are scheduled under this agenda item. Any Council action on risk pool exceptions will come as part of Agenda Item I.6 at, which time advisory body statements will be taken and full public comment opportunity will be provided.

Council Action:

None.

Reference Materials:

1. Agenda Item I.4.b, Informational Letter from Presenter: Letter to Mark Cedergreen, March 22, 2011.

Agenda Order:

- a. Agenda Item Overview
- b. Open Presentation and Question Session

Jim Seger

PFMC
03/24/11

March 22, 2011

Mr. Mark Cedergreen, Chairman
Pacific Fishery Management Council
7700 NE Ambassador Place, suite 101
Portland, OR 97220

RE: Agenda Item I.4 Informational Briefing on Risk Pools under the Trawl Rationalization Program

Dear Mr. Cedergreen,

This letter is in regards to your scheduled informational briefing on Risk Pools under the newly implemented trawl rationalization program. The information contained in this letter has been written on behalf of the Ilwaco Fishermen's and Marketing Cooperative (IFMC), a group of Fort Bragg trawlers, and the Central Coast Sustainable Groundfish Association (CCSGA). The IFMC represents several IFQ holders prosecuting IFQ groundfish with both trawl and fixed gear out of the Columbia river area, the group of Fort Bragg trawlers referred to here reflects 4 trawl vessels that harvest traditional groundfish out of Fort Bragg, and the CCSGA represents trawl, Scottish seine, and fixed gear operations operating out of Half Moon Bay, Moss Landing, and Morro Bay, California. Together, these groups represent several of the communities that appear to be at a relative disadvantage in the IFQ program as identified in the Amendment 20 EIS, several long-standing participants in the Pacific coast trawl fishery, and a substantial portion of the quota holders in the Pacific coast IFQ fishery. Over the course of the past several months, these three groups have taken efforts to construct a Risk Pool to assist their efforts in engaging in the groundfish IFQ fishery.

The purpose of this letter is predominately informational in nature and seeks to outline several main points. These include:

- Our envisioned Purpose and Need for establishing collective efforts to manage constraining species, such as risk pools
- What the risk pool being created by these three groups is intended to achieve
- What we believe the fishery may look like with and without the ability to form risk pools, or other similar structures, and
- Some basic facts and pieces of information concerning this particular Risk Pool effort

We look forward to discussing this effort with you in further detail at the April, 2011 Council meeting.

Background

Throughout the development of the trawl rationalization program there was much discussion and consideration regarding how to manage constraining species. Initially, an alternative was contemplated which would not manage overfished rockfish with IFQ, somewhat later the PFMC

began considering harvest cooperatives for the whiting fishery and the particular methods of dealing with overfished species with that tool, the PFMC advisory bodies considered the idea of an overfished species auction concept that would prevent hoarding of overfished species quota, and there were certainly other concepts considered by those within the Council family. During final action on trawl rationalization the PFMC decided to issue IFQ for overfished rockfish with the additional caveat that private risk pool structures should be allowed to form.

Several factors appeared to have weighed on the minds of industry, advisory body members, and Council members when considering how to manage constraining species in the IFQ program. Some of these factors appear to have been:

- The possibility of constraining species quota hoarding behavior which keeps quota off the market
- The prospect of constraining species quota being highly costly
- The variability of catch events, and the prospect of “disaster tows” occurring which could put an individual out of business simply by chance
- And other items

For these reasons and potentially others, the manner in which constraining species are dealt with in the IFQ program deserves some special consideration and attention. Left up to simple market trading measures, constraining species catch events – and management of them – appear to be a difficult issue to resolve. Put simply, the nature of overfished species catch events combined with the market price for overfished species quota presents an IFQ fishery participant with a high risk prospect when engaging in certain fishing activity. Catch events and catch quantities of many overfished species appear variable and uncertain, the prospect of finding overfished species quota on the market is uncertain due to limited quantity and natural hoarding tendencies, and the cost one must bear to purchase that quota is likely to be very high. One could argue that these conditions create an environment where simple market-based trading measures may be insufficient to adequately manage the catch of these species and may make it difficult to develop reasonably reliable fishing plans to support a fishing business.

High risk prospects are often overcome with insurance-like measures. Risk pooling is a term which has often been used to describe how the industry may deal with risk management and coverage of constraining species catch events. This term is akin to other types of collective insurance mechanisms in the fishing industry, such as “Hull Pools” which seek to protect vessel owners in the case of a vessel loss or catastrophe. In many of these systems, the pool receives applications from would-be members and those applications are reviewed to determine whether the applicant poses a substantial liability to the pool or whether they are a potential asset to the pool. These considerations are based on many factors including the condition of the vessel, the fishery that vessel participates in, and the captain or owner, among others.

Purpose and Need

The purpose and need for establishing risk pools to cover constraining species catch events is very similar to the need to establish hull pools. While a vessel operator may maintain his vessel adequately and take precautions in where and when he fishes, unforeseen and unplanned events can happen; in this case, the catch of overfished species. The risk pool structure assists members in a manner that covers such unintended catch events, so long as that member abides by the terms of the

pool system. It also requires transfers of quota between members, thereby eliminating the prospect of quota hoarding and eliminating the time and cost of searching for that quota on the market. Such transfers are done based upon pre-determined terms and conditions, and may include a type of “premium” through a reasonable penalty or a pay-back provision. Finally, in addition to developing terms which react to such events, terms are developed with reduce the chances of those events in the first place. Without such a structure several outcomes are possible: unforeseen catch events may inadvertently impact even the best fisherman; quota hoarding behavior may ensue, driving up quota prices and keeping quota off the market for everyone; and the economic impact of the Pacific coast IFQ fishery may be lower than what could otherwise be the case.

Goal and Objectives of the Risk Pool

The underlying goal of the risk pool described here is to maximize the catch of all target species while minimizing the risk to members from inadvertent constraining species encounters. The combined result is intended to be maximum economic potential with minimum possible economic risk. In order to do so, the Risk Pool agreement can be described with two fishery management approaches in mind:

- Proactive terms for bycatch minimization
- Reactive terms to respond to bycatch events

Both proactive and reactive measures concentrate on the prospect of constraining species encounters and are not intended to directly manage the catch of target species.

The Pacific IFQ Program With and Without Risk Pools

It is difficult to predict what the Pacific groundfish fishery would look like with and without the presence of risk pools. However, several factors are relevant which may provide insight in to these two possible states. The participants in the risk pool represented here intend to maintain their status as active fishermen or active holders of fishing assets. For many of these participants, that means attempting to acquire additional overfished species quota in order to maintain their past level of participation in the fishery. For other fishermen, such as those that are electing to switch to trap gear, their need for constraining species quota is diminished relative to their initial quota allocations. While these fishermen appear willing to depart from their constraining species quota holdings, the other members of the pool are seeking to acquire access to that quota while simultaneously seeking access to additional constraining species quota. In other words, there appears to be a shortage of constraining species quota within the pool even though trap gear fishermen are freeing up constraining species quota for trawl fishermen. With a risk pool, demand exists outside the pool for additional constraining species quota and that demand is greater than supply. Without a risk pool, demand which exceeds supply continues to exist within the market-place. The principle difference between the two states does not appear to be the availability of quota to those that are seeking it, but rather the treatment of catch events and the terms upon which that quota will be transferred.

The proactive terms developed by risk pool members to reduce bycatch are intended to both reduce risk and also to translate in to larger harvests of target species. There are many reasons to believe that having a structure which forces vessels to act collectively will result in a different outcome than vessels which are acting independently. The participants of the risk pool effort described here are of the belief that collective action will prove more successful and rewarding than the alternative. If that is the case, the outcome without a risk pool structure may equate to more vessels tied up due to

deficit conditions, more penalties assessed on vessels due to deficit conditions, and lower harvests of healthy target species.

Basic Information Concerning this Risk Pool Approach

The risk pool being formed by the groups described here have engaged in a time-intensive and thoughtful process over the course of the past 5+ months. In order to develop this structure, members of the risk pool agreement have shared multiple types of resources, including legal counsel, policy and technical analysis, spatial mapping capability, technological support, and significant time and effort.

The structure of this risk pool can be described as an over-arching “umbrella” agreement which connects the three underlying groups. Each group is – or will soon be – formed as a Fishermen’s Collective Marketing Act (FCMA) cooperative. Each group forms a corporate structure and develops their own plan for prosecuting the fishery in their local fishing grounds. Those fishing plans are peer reviewed by the other cooperatives for purposes of validating a risk-averse approach to harvesting activities, and for the purposes of sharing information and techniques for bycatch management. Each cooperative is expected to keep catch within the amount of quota available to that cooperative. However, in the event an unexpectedly large catch of constraining species occurs by a vessel in one cooperative, vessels from all three cooperatives contribute quota to cover that unexpected event. This is the insurance mechanism. This event is followed up with a review of that first cooperative’s fishing methods, including why and how that large catch event occurred. This review may be followed up with a required modification to the fishing practices of vessels in that cooperative, or – in the extreme case – by vessels in all three cooperatives in order to successfully prosecute the fishery given that large catch event.

In order to develop the best possible risk pool structure, we continue to believe that a Safe Harbor to the control rule should be developed for risk pool activities. We envision a Safe Harbor for risk pools only being allowed in very specific circumstances so that such an exception would not be used to circumvent the PFMC’s intent when establishing those control limits in the first place.

We look forward to discussing these matters with you and the PFMC advisory bodies in more detail at the April 2011 PFMC meeting

Sincerely

Merrick Burden
Senior Fisheries Economist
Environmental Defense Fund
Seattle, WA

2011 RISK POOL AGREEMENT

This 2011 RISK POOL AGREEMENT is entered into as of April ____, 2011, by and among Ilwaco Fishermen and Marketing Cooperative, a Washington Fish Marketing Act corporation ("Ilwaco Cooperative"); the Fort Bragg Cooperative Groundfish Association, a California Fish Marketing Act corporation ("Fort Bragg Association"); and the Central Coast Sustainable Groundfish Association, a California Fish Marketing Act corporation (the "Central Coast Association") (together, the Associations"), with respect to the following facts:

RECITALS

A. Members of the Ilwaco Cooperative, members of the Fort Bragg Association and The Nature Conservancy of California ("TNCC") hold certain limited entry licenses for the shoreside Pacific Coast groundfish trawl fishery (the "Fishery") managed by the National Marine Fisheries Service ("NMFS"). The Fishery has been managed on a limited entry basis through 2010, but as of the 2011 fishing year, the Fishery will be managed on a limited entry basis and under an individual fishing quota program adopted as Amendment 20 to the Pacific Coast groundfish Fishery Management Plan (the "IFQ Program").

B. Members of the Ilwaco Cooperative, members of the Fort Bragg Association and TNCC have received quota shares ("QS") and 2011 quota pounds ("QP") for the Fishery under the IFQ Program. Certain members of the Central Coast Association are leasing Fishery licenses and/or QP for the Fishery from TNCC.

C. The Associations have identified eight "constraining species" (i.e., yelloweye rockfish (*Sebastes ruberrimus*), canary rockfish (*Sebastes pinniger*), cowcod (*Sebastes levis*), bocaccio rockfish (*Sebastes paucispinus*), darkblotched rockfish (*Sebastes crameri*), Pacific ocean perch (*Sebastes alutus*), widow rockfish (*Sebastes entomelas*) and Pacific halibut (*Hippoglossus stenolepis*)) (together, the "Constraining Species") for which the aggregate amount of their QP allocations is very small.

D. Under the IFQ Program, a person cannot fish if they have a QP account deficit. Therefore, if a person harvests an amount of any IFQ Program species that exceeds their QP allocation for that species, they will be required to cease fishing until they have obtained an amount of QP adequate to cover their deficit. Because catch of the Constraining Species is not entirely predictable, an Association member could unintentionally harvest their entire annual QP allocation for one or more of the Constraining Species, even if they were taking all reasonable measures necessary to avoid them. Further, because the total IFQ Program QP allocations for the Constraining Species are very small, QP for those species may not be available (as recipients may hold all they receive until they have ceased fishing for the year, to cover their risk of an incidental catch), or may only be available at a very high cost.

E. Under these circumstances, Constraining Species catch could effectively limit access to relatively abundant target species otherwise available for harvest. Coordinating efforts to reduce encounters with Constraining Species should therefore result in increased harvests of target species. To that end, the Parties desire to enter into a risk pooling arrangement for the Constraining Species, under which they (i) adopt and enforce certain fishing rules for 2011 that are intended to reduce the risk of an unintentional harvest of the Constraining Species; (ii) pool some or all of their 2011 QP allocations for the Constraining Species, and (iii) draw on the Constraining Species 2011 QP pool they create to cover their Constraining Species catch.

Now, therefore, the parties agree as follows:

1. Risk Pool Governance. The Associations shall establish a risk pool management board (the “Risk Pool Board”) that shall have the authority to take all actions and execute all documents necessary to give effect to this Agreement, and to amend this Agreement on behalf of the Associations. As of the Effective Date of this Agreement as defined in Section 8, below, each Association shall name a Risk Pool Board member and an alternate to represent it on the Risk Pool Board. The Risk Pool Board members shall have primary authority for representing their respective appointees, and the alternates shall only have authority to do so in the absence of their respective member. Each Board member (or, if the respective member is not present, the related alternate) shall have one vote in all matters that properly come before the Risk Pool Board. Other than as provided in Section 1.2, below, consent of the Risk Pool Board member or alternate representing each Association shall be necessary for the Risk Pool Board to take action.

1.1. Risk Pool Manager. Subject to the provisions of this Section, the Risk Pool Board may retain a risk pool manager (the “Risk Pool Manager”) and may authorize the Risk Pool Manager to take certain actions necessary to implement this Agreement, including but not limited to: (i) assisting the Associations with development of their Fishing Plans (as defined below); (ii) assisting the Risk Pool Board with its review and approval of the Associations’ Fishing Plans; (iii) monitoring vessel operations; (iv) identifying and reporting apparent violations of Regional Rules (as defined below); (v) taking certain actions in response to apparent violations of Regional Rules (including, but not limited to, issuing Restricted Fishing Orders pursuant to Section 4, below); (vi) gathering, analyzing and disseminating Fishery information that may be useful for purposes of this Agreement; (vii) calling meetings of the Risk Pool Board; and (viii) generally assisting the Associations in fulfilling their obligations under this Agreement as the Risk Pool Board deems appropriate. However, the Risk Pool Board shall not delegate authority to the Risk Pool Manager to: (i) approve Fishing Plans or Fishing Plan amendments (as defined in Section 2, below); (ii) make a final determination whether a vessel has violated Regional Rules; (iii) make a final decision whether to deny a vessel Constraining

Species QP coverage or to assess liquidated damages or apply other remedies in connection with a violation of Regional Rules; or (iv) amend this Agreement.

1.2. Suspension of Unanimous Consent Requirement. Notwithstanding the unanimous consent requirement for Risk Pool Board action set forth in Section 1, above, in the event that an Association is in breach of this Agreement, consent of the member or alternate representing such Association shall not be required for the Risk Pool Board to take the actions authorized under this Agreement in response to such breach.

2. Regional Fishing Plans. As of the Effective Date, each Association shall have developed a draft 2011 fishing plan (each, a "Fishing Plan"). As a general matter, each Fishing Plan shall require each party governed by it to exercise all commercially reasonable efforts to reduce their incidental catch of the Constraining Species in the 2011 Fishery to the lowest practicable amounts and rates consistent with prosecuting the 2011 Fishery on a commercially viable basis. Subject to the foregoing, each Association shall exercise its best commercially reasonable efforts to promote all Associations' harvest of their non-Constraining Species QP, to the extent it is feasible to do so without incurring unreasonable risk of exceeding the Constraining Species QP designated for its use.

2.1. Proposed Fishing Plan Contents. Each Association's proposed Fishing Plan shall provide a general schedule for the Fishery operations of each of the vessels harvesting QP under its Fishing Plan (individually, an Association's "Vessel", and collectively, an Association's "Vessels"), specifying the time, area, method and means for harvest of each target species. Each Association's Fishing Plan shall specify the proposed amounts of target species QP to be harvested under its Fishing Plan and the proposed amounts and rates of associated incidental catch of Constraining Species QP (together, the "Fishing Plan QP"). Each Association's Fishing Plan shall identify its Vessels and the master(s) and owner(s) or bareboat charterers of each of its Vessels. Each Fishing Plan shall identify the boundaries of the Fishery region to which it applies (the "Region"). Each Fishing Plan shall include rules that specify acceptable and unacceptable fishing practices for prosecuting the Fishery within the Fishing Plan's Region (the "Regional Rules"). Each Fishing Plan shall identify the party or parties responsible for enforcing its Regional Rules, and shall specify the procedures that will be followed in enforcing its Regional Rules. Each Fishing Plan shall adopt the remedies for Regional Rule violations provided on the Remedies Schedule attached as Exhibit 1, as the same may be amended from time to time by the Risk Pool Board (the "Remedies Schedule"). No Fishing Plan submitted under this Agreement shall require its Vessels to deliver to a specific processor or port or to otherwise establish delivery terms other than the retention and reporting requirements set forth in this Agreement.

2.2. Fishing Plan Submission and Review. As of the Effective Date, each Association shall submit a Fishing Plan to the Risk Pool Board. The Risk Pool Board shall promptly review each Association's Fishing Plan to determine whether, in the Risk Pool Board's

sole discretion: (i) the Fishing Plan's target species and Constraining Species catch projections are realistic and the Fishing Plan identifies the sources of QP necessary to support those catch projections; (ii) the Fishing Plan's Regional Rules are designed to reduce the incidental catch of the Constraining Species in the Fishery to the lowest practicable rates consistent with conducting a commercially viable groundfish fishery; (iii) the Association's Vessels and their gear and equipment are appropriate for the fishing operations to be conducted under the Fishing Plan; (iv) the masters and owners or charterers of the Association's Vessels are willing and able to operate in compliance with the Fishing Plan's Regional Rules, and have consented to the remedies identified on the Remedies Schedule for violations of those Regional Rules; (v) the Region to which each Fishing Plan applies is consistent with Regions defined under the other Fishing Plans; and (vi) the Association's Fishing Plan incorporates the Remedies Schedule and the Association's governance structure and resources, and its Fishing Plan's enforcement procedures are adequate for maintaining Regional Rule compliance and generally consistent with those of the other Associations. For purposes of this Agreement, no Fishing Plan shall take effect until it is approved by the Risk Pool Board. If the Risk Pool Board does not approve a Fishing Plan, the Risk Pool Board shall specifically identify the basis for disapproval.

2.3. Fishing Plan Implementation. Upon approval of an Association's Fishing Plan, the Association submitting the Fishing Plan shall cause its Vessels to conduct their Fishery operations in accordance with the Fishing Plan. Each Association shall provide a report regarding its Fishing Plan QP catch rates and amounts on a quarterly basis or as otherwise required by the Risk Pool Board.

2.4. Fishing Plan Amendments. An Association may submit a Fishing Plan amendment to the Risk Pool Board at any time, and shall submit Fishing Plan amendments to the Risk Pool Board as required under this Section 2.4. No Fishing Plan amendment shall take effect until it is approved by the Risk Pool Board.

2.4.1. If Fishing Plan QP catch of an Association's Vessels is substantially above or below the catch rates or amounts projected under its Fishing Plan, the Association shall promptly submit a Fishing Plan amendment that corrects its Fishing Plan to take the variance into account.

2.4.2. An Association issuing a Restricted Fishing Order pursuant to Section 4, below, shall submit a Fishing Plan amendment pursuant to the provisions of that Section.

2.4.3. No Association shall add a Vessel or Vessel master to its Fishing Plan or increase or decrease the amount of target species or Constraining Species QP projected to be harvested under its Fishing Plan without first obtaining approval of a Fishing Plan amendment to that effect.

2.4.4. If an Association's Vessels' aggregate catch of a Constraining Species exceeds seventy five percent (75%) of the total annual projected catch amount for that species as reflected in the Association's Fishing Plan, then the Association shall prepare and submit a Fishing Plan amendment that specifies the actions that the Association's members will take to complete its annual Fishery operations in compliance with its Constraining Species designation.

3. Regional Rules. Each Association shall cause each of its Vessels participating in the Fishery to conduct their fishing operations in compliance with the Regional Rules adopted by the Association that has jurisdiction over the Region in which the Vessel is operating. The Association to which a Vessel belongs may impose additional restrictions on its Vessel's operations in a Region under another Association's jurisdiction. The Association to which a Vessel belongs shall take action in accordance with Section 6, below, in response to any of its Vessels failing to comply with the applicable Regional Rules. Without limiting the foregoing:

3.1. Time and Area Closures. Each Vessel shall comply with pre-season and in-season time and area restrictions. Such restrictions may limit fishing activity by season, time of day, tide cycle, and/or lunar cycle.

3.2. Methods and Means Restrictions. Each Vessel shall comply with method and means restrictions, including but not limited to gear restrictions, fishing depth restrictions, and careful handling restrictions.

3.3. Halibut Careful Handling Restrictions. Each Vessel shall take all commercially reasonable actions necessary to promote survival of Pacific halibut caught north of 40 degrees 10 minutes North latitude.

3.4. Rockfish Retention. Each Vessel shall retain all of its rockfish (i.e., genus *Sebastes*) catch, other than catch of rockfish species that are unmarketable and have been identified as non-Constraining Species rockfish by the observer prior to being discarded, and shall insure that all of its rockfish catch is reported to the NMFS shoreside monitor at delivery.

4. Restricted Fishing Orders. Restricted Fishing Orders may impose any restrictions on Vessel operations that the party issuing the Restricted Fishing Order deems necessary or appropriate in its sole discretion to limit catch of Constraining Species, including without limitation closing the continental shelf within the Region to fishing, closing the waters within the Region shoreward of 300 fathoms to fishing, restricting use of certain types of fishing gear by time, area and/or depth, and/or prohibiting a specific Vessel or Vessel master from conducting further fishing operations in the Region. **Upon being issued, a Restricted Fishing Order shall have the force and effect of a Regional Rule.**

4.1. Corrective Restricted Fishing Order. If an Association's Vessels catch of one or more Constraining Species equals or exceeds the amount projected under the Association's

Fishing Plan, the Association shall issue a Restricted Fishing Order that restricts its Vessels' operations as the Association deems appropriate to prevent any further catch of such Constraining Species until a related Fishing Plan amendment is approved.

4.2. Adaptive Restricted Fishing Order. If the Association with jurisdiction over a Region determines that its Regional Rules should be modified to more effectively limit the catch of Constraining Species in its Region, the Association may issue a Restricted Fishing Order to that effect pending approval of a related Fishing Plan amendment by the Risk Pool Board.

4.3. Restricted Fishing Order Timing and Distribution. Each Association shall issue a Restricted Fishing Order required under Sections 4.1 or 4.2 as soon as reasonably possible after the haul giving rise to such Association's obligation to issue the Restricted Fishing Order (the "Triggering Haul") is retrieved and sorted. If an Association fails to do so, the Risk Pool Board may issue a Restricted Fishing Order for that Association's Region that the Risk Pool Board determines to be appropriate in its sole discretion. The party issuing the Restricted Fishing Order shall send it directly to all Vessels fishing in the Region, to the Monitoring Agent (see Section 10, below) and to all Risk Pool Board members and alternates.

4.4. Fishing Plan Amendment. Within seven (7) days of a Restricted Fishing Order being issued, the Association whose Fishing Plan is affected by the Restricted Fishing Order shall prepare a related Fishing Plan amendment and submit it to the Risk Pool Board for approval. In the event that the Association fails to submit a Fishing Plan amendment within seven (7) days of the Restricted Fishing Order being issued, the Risk Pool Board shall have the authority to amend the Association's Fishing Plan as the Risk Pool Board deems appropriate in its sole discretion. A Restricted Fishing Order shall not be rescinded until the Risk Pool Board has approved the related Fishing Plan amendment.

5. Constraining Species QP Designation and Usage. Notwithstanding the allocation of Constraining Species QP among the Association's members by NMFS and the acquisition of Constraining Species QP by Association members through lease or purchase, the total amount of Constraining Species QP held by Association members that participate in the Fishery shall be managed and used in accordance with the provisions of this Section 5.

5.1. Constraining Species QP Holding Accounts. On or before the Effective Date, the Associations shall cause their members to identify inactive Pacific Coast trawl limited entry licenses and vessels, and to establish a sufficient number of Constraining Species QP holding accounts (the "Holding Accounts") using such permits and vessels such that the total Constraining Species QP can be stored in the Holding Accounts in compliance with the IFQ Program's QP usage limits. Upon each Holding Account being established, the party establishing the Holding Account shall take the steps necessary to transfer exclusive control over QP transfers into and out of the Holding Accounts to an agent identified by the Risk Pool Board who may be, but is not required to be, the Risk Pool Manager.

5.2. Holding Account Funding. As of the Effective Date, the Associations shall cause their members to transfer their Constraining Species QP from their individual QS and Vessel accounts into the Holding Accounts. The Risk Pool Manager shall establish an accounting system that identifies the sources and amounts of all Constraining Species QP deposited in the Holding Accounts.

5.3. Preliminary Constraining Species QP Designations. As part of the Fishing Plan approval process, the Risk Pool Board shall designate amounts of Constraining Species QP for each Association's use consistent with its Fishing Plan. Such designations shall be reflected in the Fishing Plans approved by the Risk Pool Board.

5.4. Holding Account Coverage of Constraining Species Catch. A Vessel's eligibility to have its Constraining Species catch covered with Holding Account QP shall be determined on a trip by trip basis. Subject to the provisions of this Section 5, a Vessel in the Fishery that operates in compliance with the applicable Regional Rules at all times during a fishing trip (an "Eligible Vessel") shall have its Constraining Species catch taken during that fishing trip covered by the Constraining Species QP deposited in the Holding Accounts. **No Vessel other than an Eligible Vessel shall have the right to have its Constraining Species catch covered with Holding Account QP.** The Risk Pool Board shall have the authority to withhold Holding Account QP coverage of Constraining Species catch until the Risk Pool Board has determined in its sole discretion that the Vessel requesting Holding Account coverage was operating in compliance with the applicable Regional Rules during the fishing trip when the Constraining Species catch occurred. The Risk Pool Board shall determine whether to cover a Vessel's Constraining Species catch as soon as reasonably possible. The Risk Pool Board may in its sole discretion elect to cover some or all of a non-Eligible Vessel's Constraining Species catch with Holding Account QP, if the Risk Pool Board determines it is appropriate to do so. All such decisions of the Risk Pool Board shall be final, and shall be binding on the Associations, their members and their Vessels.

5.4.1. Without limiting the Risk Pool Board's general authority to withhold Holding Account QP coverage pending a determination of a Vessel's Regional Rule compliance, in the event that a Vessel's Constraining Species catch during a trip is equal to or greater than the amounts set forth in the Rule Compliance Audit Threshold schedule below, the Risk Pool Board shall determine whether the Vessel is an Eligible Vessel before covering the Vessel's Constraining Species catch with Holding Account QP.

Species	Rule Compliance Audit Threshold
Yelloweye Rockfish	One (1) Fish
Canary Rockfish	200 pounds

Darkblotched Rockfish	1500 pounds
Widow Rockfish	1500 pounds
Pacific Ocean Perch	1000 pounds
Cowcod (South of 40 degrees 10 minutes N.)	90 pounds
Bocaccio Rockfish (South of 40 degrees 10 minutes N.)	1750 pounds
Pacific Halibut (North of 40 degrees 10 minutes N.)*	1000 pounds

5.5. Holding Account QP Disbursements. A Vessel's Constraining Species catch covered by Holding Account QP shall in each instance first be covered by the Constraining Species QP designated for use by the Association under whose Fishing Plan the Vessel is operating. In the event that such Association does not have a sufficient amount of designated Constraining Species QP to cover such Vessel's catch, the Vessel's Constraining Species catch shall be covered by the Constraining Species QP of all Associations, pro-rata according to the amounts of the affected Constraining Species QP designated for the use of such Associations under their Fishing Plans.

5.6. Insufficient Holding Account QP. In the event that the total amount of Constraining Species QP in the Holding Accounts is insufficient to cover the Constraining Species catch of an Eligible Vessel, the Associations shall collectively undertake their best commercially reasonable efforts to obtain additional Constraining Species QP in the amount necessary to cover the Holding Account shortfall, and to provide a reasonable buffer against further shortfalls. In the event that the Associations are not able to obtain an additional amount of Constraining Species QP sufficient to cover the shortfall on commercially reasonable terms within thirty (30) days, the Associations shall: (i) jointly contribute toward the payment of all NMFS fines, penalties and forfeitures related to the Constraining Species QP deficit resulting from the Holding Account shortfall, such that all Associations bear a share of such expenses that is proportionate to their designated amounts of the related Constraining Species, provided that if the Constraining Species QP deficit is Yelloweye rockfish, all Associations shall contribute to covering such fines, penalties and forfeiture on an equal share basis; and (ii) if the holder of the affected Vessel account desires, undertake their best commercially reasonable efforts to have the affected Vessel account holder's 2011 target species QP harvested by other Vessels at cost, with the balance of the related ex-vessel revenues being distributed to the affected Vessel account holder.

6. Regional Rule Enforcement and Remedies. Each Association shall enforce its Regional Rules in accordance with the following provisions.

6.1. Monitoring Regional Rule Compliance and Reporting Apparent Violations.

Each Association shall monitor its Vessels' locations, inform itself concerning the Regional Rules for each Region in which each of its Vessels is operating, and monitor its Vessels' compliance with the Regional Rules applicable to their operations. Each Association shall have primary responsibility for taking action in accordance with this Section in response to an apparent violation of applicable Regional Rules by one or more of its Vessels. In addition, the Monitoring Agent and any Association manager or member may report any Vessel's suspected violation of Regional Rules to the Vessel's Association and the Risk Pool Board.

6.2. Enforcement Action. Upon receiving notice of an apparent violation, the Association under whose Fishing Plan the subject Vessel was operating at the time of the apparent violation shall take action in response within sixty (60) days, and shall provide a report of the action taken and a copy of the record supporting that action to each Risk Pool Board member. If an Association (i) fails to take action with respect to an apparent violation and report the action taken to the Risk Pool Board within such 60-day period, or (ii) takes an action that is inconsistent with the Remedies Schedule or any of such Association's obligations under this Agreement, and fails to provide justification for its inaction or its inconsistent action that the Risk Pool Board deems sufficient in its sole discretion, then the Risk Pool Board shall take enforcement action as appropriate.

6.3. Dispositive Evidence. For purposes of this Section 6, state and federal landing reports, observer data, Vessel Monitoring Service ("VMS") tracking data, vessel log books and plotter data and catch data produced by the Monitoring Agent in conformance with NMFS catch accounting and bycatch estimation procedures shall be presumed accurate and sufficient for determining whether a Vessel violated Regional Rules, absent a clear and compelling demonstration of manifest error.

6.4. Remedies for Regional Rule Violations. As a substitute for actual, direct, indirect or consequential monetary damages, each Association hereby adopts the following remedies as the sole remedies for Regional Rule violations. Each of the following remedies may be applied individually or in combination with one or more other remedies in response to a specific Regional Rule violation. The type and amount of the remedy or remedies applied in connection with a specific Regional Rule violation shall be determined with reference to the Remedies Schedule. In the event of a conflict between the terms of this Agreement and the Remedies Schedule, this Agreement shall control.

6.4.1. Denial of QP Coverage for Constraining Species Catch. A Vessel other than an Eligible Vessel (as defined in Section 5.4, above) may be denied Holding Account QP coverage for its Constraining Species catch.

6.4.2. Liquidated Damages. **The master and the owner or owners of a Vessel that violates a Regional Rule shall be liable for liquidated damages determined in**

accordance with the Remedies Schedule for each instance in which the Vessel is operated in violation of the applicable Regional Rules. In the event that a Vessel is under charter, the charterer shall be liable for all liquidated damages that would be assessed to the Vessel's owner or owners.

6.4.3. Termination of Risk Pool Participation. The Associations acknowledge that in cases where a Vessel master accrues multiple Regional Rule violations, or where a Vessel master's violation of a Regional Rule is the result of the master's gross negligence or willful misconduct, denying Holding Account QP coverage for Constraining Species catch and/or assessing liquidated damages may not be adequate remedies. Each Association therefore agrees that if a Vessel master accrues three (3) or more Regional Rule violations, or if the Association or the Risk Pool Board conclude in their sole discretion that a Vessel master's violation of a Regional Rule is the result of gross negligence or willful misconduct, the Association or the Risk Pool Board may declare the Vessel, the Vessel's master and/or the Vessel's owner(s) or charterer(s) ineligible to participate in the Constraining Species QP risk pool arrangement contemplated under this Agreement, may declare the Vessel operated by such master to be a non-Eligible Vessel for the remainder of the 2011 Fishery, and may deny the Vessel, the Vessel's master and/or the Vessel's owner(s) or charterer(s) Holding Account QP coverage for all Constraining Species catch after the effective date of such declaration, regardless of whether the Vessel is operating in compliance with the Regional Rules. A party who is declared ineligible to participate in the Constraining Species risk pool under this Section 6.4.3 shall have no right to receive a refund of the Constraining Species QP contributed to a Holding Account by them or on their behalf. **All such party's liquidated damage obligations, indemnification and defense obligations, fee and cost reimbursement obligations and confidentiality obligations incurred during the term of this Agreement shall survive such party's termination.**

6.4.4. Reimbursement of All Costs and Fees. Notwithstanding any provision of this Agreement to the contrary, each Association, the Risk Pool Board, the Risk Pool Manager, and the Monitoring Agent shall be entitled to reimbursement of all costs and fees they incur in connection with any legal action they may individually or collectively take to enforce Regional Rules in which they are the substantially prevailing party, including but not limited to all attorneys' fees, arbitration costs, court costs, costs of bonds or other financial security posted or pledged in connection with such action, expert witness costs, costs of receivers or special masters, and each and every other cost or fee of any nature or amount whatsoever incurred in connection with such action, provided that such costs and fees are reasonable in nature and amount.

6.4.5. Indemnification Against All Governmental Fines, Penalties and Forfeitures. Notwithstanding any provision of this Agreement to the contrary, the master and the owner(s) or charterer(s) of a Vessel that conducts fishing operations in violation of the applicable Regional Rules shall jointly indemnify, defend and hold the Associations, their

members, the masters and owners of all other Vessels, the Risk Pool Board, the Risk Pool Manager and the Monitoring Agent harmless from and against all claims, liabilities, fines, penalties, forfeitures and fees of any nature and amount whatsoever asserted or obtained by NMFS, the U.S. Department of Justice or any other state or federal governmental agency with jurisdiction over the Fishery in connection with Vessel fishing operations conducted in violation of the applicable Regional Rules. This indemnification, defense and hold harmless shall extend to all attorneys' fees and all other costs and fees of any nature or amount whatsoever incurred in relation to such action, provided that such costs and fees are reasonable in nature and amount.

6.5. Application of Liquidated Damages and Other Recovered Funds. All liquidated damages awarded to and cost and fee reimbursements recovered by an Association in connection with its enforcement of Regional Rules shall be retained by such Association. All liquidated damages awarded to and cost and fee reimbursements recovered by the Risk Pool Board, the Risk Pool Manager or the Monitoring Agent in connection with an action to enforce Regional Rules shall be retained by the risk Pool Board and expended or distributed as the Risk Pool Board deems appropriate.

6.6. Limitation and Waiver of Remedies. Each Association agrees that the remedies for violating Regional Rules shall be limited to those specifically provided in Sections 6.4.1 through 6.4.5, above. On behalf of itself and its members, each Association hereby waives any claims to actual, direct, indirect or consequential damages in connection with any violation of Regional Rules. Further, each Association agrees to obtain the same waiver of remedies and damages from each of its Vessels' masters and owners and each person whose QP are harvested under the Association's Fishing Plan.

7. Breach of this Agreement and Remedies for Breach. An Association that fails to fulfill any of its obligations under this Agreement shall be in breach of this Agreement, and all other Associations shall be entitled to the remedies for breach provided in this Section 7.

7.1. Revocation of Constraining Species QP Assignment and Constraining Species QP Pool Coverage. The Risk Pool Board, by the affirmative vote of all Risk Pool Board members other than the Board member representing the Association that is the subject of the vote, may immediately revoke an Association's Constraining Species QP assignment and may deny all subsequent applications for Holding Account coverage of Constraining Species catch by such Association, its members and its Vessels if such Association fails to: (i) cause its Vessels to comply with the applicable Regional Rules, or to take timely and effective enforcement action in accordance with Section 6, above, in the event that one or more of its Vessels fails to comply with the applicable Regional Rules; (ii) issue a Restricted Fishing Order and obtain approval of a Fishing Plan amendment in the event that it is required to do so pursuant to Section 4, above; (iii) cause its Vessels to collect and/or report catch data in accordance with Section 9, below; or (iv) fulfill any of its other obligations under this Agreement, and the Risk Pool Board determines

that such failure has a material adverse effect on the Constraining Species risk pool arrangement contemplated under this Agreement. In the event that the Risk Pool Board elects to revoke an Association's Constraining Species assignment and Holding Account coverage for its Vessels' Constraining Species catch, the Risk Pool Board shall arrange to have seventy-five percent (75%) of the remaining amount (if any) of the Constraining Species QP transferred to the Holding Accounts by that Association's members or on their behalf disbursed as such Association requests. **All liquidated damage obligations, indemnification and defense obligations, fee and cost reimbursement obligations and confidentiality obligations incurred by an Association shall survive its termination.**

7.2. Reimbursement of Costs and Fees. Notwithstanding any provision of this Agreement to the contrary, each Association, the Risk Pool Board, the Risk Pool Manager, and the Monitoring Agent shall be entitled to reimbursement of all costs and fees they incur in connection with any legal action they may individually or collectively take to enforce the terms and conditions of this Agreement, including but not limited to all attorneys' fees, arbitration costs, court costs, costs of bonds or other financial security posted or pledged in connection with such action, expert witness costs, costs of receivers or special masters, and each and every other cost or fee of any nature or amount whatsoever incurred in connection with such action, provided that such costs and fees are reasonable in nature and amount.

7.3. Indemnification. Notwithstanding any provision of this Agreement to the contrary, each Association that breaches this Agreement shall indemnify, defend and hold the other Associations, their members, the masters and owners of the Vessels, the Risk Pool Board, the Risk Pool Manager and the Monitoring Agent harmless from and against all claims, liabilities, fines, penalties, forfeitures and fees of any nature and amount whatsoever asserted or obtained by NMFS, the U.S. Department of Justice or any other state or federal governmental agency with jurisdiction over the Fishery in connection with a breach of this Agreement. This indemnification, defense and hold harmless shall extend to all attorneys' fees and all other costs and fees of any nature or amount whatsoever incurred in relation to such action, provided that such costs and fees are reasonable in nature and amount.

8. Term and Termination. This Agreement shall take effect as of the date on which it is executed by the authorized representatives of the Associations (the "Effective Date") and shall remain in effect until midnight on December 31, 2011. This Agreement may be terminated earlier by unanimous vote of the Risk Pool Board. Upon termination of this Agreement, any QP remaining in the Constraining Species QP Pool shall be allocated among the Associations by the Risk Pool Board on a pro rata basis, according to the amounts of Constraining Species QP assigned to the Holding Accounts by their members or on their members' behalf. **All liquidated damage obligations, indemnification and defense obligations, fee and cost reimbursement obligations and confidentiality obligations incurred during the term of this Agreement shall survive its termination.**

9. Bycatch Data Collection and Release. Each Association shall cause the masters and owners of its Vessels to take all commercially reasonable actions to obtain as soon as reasonably possible the catch data and other information necessary for effective management of the risk pool arrangement contemplated under this Agreement, as determined by the Risk Pool Board from time to time. Vessel masters and owners shall provide such data to the Monitoring Agent or as the Risk Pool Board directs as soon as reasonably possible after it becomes available. In addition, each Association shall cause the masters and owners of its Vessels to prepare and submit as soon as reasonably possible all required log book data upon the Risk Pool Manager or Monitoring Agent's request, to take all reasonable actions to have their Vessels' VMS data released directly from NMFS or the VMS service to the Monitoring Agent or as the Risk Pool Board directs, and to take all reasonable actions necessary to facilitate accurate collection of catch information by NMFS observers and shoreside monitors. **A Vessel master's or Vessel owner's failure to collect, provide or release data in accordance with this Section 9 shall be a Regional Rule violation.**

9.1. Agency Data. NMFS catch data, state log book data and VMS data shall be the official record of catch for purposes of this Agreement.

9.2. Data Dissemination. The Risk Pool Board shall have the authority to direct the Monitoring Agent to release the data it receives under this Agreement in such formats and to such parties as the Risk Pool Board deems appropriate. The Risk Pool Board may require the Monitoring Agent and/or any other party receiving such data to execute a non-disclosure agreement that restricts the distribution of that information.

9.3. Elevated Bycatch Event Data. The master of a Vessel that has a haul that exceeds a catch threshold identified in this Section 9.3 shall notify the Monitoring Agent and the masters of all other Vessels harvesting in the same Region within the earlier of (i) one (1) hour after sorting the catch or (ii) as soon as reasonably possible after completing the haul. For purposes of this Section, such elevated catch thresholds are:

Species	Elevated Bycatch Event Threshold
Yelloweye Rockfish	One (1) Fish
Canary Rockfish	40 pounds
Darkblotched Rockfish	500 pounds
Widow Rockfish	300 pounds
Pacific Ocean Perch	175 pounds
Cowcod (South of 40 degrees 10 minutes N.)	50 pounds

Bocaccio Rockfish (South of 40 degrees 10 minutes N.)	500 pounds
Pacific Halibut (North of 40 degrees 10 minutes N.)*	500 pounds

Notes: * Pacific halibut catch poundage is for total catch (landings, dead discard, live discard), not total mortality. This total catch information is necessary to identify areas and events of Pacific halibut bycatch.

In connection with any such catch event, the Vessel master's report shall include the following data:

- Name of the Vessel making the haul;
- Catch amount for the species whose catch exceeds the threshold;
- Set location and time;
- Haul location and time;
- Set depth;
- The Vessel master's best estimate of the exact location of the Constraining Species catch incident;
- The gear used; and
- Any other information the Vessel master considers relevant in connection with the Constraining Species catch event.

9.4. Confidential Information. All data and information reported to the Monitoring Agent pursuant to this Section 9 and all other information regarding the Fishery or the marine habitat where the Fishery takes place of any nature whatsoever that is provided by the Associations or their members, directors, officers, employees, affiliates, representatives or agents (collectively, "Representatives") in connection with this Agreement, and all work product generated from that information, whether in electronic, digital or hard copy format, written or oral, tangible or intangible, or furnished before or after the date hereof, shall constitute "Confidential Information." The term "Confidential Information" does not, however, include information which (i) is or becomes publicly available other than as a result of a disclosure by the Associations or their Representatives, or (ii) is or becomes publicly available on a non-confidential basis from a source which, to the best of the knowledge of the "Receiving Party," as defined in Section 9.4.1, after due inquiry, is not prohibited from disclosing such information by a legal, contractual or fiduciary obligation to the Associations or their Representatives.

9.4.1. Disclosure and Use of Confidential Information. Confidential Information received by the Monitoring Agent, Risk Pool Manager, Environmental Defense Fund (“EDF”) and TNCC and EDF’s and TNCC’s contractors (each a “Receiving Party”, and collectively the “Receiving Parties”) shall be disclosed only to the Risk Pool Board, Representatives of the Associations, and to other persons retained to work with the Associations in furtherance of this Agreement. As a condition to receiving Confidential Information, the Risk Pool Board shall require each Receiving Party to execute a certificate of agreement to abide by these confidentiality provisions attached as Exhibit 2 to this Agreement. Confidential Information may not be disclosed by a Receiving Party to any person who is not the Monitoring Agent, a member of the Risk Pool Board, the Risk Pool Manager, or a Representative of an Association without the prior consent of the Risk Pool Board. Receiving Parties may exchange and share Confidential Information with each other. All Confidential Information shall be used and disclosed by Receiving Parties only for purposes related to this Agreement.

9.4.2. Duty to Keep Confidential. Each Receiving Party will take all commercially reasonable precautions necessary or appropriate to keep Confidential Information confidential and will not (except as required by applicable law, regulation or legal process, and only after compliance with Section 9.4.2.1 below), without the prior written consent of the disclosing party, disclose Confidential Information to anyone other than another Receiving Party or use Confidential Information for any purpose other than to support the operations of the Constraining Species risk pool contemplated under this Agreement.

9.4.2.1. Notwithstanding Section 9.4.2, above, Confidential Information may be disclosed to an arbitrator or a court in connection with an enforcement action under Section 6, provided that such Confidential Information is submitted for filing under seal in accordance with the arbitrator’s or the court’s rules and redacted to the extent feasible to protect the confidentiality of the Confidential Information and the identity of the persons that disclosed the Confidential Information, while still preserving the ability of the Risk Pool Manager or other person to effectively enforce Regional Rules, Restricted Fishing Orders and this Agreement.

9.4.3. Compelled Disclosure. In the event that any of the Receiving Parties or their Representatives are requested pursuant to, or required by, applicable law, regulation or legal process to disclose any of the Confidential Information, that party will notify the disclosing party so that he, she or it may seek a protective order or other appropriate remedy or, in the disclosing party’s sole discretion, waive compliance with the terms of this Agreement. In the event that no such protective order or other remedy is obtained, or that the disclosing party waives compliance with the terms of this Agreement, the Receiving Party from whom the Confidential Information is sought will furnish only that portion of the Confidential Information which is legally required to be furnished and will exercise all commercially reasonable efforts to obtain reliable assurance that confidential treatment will be accorded the Confidential Information furnished.

9.4.4. Return or Destruction of Confidential Information. Prior to termination of this Agreement, any Receiving Party that for any reason is no longer party to the risk pool arrangement contemplated under this Agreement shall promptly so inform the Risk Pool Manager, if any, or if none, all members of the Risk Pool Board, and will promptly deliver to the Risk Pool Manager, if any, or if none, one continuing member of the Risk Pool Board, at the Receiving Party's own expense all written or otherwise tangible copies of Confidential Information in the that party's possession or control. Within two weeks of termination of this Agreement, all written or otherwise tangible copies of Confidential Information in any Receiving Party's possession, custody or control shall be permanently destroyed at the Receiving Party's expense. Any oral or otherwise intangible Confidential Information will continue to be subject to the terms of this Agreement following termination of this Agreement.

10. Monitoring Agent. The Associations agree that Sea State, Inc. will be the initial "Monitoring Agent" for purposes of this Agreement. The Associations authorize the Risk Pool Board to retain Sea State, Inc. or such other party as the Risk Pool Board may elect from time to time to serve as the Monitoring Agent. The Risk Pool Board shall determine the amount of the Monitoring Agent's cost that each Association shall bear.

11. Release and Waiver of All Claims Against Risk Pool Board, Risk Pool Manager and Monitoring Agent; Indemnification and Hold Harmless. Each Association acknowledges that the effectiveness of this Agreement depends to a significant extent on the Risk Pool Board, the Risk Pool Manager and Monitoring Agent exercising their independent responsibility and judgment in fulfilling its terms. Each Association further acknowledges that if the Risk Pool Board, the Risk Pool Manager or the Monitoring Agent were potentially liable for simple negligence in connection with such actions, the Risk Pool Board, the Risk Pool Manager and/or the Monitoring Agent would not accept the responsibilities they assume under this Agreement. It is therefore in each Association's interest to reduce the Risk Pool Board's, the Risk Pool Manager's and the Monitoring Agent's potential liability under this Agreement. Therefore, each Association hereby waives and releases any and all claims against the Risk Pool Board and each of its members and alternates, the Risk Pool Manager and the Monitoring Agent in connection with this Agreement, other than those arising out of gross negligence or willful misconduct by the Risk Pool Board, the Risk Pool Manager or Monitoring Agent. Further, the Associations agree to indemnify, defend and hold the Risk Pool Board, the Risk Pool Manager and the Monitoring Agent harmless against any third party claims asserted against the Risk Pool Board, the Risk Pool Manager or the Monitoring Agent in connection with this Agreement, other than those arising out of gross negligence or willful misconduct by the Risk Pool Board, the Risk Pool Manager or Monitoring Agent.

12. Binding Arbitration. Each Association agrees to use its best efforts to resolve any disputes arising under this Agreement through direct negotiations. Other than disputes in connection with which an Association, the Risk Pool Board or the Risk Pool Manager seeks a restraining order, an injunction, or some other form of equitable relief, all disputes not resolved

through direct negotiation shall be submitted to binding arbitration before a single arbitrator upon the written request of the Risk Pool Board or any Association. The written request will include the name of the arbitrator selected by the party requesting arbitration. The responding party will have ten (10) days to provide written notice of the name of the arbitrator it has selected, if any. If the responding party timely selects a second arbitrator, the two arbitrators will select the arbitrator within ten (10) days. The single arbitrator selected by the initiating party (if the responding party agrees with the initiating party's selection or does not select an arbitrator) or by the arbitrators selected by the initiating and responding party will schedule the arbitration hearing as soon as reasonably possible thereafter, and will determine its location. Every arbitrator, however chosen, must be without material ties to any Association, Association member, Vessel master or Vessel owner. The decision of the arbitrator will be final and binding. The arbitration will be conducted under evidentiary and procedural rules established by the arbitrator. The parties will be entitled to limited discovery as determined by the arbitrator in his or her sole discretion. The arbitrator will also determine the "prevailing party" and that party will be entitled to its reimbursement of its reasonable costs, fees and expenses from the non-prevailing party, including attorneys' and arbitrator fees, in accordance with this Agreement. In no event will arbitration be available pursuant to this Section 12 after the date when commencement of such legal or equitable proceedings based on such claim, dispute, or other matter in question would be barred by the applicable statute of limitations.

13. Miscellaneous.

13.1. Counterparts and Electronic Transmission. This Agreement may be executed in counterparts which, when taken together, shall have the same effect as a fully executed original. Delivery of a signed copy of this Agreement by electronic transmission shall have the same effect as delivering a signed original.

13.2. Further Actions. Each party to this Agreement agrees to take all actions and execute all documents necessary or convenient to give effect to the intents and purposes of this Agreement. Without limitation, such obligations shall include forming and maintaining such local organizations as may be necessary to implement and enforce Regional Rules and the general provisions of this Agreement, and amending this Agreement as reasonably necessary to comply with changes in law, and policies and regulations implementing Amendment 20.

13.3. Severability. In the event that any provision of this Agreement is held to be invalid or unenforceable, such provision shall be deemed to be severed from this Agreement, and such holding shall not affect in any respect whatsoever the validity of the remainder of this Agreement.

13.4. Entire Agreement. This Agreement contains the entire understanding of the parties as to the matters addressed herein, and supersedes all prior agreements related to

the same. No amendment to this Agreement shall be effective against a party hereto unless in writing and duly executed by such party.

13.5. Due Authority. Each Association hereby represents and warrants that: (i) it is duly organized, validly existing and in good standing; (ii) it has all authority, corporate and otherwise, to enter into this Agreement on its own behalf and on behalf of its members who are participating in the Fishery; and (iii) this Agreement constitutes a valid, binding obligation of such Association according to its terms.

13.6. Assignment. No party may assign any of its rights hereunder without the prior written consent of the other parties hereto, which consent shall not be unreasonably withheld. Such consent may be conditioned upon execution of an adherence agreement by the party to whom such rights are proposed to be assigned. This Agreement shall be binding on the successors and assigns of all parties hereto.

ILWACO FISHERMEN AND MARKETING
COOPERATIVE, a Washington Fish Marketing
Act corporation

FORT BRAGG COOPERATIVE GROUND FISH
ASSOCIATION, a California Fish Marketing Act
corporation

By: _____

By: _____

Its: _____

Its: _____

CENTRAL COAST SUSTAINABLE GROUND FISH
ASSOCIATION, a California Fish Marketing Act
corporation

By: _____

Its: _____

EXHIBIT 1

REMEDIES SCHEDULE

Each Association acknowledges that the actual damages an Association, its members and its Vessels would suffer as the result of a Vessel's failure to comply with the Regional Rules governing its operations are uncertain, and that calculating such damages in the future would be difficult. Each Association hereby agrees that the liquidated damages amounts reflected on this Remedies Schedule are a reasonable estimate of the damages that the Associations would suffer as a result of a Vessel's failure to comply with the applicable Regional Rules.

The remedies set forth on this Remedies Schedule may be applied individually or in combination with one or more other remedies provided on this Remedies Schedule.

1. Data Collection and Reporting Violations. The remedies set forth in this Section apply to: violation of any data collection, reporting and/or release obligation; failure to facilitate observer or shoreside monitor performance of their respective duties; and failure to accurately estimate and report catch.

Remedies:

- First violation (if no gross negligence or willful misconduct): written warning, or up to \$1,500 liquidated damages.
- Second violation (if no gross negligence or willful misconduct): up to \$3,000 liquidated damages.
- Third violation, or first or second violation if the violation results from gross negligence or willful misconduct: up to \$10,000 liquidated damages and/or expulsion.

2. Retention Violations. The remedies set forth in this Section apply to: failure to retain all rockfish (genus *Sebastes*) as required under this Agreement until catch is delivered and accounted for by a shoreside monitor; and failure to employ careful handling and careful release procedures with halibut taken North of 40 degrees 10 minutes North latitude.

Remedies:

- First violation (if no gross negligence or willful misconduct): written warning, or up to \$2,500 liquidated damages.
- Second violation (if no gross negligence or willful misconduct): up to \$5,000 liquidated damages.

- Third violation, or first or second violation if the violation results from gross negligence or willful misconduct: up to \$25,000 and/or expulsion.

3. Time, Area, Methods and Means Violations. The remedies set forth in this Section apply to: violations of Regional Rules that establish the permissible time, area, method and means for conducting fishing operations, including fishing in a closed area, fishing with unauthorized gear, fishing at an unauthorized time, and comparable violations; and failure to comply with a Restricted Fishing Order.

Remedies:

- First violation (if no gross negligence or willful misconduct): up to \$10,000 liquidated damages.
- Second violation (if no gross negligence or willful misconduct): up to \$20,000 liquidated damages and forfeiture of an amount up to the value of the catch taken in connection with the violation.
- Third violation, or first or second violation if the violation results from gross negligence or willful misconduct: up to \$50,000 liquidated damages, forfeiture of an amount up to the value of the catch taken in connection with the violation and expulsion.

EXHIBIT 2

CERTIFICATE OF AGREEMENT
TO COMPLY WITH CONFIDENTIALITY PROVISIONS OF
2011 RISK POOL AGREEMENT

I, _____, state that:

1. My address is _____.
2. My present employer is _____.
3. My present occupation or job description is _____.

4. I have received a copy of the foregoing 2011 Risk Pool Agreement and have carefully read and understand its provisions concerning the disclosure and use of "Confidential Information" as that term is defined therein. I will comply with all of the confidentiality provisions of the 2011 Risk Pool Agreement, including holding in confidence and not disclosing to anyone any Confidential Information, except to my counsel, if any, or pursuant to court order or as otherwise may be permitted pursuant to the terms of the 2011 Risk Pool Agreement.

DATED this _____ day of _____, 2011.

[Signature]

[Printed name]

GLOSSARY OF TERMS

Term	Definition	Section
Associations	Ilwaco Fishermen and Marketing Cooperative, Fort Bragg Cooperative Groundfish Association, and Central Coast Sustainable Groundfish Association	Introduction
Confidential Information	All data and information reported to the Monitoring Agent pursuant to Section 9 and all other information regarding the Fishery or the marine habitat where the Fishery takes place of any nature whatsoever that is provided in connection with this Agreement, and all work product generated from that information, whether in electronic, digital or hard copy format, written or oral, tangible or intangible, or furnished before or after the date hereof	9.4
Constraining Species	Yelloweye rockfish (<i>Sebastes ruberrimus</i>), canary rockfish (<i>Sebastes pinniger</i>), cow cod (<i>Sebastes levis</i>), bocaccio rockfish (<i>Sebastes paucispinus</i>), darkblotched rockfish (<i>Sebastes crameri</i>), Pacific ocean perch (<i>Sebastes alutus</i>), widow rockfish (<i>Sebastes entomelas</i>) and Pacific halibut (<i>Hippoglossus stenolepis</i>)	Recital C
EDF	Environmental Defense Fund	9.4.1
Effective Date	Date on which Agreement is executed by the authorized representatives of the Associations	8
Eligible Vessel	A Vessel in the Fishery that operates in compliance with the applicable Regional Rules at all times during a fishing trip	5.4
Fishery	Pacific Coast groundfish trawl fishery	Recital A
Fishing Plan	Draft 2011 fishing plan	2
Fishing Plan QP	Amounts and rates of incidental catch of Constraining Species QP	2.1
Holding Accounts	A sufficient number of Constraining Species QP holding accounts using permits of inactive Pacific Coast trawl limited entry licenses and vessels	5.1
IFQ Program	Individual fishing quota program adopted as Amendment 20 to the Pacific Coast groundfish Fishery Management Plan	Recital A

Monitoring Agent	Sea State, Inc. will be the initial Monitoring Agent for purposes of this Agreement	10
NMFS	National Marine Fisheries Service	Recital A
QP	2011 quota pounds	Recital B
QS	Quota shares	Recital B
Receiving Parties	The Monitoring Agent, Risk Pool Manager, Environmental Defense Fund, and The Nature Conservancy of California and EDF's and TNCC's contractors	9.4.1
Region	Boundary of Fishery region	2.1
Regional Rules	Rules that specify acceptable and unacceptable fishing practices for prosecuting the Fishery within the Fishing Plan's Region	2.1
Remedies Schedule	Remedies for Regional Rule violations provided on the Remedies Schedule attached as <u>Exhibit 1</u>	2.1
Representatives	Associations, their members, directors, officers, employees, affiliates, representatives or agents	9.4
Restricted Fishing Orders	Any restrictions on Vessel operations that the party issuing the Restricted Fishing Order deems necessary or appropriate in its sole discretion to limit catch of Constraining Species	4
Risk Pool Board	Risk pool management board	1
Risk Pool Manager	Manager retained by Risk Pool Board	1.1
TNCC	The Nature Conservancy of California	Recital A
Triggering Haul	Haul giving rise to an Association's obligation to issue a Restricted Fishing Order	4.3
Vessel/Vessels	An Association's vessel or vessels	2.1
VMS	Vessel Monitoring Service	6.3

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Constraining Species Risk Pooling in the Pacific IFQ Fishery

Concepts, insights, and suggested policy adjustments

Presentation Overview

- Constraining species challenges in the Pacific groundfish fishery
- History of constraining species policy considerations during rationalization program development
- Tools for constraining species management, including collective management approaches
- Building a well functioning risk pool and related policy adjustments
- Description of one Pacific coast risk pooling effort
 - Big picture perspective
 - Governance construct
 - Individual perspectives

Constraining species: overview and policy history

- Pacific groundfish fishery has significant constraints in ability to prosecute the fishery
- PFMC, advisory bodies, and public wrestled with several ideas for managing these species in the IFQ program
 - A quasi-auction
 - No IFQ for OFS
 - Other ideas
- PFMC acknowledged that these stocks need special attention for successful management, but left it to industry
 - Specifically indicated that private risk pools should be allowed to form

Existing regulations implementing control

- Generally, control is defined as :
 - The person has the right to direct...the business of the entity to which the QS or IBQ are registered
 - ...controls a board of directors, or an executive director
 - ...directs or delays transfer of QS
 - ...can affect the day to day business activities of a business that holds QS
 - And others
- A single year risk pool agreement does not appear to violate existing control limits. An agreement that goes beyond a year may implicate control limits

Market based outcomes with constraining species QP

Leaving constraining species QP transfers up to the market poses some challenges

- Potentially high cost
- Self preservation may lead to quota hoarding behavior (Holland, 2010)
- Potential lack of ability to find quota on the market
- And others

Empirical example from North Pacific

- Rather than acquiring more constraining species QP, a vessel that has depleted his constraining species quota may be put in the position of trading out his target species and ceasing fishing

Collective agreements as a constraining species tool

Collective agreements can serve many functions,
including the management of constraining species

- Risk management through insurance-like concepts
- Development of measures for minimizing encounters
- Development of measures to react to encounters when/if they occur
- Requiring the transfer of constraining species quota to occur among pool members per terms of agreement

A Pacific Groundfish Risk Pool Effort

Goals, Methods, Governance, and Personal Perspectives

Overview of Pacific risk pool effort

- Goals of this risk pool effort
- Conceptual approaches for achieving those goals
- Overview of tools, approaches, and policies used for constraining species management
- Description of governance structure implementing the risk pool
- PFMC policy adjustments necessary for optimal success

Goals

- Maximize the catch of target species to the extent possible
- Minimize risks to members stemming from chance encounters with constraining species

Approach: borrow from existing case studies and literature

- Learned from other functional examples that deal with similar issues:
 - MS sector cooperative
 - BSAI pollock and crab cooperatives
 - NESC sector plan
- Draw upon collective management approaches as a proven technique (Gutierrez, Hilborn, and Defeo, 2010, and others)
- Borrowed from insights generated on Pacific bycatch risk management approaches (Holland, 2010)

General Concepts used to achieve goals

Proactive Management Measures

- Fishing plans are developed by members outlining methods for OFS avoidance
- Plans are peer reviewed for validation and information sharing purposes

Reactive Management Measures

- Elevated catch events require check-in and adaptive modification of fishing practices by that member, several members, or all members
 - Modifications are also peer reviewed

Example of tools used

- Formal, written agreements outlining clear expectations for each member
 - Hotspot avoidance
 - Gear modifications
 - Seasonal restrictions
 - Day/night fishing
 - Adaptive response processes
- Utilization of particular gears (trawl vs trap vs hook) is not a condition of risk pool participation

Scope of agreement

- Agreement is intended to facilitate the successful management of constraining species
 - No intention to apply to target species
- Agreement only applies to harvesting activity
 - No delivery obligations
- Certain harvesting activities are not pre-specified for risk pool participation
 - No pre-specified terms dictating gear use, areas, etc
 - Members propose their own strategies. Those are reviewed for acceptable risk

Governance structure implementing the risk pool umbrella agreement

- Risk pool board and manager
- Regional fishing plans
 - Including amendment to those plans
- Regional rules
 - Time, area, methods, and means
- Restricted fishing orders
- Constraining species QP designation and usage
 - Holding accounts
- Regional rule enforcement and remedies
- Duration of agreement
- Data sharing and confidentiality

Perspective of each member association

- The Ilwaco perspective and process
- The Fort Bragg perspective and process
- The CCSGA perspective and process
- Observations made after going through each of these developments

Need for a policy adjustment

- What happens without one
 - One year arrangements limit ability of risk pool and create unfortunate incentives
- What can happen with a policy adjustment
- Why this is a high priority issue



Questions?

CONSIDERATION OF INSEASON ADJUSTMENTS – PART I

Management measures for the groundfish seasons are set by the Council with the general understanding these measures will likely need to be adjusted within the biennium to attain, but not exceed, the total catch limits. This agenda item will consider inseason adjustments to ongoing 2011 fisheries. Potential inseason adjustments include adjustments to rockfish conservation area boundaries and adjustments to commercial and recreational fishery catch limits. Adjustments are, in part, based on catch estimate updates and the latest information from the West Coast Groundfish Observer Program.

The Groundfish Management Team and the Groundfish Advisory Subpanel will meet prior to this agenda item to discuss and recommend inseason adjustments to 2011 groundfish fisheries. The Council will consider this agenda item on Monday, April 11, 2011, and make recommendations as necessary. If further consideration of inseason adjustments is warranted, Agenda Item I.8, Consideration of Inseason Adjustments – Part II, is scheduled for Wednesday, April 13, 2011.

Council Action:

- 1. Consider information on the status of 2011 fisheries and adopt preliminary or final (if possible) inseason adjustments as necessary.**

Reference Materials:

None.

Agenda Order:

- Agenda Item Overview
- Reports and Comments of Advisory Bodies and Management Entities
- Public Comment
- Council Action:** Adopt Preliminary or Final Recommendations for Adjustments to 2011 Groundfish Fisheries (Part II on Wednesday, if necessary)

Kelly Ames

PFMC
3/22/11

THE GROUNDFISH MANAGEMENT TEAM REPORT ON CONSIDERATION OF INSEASON ADJUSTMENTS

The Groundfish Management Team (GMT) received no requests from industry representatives regarding inseason adjustments to management measures. This inseason statement will therefore (a) report on the Individual Fishing Quota (IFQ) fishery, and (b) provide an updated scorecard for 2011.

The GMT points out that observed catches reported by the West Coast Groundfish Observer Program (WCGOP) have not been included in this or previous summaries of the IFQ program (i.e., Agenda Item H.4.b, Supplemental GMT Report 1, March 2011). Catch data recorded by the WCGOP was recently provided to Pacific States Marine Fisheries Commission (PSMFC), and may therefore be included in our subsequent IFQ summaries.

IFQ landings summary

Current IFQ landings are similar to that shown at the March Council meeting in terms of its distribution among species categories, states, and ports (Agenda Item H.4.b., Supplemental GMT Report 1, March 2011), although the number of vessels participating has increased from 31 to 43 during the past month.

As of Thursday, April 7, 2011, there were 229 landings (receipts) recorded over 63 landing days (86 possible fishing days), counted against 43 vessel accounts at 9 ports in all three states, since the fishery began January 11, 2011. Landings have been made for 25 of the 29 IFQ species categories (species or species groups), and 4.8 percent of total available IFQ quota pounds have been landed (Table 1). Species with the highest landings (6.3 percent to 26.2 percent of their allocations) continue to be primarily DTS complex species, petrale sole, and arrowtooth flounder (Table 1). The percentage of IFQ pounds landed for overfished species was: 5.2 percent for darkblotched rockfish (28,845 lbs.), 2.3 percent for yelloweye rockfish (15 lbs.), 0.2 percent for canary rockfish allocation (93 lbs.), and 0.09 percent for widow rockfish allocation (536 lbs.). No bocaccio rockfish or cowcod have been landed as of April 7, 2011.

Table 1. IFQ landings (lbs), IFQ allocation (lbs), and percent of the allocation landed by species category as of April 7, 2011.

IFQ Species Category	IFQ landings (lbs)	Allocation (lbs)	Percent of allocation
Arrowtooth flounder	1,061,732	16,804,295	6.3%
BOCACIO ROCKFISH South of 40°10' N.	0	132,277	0.0%
CANARY ROCKFISH	93	57,100	0.2%
Chilipepper rockfish South of 40°10' N.	57	3,252,370	0.0%
Cowcod South of 40°10' N.	0	2,976	0.0%
DARKBLOTCHED ROCKFISH	28,845	552,997	5.2%
Dover sole	4,245,619	31,216,354	13.6%
English sole	18,643	20,189,383	0.1%
Lingcod	181,402	4,107,873	4.4%
Longspine thornyheads North of 34°27' N.	439,657	4,334,839	10.1%
Minor shelf rockfish North of 40°10' N.	726	115,813	0.6%
Minor shelf rockfish South of 40°10' N.	1	189,958	0.0%
Minor slope rockfish North of 40°10' N.	26,386	1,828,779	1.4%
Minor slope rockfish South of 40°10' N.	872	831,958	0.1%
Other flatfish	105,553	9,253,683	1.1%
Pacific cod	1,223	2,502,247	0.0%
Pacific halibut (IBQ) North of 40°10' N.	28	257,524	0.0%
Pacific ocean perch North of 40°10' N.	12,788	563,148	2.3%
Pacific whiting	4,443	40,712,766	0.01%
PETRALE SOLE	497,216	1,896,130	26.2%
Sablefish North of 36° N.	745,403	5,613,728	13.3%
Sablefish South of 36° N.	0	1,133,352	0.0%
Shortspine thornyheads North of 34°27' N.	267,559	3,456,138	7.7%
Shortspine thornyheads South of 34°27' N.	0	110,231	0.0%
Splitnose rockfish South of 40°10' N.	513	950,854	0.1%
Starry flounder	1,694	1,168,450	0.1%
WIDOW ROCKFISH	536	622,916	0.09%
YELLOW EYE ROCKFISH	15	661	2.3%
Yellowtail rockfish North of 40°10' N.	27,108	6,821,455	0.4%
Total	7,668,112	158,680,255	4.8%

Note: Discard not included in lbs. debited

The majority of the total quota pounds debited have been landed in Oregon (70 percent), followed by Washington (18 percent) and California (13 percent). Of the nine ports where landings have occurred so far, Astoria (34 percent) and Charleston/Coos Bay (18 percent) have landed the largest percentage of catch, followed by Eureka (11 percent) and Newport (9 percent). Bellingham Bay, Brookings, Fort Bragg, Ilwaco, and Moss Landing are reported as combined (26 percent, Figure 1).

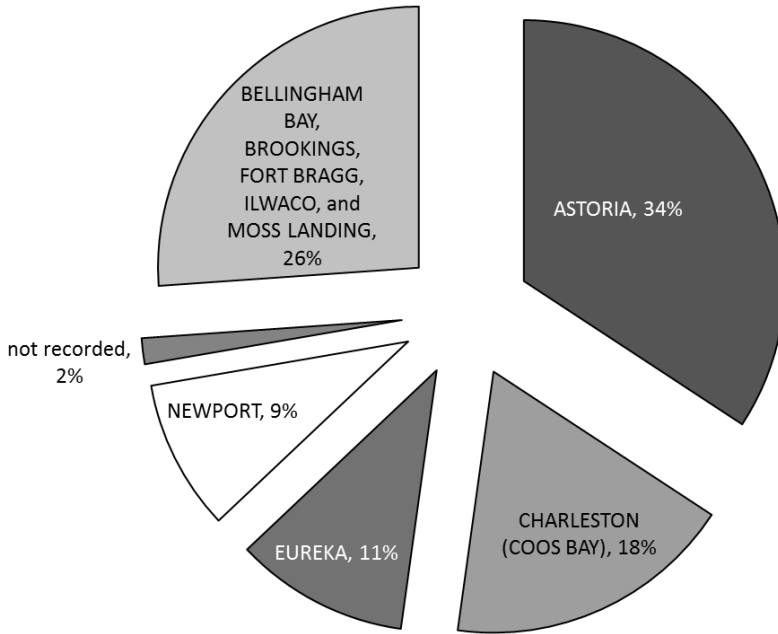


Figure 1. Distribution of IFQ landings (percentage of total pounds) as of April 7, 2011 by port.

Comparison with previous years

Table 2 provides landings comparisons (number of landings, number of buyers, etc.) for the periods January 1 through February 28, 2006-2010, and January 11 through March 4, 2011. The number of vessels participating in early 2011 was substantially lower than the average observed during the previous five years (31 vs. 78), as was the number of ports receiving landings (8 vs. 15) and the number of buyers receiving landings (10 vs. 26). The number of landing receipts recorded during the first period of 2011 (125) was also substantially lower than observed during the first period of earlier years (average = 390). Comparisons are also provided for calendar days, fish ticket days, fish tickets per day, and species (Table 2). It should be noted that not all species listed in Table 2 are IFQ species, and not all species landed translated into exvessel revenue.

Table 2. Landings statistics for limited entry non-whiting trawl during January – February 2006-2010 (pre-IFQ) as compared to January 11 – March 4, 2011 (IFQ). Fish ticket abbreviated as “FT.”

Year	Calendar days	Fish tickets FT days	Fish tickets (No.)	Fish Tickets per day	Buyers (No.)	Vessels (No.)	Ports (No.)	Species (No.)
2006	56	54	316	5.9	25	58	15	51
2007	58	56	383	6.8	30	80	16	47
2008	60	57	446	7.8	26	85	15	46
2009	59	58	526	9.1	31	96	16	55
2010	56	44	280	6.4	20	71	15	48
2011	49	41	125	3.0	10	31	8	63

Although the number of vessels, landings, and dealers receiving landings were lower during early 2011 relative to the same time period during prior years, average landings per vessel (volume and value) in the IFQ fishery were higher than that observed for the trawl fishery in previous years (Figures 2 and 3). Average total landings per vessel for early 2011 was 137,152 lbs, compared with a range of 77,818 – 109,578 during the same period in 2006 – 2010 (avg.= 97,133 lbs). Average total revenue per vessel for early 2011 was \$88,149, whereas the average total revenue per vessel ranged from \$47,029 – \$63,388 for early 2006 through 2010 (avg. = \$56,391; Figure 5).

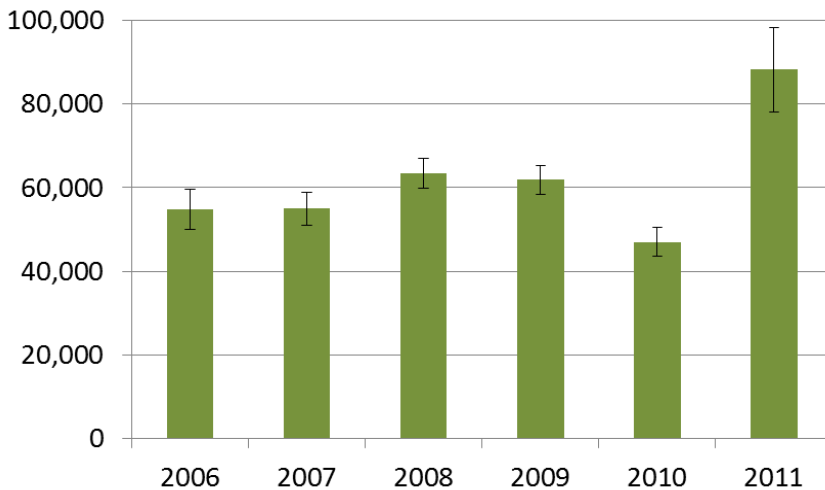


Figure 2. Average total revenue per vessel ± 1 S.E., by year, for the first two months of the limited entry non-whiting trawl fishery (2006 – 2010) and the non-whiting IFQ fishery (2011).

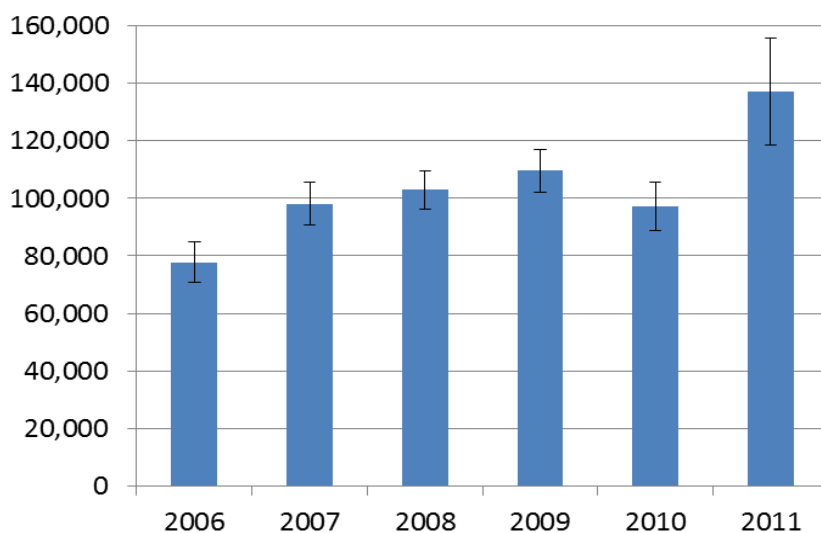


Figure 3. Average total landings per vessel ± 1 S.E., by year, for the first two months of the limited entry non-whiting trawl or non-whiting IFQ fishery.

A comparison of species landed among years demonstrates that for most cases, landings have been substantially lower in early 2011 relative to the similar period during other years. However, large increases in landings of certain species has occurred during the early months of the IFQ program relative to other years; large increases were found for lingcod (298 percent), longnose skate (191 percent), Pacific sanddab (188 percent), sand sole (313 percent) and spiny dogfish (1161 percent; Table 4). For a few species, the percentages listed in Table 4 are largely the product of interannual variation, rather than an expression of a real trend or difference (e.g. canary rockfish, unspecified flatfish, unspecified skates, yelloweye rockfish and yellowtail rockfish).

Table 3. Comparison of landings by species or species group, between early 2011 and similar period of 2006-2010. Landings from 2006-2010 tabulated from January 1 through February 28. Landings in 2011 tabulated from January 11 through March 4.

Species	2006-2010 average	2010	2011	2011 relative to 2006-10 average	2011 relative to 2010
Arrowtooth flounder	824,544	939,194	498,937	61%	53%
BOCACCIO ROCKFISH	188	20	0	0%	0%
California halibut	44,938	17,107	0	0%	0%
CANARY ROCKFISH	133	0	65	49%	-
Chilipepper rockfish	8,699	18,010	53	1%	0%
DARKBLOTCHED ROCKFISH	66,845	55,705	17,598	26%	32%
Dover sole	3,184,657	3,608,837	1,977,043	62%	55%
English sole	113,099	31,670	10,190	9%	32%
Flatfish unspecified	426	4	204	48%	5100%
Lincod	26,938	9,464	80,174	298%	847%
Longnose skate	110,193	208,040	210,033	191%	101%
Longspine thornyhead	314,775	330,417	265,062	84%	80%
Northern unspecified shelf rockfish	463	312	156	34%	50%
Northern unspecified slope rockfish	25,339	23,442	12,862	51%	55%
Pacific cod	7,800	776	837	11%	108%
PACIFIC OCEAN PERCH	24,025	20,574	2,778	12%	14%
Pacific sanddab	6,527	8,087	12,248	188%	151%
Petrable sole	1,547,195	543,395	353,839	23%	65%
Rex sole	160,490	112,871	50,348	31%	45%
Sablefish	604,506	567,175	404,586	67%	71%
Sand sole	3,387	3,395	10,586	313%	312%
Shelf rockfish unspecified	18	20	0	0%	0%
Shortspine thornyhead	265,722	293,526	149,875	56%	51%
Skate unspecified	310,626	22,914	28,829	9%	126%
Slope rockfish unspecified	17,006	9,428	50	0%	1%
Spiny dogfish	11,069	1,968	128,472	1161%	6528%
Splitnose rockfish	15,449	15,145	456	3%	3%
Starry flounder	9,450	16,299	924	10%	6%
WIDOW ROCKFISH	1,567	238	198	13%	83%
YELLOWEYE ROCKFISH	2	0	10	625%	-
Yellowtail rockfish	1,018	151	312	31%	207%

Attachment 1. April 2011 Scorecard. Allocations^a and projected mortality impacts (mt) of overfished groundfish species for 2011. Bolded numbers represent updates.

Fishery	Bocaccio b/		Canary		Cowcod b/		Dkbl		Petrale		POP		Widow		Yelloweye	
<i>Date: 10 April, 2011</i>	Allocation a/	Projected Impacts	Allocation a/	Projected Impacts	Allocation a/	Projected Impacts	Allocation a/	Projected Impacts	Allocation a/	Projected Impacts	Allocation a/	Projected Impacts	Allocation a/	Projected Impacts	Allocation a/	Projected Impacts
Off the Top Deductions		13.4		20.0		0.3		18.7		65.4		12.9		60.9		3.9
EFPc/		11.0		1.3		0.2		1.5		2.0		0.1		11.0		0.1
Research d/		1.7		7.2		0.1		2.1		17.0		1.8		1.6		1.3
Incidental OA e/		0.7		2.0				15.0		1.0		0.1		3.3		0.2
Tribal f/		0.0		9.5		0.0		0.1		45.4		10.9		45.0		2.3
SB Trawl Allocations	60.0	60.0	25.9	25.9	1.4	1.4	250.8	250.8	860.1	860.1	119.4	119.4	282.6	282.6	0.3	0.3
At-Sea Trawl				8.2				14.5				17.4		147.9		
At-sea whiting MS				3.4				6.0				7.2		61.2		
At-sea whiting CP				4.8				8.5				10.2		86.7		
Non-Trawl		55.9		17.1		0.2		5.8		0.0		0.4		10.0		9.6
Non-Nearshore	57.9		2.3													
LE FG				1.4				4.8				0.3		0.1	0.8	0.8
OA FG				0.2				0.8				0.1		0.0	0.1	0.1
Directed OA: Nearshore	0.7	0.5	4.0	3.3		0.0		0.2						0.2	1.1	1.1
Recreational Groundfish																
WA			2.0	0.5				--		--		--		--	4.9	2.6
OR			7.0	2.4				--		--		--		1.0		2.3
CA	131.0	55.4	14.5	9.3		0.2		--		--		--		8.7	2.7	2.7
TOTAL	60.0	129.3	25.9	63.0	1.4	1.9	250.8	289.8	860.1	925.5	119.4	150.1	282.6	501.4	0.3	13.8
2011 Harvest Specification g/	288	288	105	105	4.0	4.0	330	330	1,200	1,200	200	200	509	509	14	14
Difference	228.0	158.7	79.1	42.0	2.7	2.2	79.2	40.2	339.9	274.5	80.6	49.9	226.5	7.6	13.7	0.2
Percent of OY	20.8%	44.9%	24.7%	60.0%	33.8%	46.3%	76.0%	87.8%	71.7%	77.1%	59.7%	75.0%	55.5%	98.5%	2.1%	98.6%
Key			= not applicable													
		--	= trace, less than 0.1 mt													
			= Fixed Values													
			= off the top deductions													

a/ Due to the delay in implementing the 11-12 regulations, the only allocations currently specified in regulation (75FR82296) are the shorebased trawl allocations. Projected impacts for the at-sea sector are the expected allocations when the rule for final harvest specifications for 2011 fisheries is issued. For the non-trawl sectors, the values in the allocation column represent the Council's final preferred apportionment of the non-trawl allocation or harvest guidelines for the recreational fishery (canary, yelloweye). The recreational harvest guidelines are the Council's final preferred harvest guidelines anticipated for publication in the final rule for 2011 fisheries.

b/ South of 40°10' N. lat.

c/ EFPs are amounts set aside to accommodate anticipated applications. Values in this table represent the estimates from the 11-12 biennial cycle, which still represent our best estimate of catch.

d/ Includes NMFS trawl shelf-slope surveys, the IPHC halibut survey, and expected impacts from SRPs and LOAs.

e/ The GMT's best estimate of impacts as analyzed in the 2011-2012 Environmental Impact Statement (Appendix B).

f/ Tribal values represent the estimates derived during the 11-12 biennial cycle, which still represent our best estimate of catch.

g/ The values in the table represent the harvest specifications implemented in 75FR82296, which carry-over the 2010 OYs for the start of 2011. These values will be updated when the final rule that implements the 2011 harvest specifications is published for the 2011-12 biennial cycle.

PRIORITY TRAILING ACTIONS UNDER TRAWL RATIONALIZATION AND INTERSECTOR ALLOCATION

The Council is working on a number of trailing actions pertaining to its trawl rationalization and intersector allocation amendments (Amendments 20 and 21 to the groundfish fishery management plan [FMP], respectively), and is being asked to provide guidance on four of these issues at this meeting:

- ❖ Cost Recovery
- ❖ Safe Harbors from Quota Share (QS) Control Rules for
 - Community Fishing Associations (CFAs)
 - Risk Pools
 - Lenders
- ❖ Adaptive Management Program Quota Pound Pass-Through
- ❖ Amendment 21 trawl/nontrawl allocations superseding Amendment 6 limited entry/open access allocations and set-asides

Additionally, at its March 2011 meeting, National Marine Fisheries Service (NMFS) reminded the Council that there were some follow on actions needed to complete implementation of the program (e.g. rules for entry of new west coast observer providers) and notified the Council that there are a number of adjustments needed in the regulations to complete the implementation process. These adjustments would be taken up as part of a program improvement and enhancement (PIE) rule. A complete list of all trailing action issues, calendar, and details on the proposed PIE rule come up under Agenda Item I.7. Under that agenda item, the Council may also want to take up prioritization and calendar setting as well as the appointment of a committee to identify other regulatory changes that would enhance the effectiveness of the trawl rationalization program (e.g. reducing constraints on the configuration of trawl gear). This agenda item will be restricted to providing guidance on the further development of the four topics identified above.

NMFS is in the lead on developing a methodology for the Council to consider for cost recovery. At this meeting, NMFS will provide a progress report (Agenda Item I.6.b, NMFS Cost Recovery Report), including a number of questions for Council consideration. The Council's response to those questions will help guide the development of options which will be brought back to the Council in June, at which time the Council is expected select a preliminary preferred alternative (PPA).

The trawl rationalization program included limits on the amount of QS any single entity can control. The Council is currently considering three separate exceptions for these control limits. The first potential exception is for CFAs, potentially with limits or additional requirements that a CFAs would have to meet to qualify for a "safe harbor" from an enforcement action for exceeding accumulation caps. A preliminary report, presented in the format of a draft environmental assessment, is provided as Agenda Item I.6.a, Attachment 1. The appendices to this attachment are responsive to a number of questions posed by the Council at its November 2010 meeting. After reviewing this information the Council may wish to provide further

direction on the development of options, including what requirements CFAs would need to meet in order to be granted an exception to the accumulation caps.

The second potential QS control limit exception before the Council is for risk pools. If the Council chooses to provide an exception, potential limits or additional requirements an entity would have to meet to qualify for the safe harbor will need to be identified. At its November 2010 meeting the Council provided general guidance on the development of options for a safe harbor for risk pools. That general guidance has been used to develop more specific options for the Council to review (Agenda Item I.6.a, Attachment 2). These options will be evaluated in the context of any additional guidance provided at this meeting, and an analysis provided at the June Council meeting, at which time the Council is scheduled to select a PPA. Additionally, at its November 2010 meeting the Council asked that NMFS report to the Council on any meetings that occurred in response to the NMFS/ National Oceanic and Atmospheric Administration General Counsel (NOAA GC) offer to meet with entities forming risk pools to discuss whether or not the plans of those entities would potentially violate control limits.

The third potential QS control limit exception before the Council is for lenders. An exception for “banks and other financial institutions” already exists, but if the Council chooses to modify the exception, potential limits or additional requirements an entity would have to meet to qualify for the safe harbor will need to be identified. The current control limit language is provided in Agenda Item I.6.a, Attachment 3, with the language pertaining to lenders highlighted. The primary concern about the language in the existing regulations is whether it was too broad and might create a loop hole, providing anyone who is lending money for the purchase of QS an opportunity to circumvent the QS control limits. Council staff has enquired with NOAA GC about the breadth of entities that might be covered by the exception for “banks and other financial institutions.” It is Council staff’s understanding that the terms “banks and other financial institutions” refers to organizations authorized to do business under state or Federal laws relating to financial institutions. Whether any person lending money actually qualifies as a bank or other financial institution will depend on the specific facts and the applicable Federal or state law.

An Adaptive Management Program (AMP) was established under Amendment 20 that reserves 10 percent of the QS for situational distribution. For 2011 and 2012, the QP associated with the AMP is scheduled for pass-through to QS holders in proportion to their QS holdings. For 2013, the Council is scheduled to have a protocol in place to dictate more specific QP distribution. This protocol may not be developed and implemented on time for that fishery. The Council has identified a number of options that would continue the current pass-through protocol beyond 2012. Continuation of the current protocol is expected to have minimal impacts, the primary issue being the establishment of a precedent and expectation about the indefinite continuation of the pass-through. The adopted Council motion on this issue is provided here as formal options (Agenda Item I.6.a, Attachment 4). The Council should review these options and determine whether any adjustments are needed prior to their representation in June for selection of a PPA.

At its March 2011 meeting, the Council reviewed the alternatives for Amendment 21 allocations superseding Amendment 6 allocations and recommendations that flexibility for the inseason adjustment of set-asides be addressed as part of this trailing action. Agenda Item I.6.a, Attachment 5 provides the modifications to the regulations and Fishery Management Plan

language that comport with the PPA adopted by the Council in March. After reviewing this report, the Council may wish to provide additional guidance on refinement of the PPA.

Council Action:

Provide guidance as needed on:

- 1. Cost recovery**
- 2. Safe harbor from control rule for Community Fishing Associations**
- 3. Safe harbor from control rule for Risk Pools**
- 4. Safe harbor from control rule for Lenders**
- 5. Adaptive Management Program Quota Pounds Pass-Through**
- 6. Amendment 21 v. Amendment 6 and Set-Asides**

Reference Materials:

1. Agenda Item I.6.a, Attachment 1: Trawl Catch Shares and Regulatory Amendments Control Limit Safe Harbors for Community Fishing Associations, Draft Environmental Assessment.
2. Agenda Item I.6.a, Attachment 2: Safe Harbor from Control Rule: Risk Pool Options.
3. Agenda Item I.6.a, Attachment 3: Safe Harbor from Control Rule: Lender Options.
4. Agenda Item I.6.a, Attachment 4: Adaptive Management Program QP Pass-through Options.
5. Agenda Item I.6.a, Attachment 5: Recommended Process for Resolving the Council's Intent Regarding Superseding Amendment 6 Allocations With Amendment 21 Allocations and Annual Management of Fishery Set-Asides.
6. Agenda Item I.6.b, Supplemental NMFS Report on Cost Recovery: Identifying Questions and Potential Answers for the Development of the Trawl Rationalization Cost Recovery Program.
7. Agenda Item I.6.c, Public Comment.

Agenda Order:

- a. Agenda Item Overview Jim Seger/LB Boydstun
- b. Reports and Comments of Advisory Bodies and Management Entities
- c. Public Comment
- d. **Council Action:** Guide Further Development of the Issues Concerning Cost Recovery, Safe Harbors from the Control Rule, the Adaptive Management Program Pass-Through and Amendment 6 v. Amendment 21.

PFMC
03/29/11

TRAWL CATCH SHARES REGULATORY AMENDMENTS

CONTROL LIMIT SAFE HARBORS FOR COMMUNITY FISHING ASSOCIATIONS

Draft Environmental Assessment

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CHAPTER 1 PURPOSE AND NEED FOR THE PROPOSED ACTION

1.1 Introduction

The Council is considering a number of trailing actions for the Amendment 20 trawl rationalization program.

This document provides background information about, and analyses for,

- the creation of safe harbor exceptions from QS control limits for community fishing associations (CFAs)

The safe harbor exceptions, if adopted, would provide CFAs with the opportunity to control QS in excess of existing QS control limits, up to a higher limit that will be proposed as part of the action. If the Council recommends an exception for CFAs, this document will be merged with environmental assessments covering trailing action on issues for which the Council completes action concurrent with action on this issue.

The proposed action would require an amendment to the regulations implementing the Pacific Coast Groundfish Fishery Management Plan (FMP). If the regulatory amendment is implemented, the description of the trawl rationalization program contained in Appendix E to the groundfish FMP would automatically be revised to reflect the regulatory modification. The proposed action must conform to the Magnuson-Stevens Fishery Conservation and Management Act (MSA), the principal legal basis for fishery management within the Exclusive Economic Zone (EEZ), which extends from the outer boundary of the territorial sea to a distance of 200 nautical miles from shore.

In addition to addressing MSA mandates, this document is an environmental assessment (EA), pursuant to the National Environmental Policy Act (NEPA) of 1969, as amended. This document is organized so that it contains the analyses required under NEPA.

Background. A management system intended to rationalize the groundfish trawl fishery was implemented in 2011. This management system uses a different catch share program for each sector of the groundfish trawl fishery:

Shoreside Trawl Sector (non-whiting groundfish species and whiting):

Manage with IFQs.

Provide 90% of the initial allocation of non-whiting IFQ to holders of vessel permits;
and
set aside 10% of the initial allocation for an adaptive management program (AMP) that may be used in the future to benefit processors and communities, among others.

Provide 80% of the initial allocation of whiting IFQ to holders of vessel permits; and provide 20% of the initial allocation of whiting to processors (no AMP set aside).

Mothership Trawl Sector (whiting and groundfish bycatch species):

Manage with a harvester co-op system.

Require that vessels declare preseason the mothership processor for which they will fish in a coming year.

Catcher Processor Sector (whiting and groundfish bycatch species):

Create a permit endorsement to prevent expansion of the number of participants.

License the current voluntary co-op.

Allocate whiting and bycatch to participants in the existing voluntary co-op program.

Provide an IFQ program if the voluntary co-op program fails (initially allocate IFQ equally among all permit holders).

This set of proposed regulatory amendments deals with the IFQ program set up for the shoreside fishery. ADD OTHER BACKGROUND INFO THAT MAY BE HELPFUL IN UNDERSTANDING THE ISSUES AND OPTIONS CONTINUED IN THIS EA.

1.2 Description of the Proposed Action

1.2.1 Issue: Safe Harbor for Community Fishing Associations

The action considered under this issue would amend the shoreside trawl rationalization regulations to create exceptions from control limits (control limit safe harbors) for recognized/designated *community fishing associations (CFAs)*. The proposed action is limited in scope to the *non-whiting portion* of the IFQ program under which the shoreside groundfish trawl fishery is managed.

1.3 Purpose and Need for the Proposed Action

1.3.1 Issue: Safe Harbor for Community Fishing Associations

One major concern for the trawl rationalization program is the potential for consolidation and geographic redistribution of landings. This potential was identified in the EIS which analyzed the Amendment 20 trawl rationalization program. While the EIS identified a number of reasons that certain communities might be advantaged while others were disadvantaged, the information available was not sufficient to predict exactly how landings might be redistributed under the program. However, there were a number of provisions in the program that were expected to provide some opportunities for communities to adjust and respond to the significant changes in the fishery that were expected to result from trawl rationalization. One of these provisions allows acquisition of QS/QP by any entity eligible to own a US documented fishing vessel, including any legally organized associations and government entities that may wish to acquire QS/QP to benefit local communities, so long as they would be eligible to own a US documented fishing vessel.

The amount of QS that any one entity may acquire is limited by control limits. The amount of QS required to meet all of the QS needs of the vessels operating under the trawl IFQ program in a particular community may exceed those control limits. If a single organization is to be allowed to acquire sufficient QS to meet the all of the QS needs of the vessels operating in a particular community, for some port areas an exception to the QS limits would be required.

The proposed action would permit organizations officially designated “Community Fishing Associations” to acquire and control trawl fishery quota shares in excess of QS control limits that apply to all other QS holders.

CHAPTER 2 DESCRIPTION OF THE ALTERNATIVES

2.1.1.1 Issue: Safe Harbor for Community Fishing Associations

Entities are able to form community fishing associations (CFAs) for a variety of purposes without Council action. Prior to its finalization of Amendment 20, the Council scoped the possibility of creating special provisions for such associations. The main issues were

- (1) what, if any, special privileges should be provided to CFAs, and
- (2) what criteria would CFA have to meet in order to be designated as a CFA that qualifies for such privileges?

The special privilege that is under consideration for this action is a safe harbor exception from quota share (QS) control limits. If the Council recommends a safe harbor exception for CFAs, there could be two types of CFAs participating in the trawl shoreside IFQ program:

General CFAs: community based organizations that participate in common with other program participants (i.e. receive no special privileges). Since they receive no special privileges there is no need to develop definitions and criteria to identify general CFAs as distinct from any other participant in the program.

Designated CFAs: A designated CFA would be defined by virtue of its having met certain criteria and therefore qualifying for a special privilege (a safe harbor exception from control limits). The special privileges may also come with special responsibilities.

While qualifying for an exception, it is likely that the exception provided designated CFAs would not be a complete exception, i.e. designated-CFAs would still be held to control limits, but some or all of those control limits would be higher than those which apply to other program participants. Thus the CFA safe harbor options entail consideration of two issues corresponding to the main questions the Council considered when it first took up this issue:

- (1) the level of the control limit that will apply to designated CFAs, and
- (2) the criteria an organization must meet to qualify as a designated CFA.

No Action Alternative (Status Quo) – General CFAs. General CFAs would operate within the regulatory parameters common to all other participants. Such CFAs would need to meet the same criteria for owning QS as all other participants and be subject to the same control limits.

660.140(d)(2) Eligibility and registration —

(i) *Eligibility.* Only the following persons are eligible to own QS permits:

- (A) A United States citizen, that is eligible to own and control a U.S. fishing vessel with a fishery endorsement pursuant to 46 U.S.C. 12113 (general fishery endorsement requirements and 75 percent citizenship requirement for entities);
- (B) A permanent resident alien, that is eligible to own and control a U.S. fishing vessel with a fishery endorsement pursuant to 46 U.S.C. 12113 (general fishery endorsement requirements and 75 percent citizenship requirement for entities); or
- (C) A corporation, partnership, or other entity established under the laws of the United States or any State, that is eligible to own and control a U.S. fishing vessel with a fishery endorsement pursuant to 46 U.S.C. 12113 (general fishery endorsement requirements and 75 percent citizenship requirement for entities). However, there is an exception for any entity that owns a mothership that participated in the west coast groundfish fishery during the allocation period and is eligible to own or control that U.S. fishing vessel with a fishery endorsement pursuant to sections 203(g) and 213(g) of the AFA.

660.140(d)(4) Accumulation limits—

(i) *QS and IBQ control limits.* QS and IBQ control limits are accumulation limits and are the amount of QS and IBQ that a person, individually or collectively, may own or control. QS and IBQ control limits are expressed as a percentage of the Shorebased IFQ Program's allocation.

- (A) *Control limits for individual species.* No person may own or control, or have a controlling influence over, by any means whatsoever an amount of QS or IBQ for any individual species that exceeds the Shorebased IFQ Program accumulation limits.
- (B) *Control limit for aggregate . . .* [description of calculation of aggregate nonwhiting QS control limit].
- (C) The Shorebased IFQ Program accumulation limits are as follows: [see table of QS Control Limits (Table 2-1)]

(ii) *Ownership—individual and collective rule.* The QS or IBQ that counts toward a person's accumulation limit will include:

- (A) The QS or IBQ owned by that person, and
- (B) That portion of the QS or IBQ owned by an entity in which that person has an economic or financial interest, where the person's share of interest in that entity will determine the portion of that entity's QS or IBQ that counts toward the person's limit.

(iii) *Control.* Control means, but is not limited to, the following:

- (A) The person has the right to direct, or does direct, in whole or in part, the business of the entity to which the QS or IBQ are registered;
- (B) The person has the right to limit the actions of or replace, or does limit the actions of 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 IBQ are registered;
- (C) The person has the right to direct, or does direct, and/or the right to prevent or delay, or does prevent or delay, the transfer of QS or IBQ, or the resulting QP or IBQ pounds;

- (D) The person, through loan covenants or any other means, has the right to restrict, or does restrict, and/or has a controlling influence over the day to day business activities or management policies of the entity to which the QS or IBQ are registered;
- (E) The person, excluding banks and other financial institutions that rely on QS or IBQ as collateral for loans, through loan covenants or any other means, has the right to restrict, or does restrict, any activity related to QS or IBQ or QP or IBQ pounds, including, but not limited to, use of QS or IBQ, or the resulting QP or IBQ pounds, or disposition of fish harvested under the resulting QP or IBQ pounds;
- (F) The person, excluding banks and other financial institutions that rely on QS or IBQ as collateral for loans, 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 IBQ, or the resulting QP or IBQ pounds, are registered;
- (G) The person, excluding banks and other financial institutions that rely on QS or IBQ as collateral for loans, has the right to cause or prevent, or does cause or prevent, the sale, lease or other disposition of QS or IBQ, or the resulting QP or IBQ pounds; and
- (H) The person has the ability through any means whatsoever to control or have a controlling influence over the entity to which QS or IBQ is registered.

Alternative 1: CFAs applying for and meeting specific criteria (Designated CFAs) would be recognized for special privileges. Designated CFAs would operate under the rules that apply to all other participants, but would be eligible for higher QS control limits. This alternative is outlined as follows and fully described in Table 2-1.

Special Privilege. Section 1.0 describes the special privileges to be granted to designated CFAs. The following are the options within this section.

1.0 CFA Special Privileges

- Option a:** For designated CFAs quota share control limits for some or all QS species categories are 1.5 times the current accumulation limits.
- Option b:** For designated CFAs quota share control limits for some or all QS species categories are 2.0 times the current accumulation limits
- Option c:** There are no specific values for quota share control limits for designated CFAs, rather consider is given to the level of need based on historical harvest level. (*Motion said “consider the size of the CFA”. What does “size” mean? This is an interpretation of that language.*)

Designated CFA Qualifying Criteria and Other Elements. Sections 2.0 through 4.0 collectively describe what an organization must do to qualify as a designated CFA and maintain that qualification. The following is a general outline of these sections. Specific options are provided in each section (or to be developed).

2.0 CFA Agreements and Activities

- 2.1 Organizational Agreements (CFA Charter Agreement)
 - 2.1.1 Local Government Approval
 - 2.1.2 CFA Geographic Affiliations
 - 2.1.3 CFA Organization
 - 2.1.4 Control of CFA

2.2 Harvest and Harvest Agreements

3.0 CFA Reporting Requirements

4.0 CFA Approval and Renewal

Table 2-1: Aggregate control and vessel use limits under the trawl rationalization program (expressed as a proportion of species-specific trawl sector allocations).

Species Category	Vessel Limit (Applies to all QP in a Vessel Account, Used and Unused)	Vessel Unused QP Limit**	QS Control Lim
Non-whiting Groundfish Species	3.20%		2.70%
Lingcod - coastwide	3.80%		2.50%
Pacific Cod	20.00%		12.00%
Pacific whiting (shoreside)	15.00%		10.00%
Pacific whiting (mothership)	30.00%		20.00%
Sablefish			
N. of 36° (Monterey north)e	4.50%		3.00%
S. of 36° (Conception area)	15.00%		10.00%
PACIFIC OCEAN PERCH	6.00%	4.00%	4.00%
WIDOW ROCKFISH *	8.50%	5.10%	5.10%
CANARY ROCKFISH	10.00%	4.40%	4.40%
Chilipepper Rockfish	15.00%		10.00%
BOCACCIO	15.40%	13.20%	13.20%
Splitnose Rockfish	15.00%		10.00%
Yellowtail Rockfish	7.50%		5.00%
Shortspine Thornyhead			
N. of 34°27'	9.00%		6.00%
S. of 34°27'	9.00%		6.00%
Longspine Thornyhead			
N. of 34°27'	9.00%		6.00%
COWCOD	17.70%	17.70%	17.70%
DARKBLOTCHED	6.80%	4.50%	4.50%
YELLOWEYE	11.40%	5.70%	5.70%
Minor Rockfish North			
Shelf Species	7.50%		5.00%
Slope Species	7.50%		5.00%
Minor Rockfish South			
Shelf Species	13.50%		9.00%
Slope Species	9.00%		6.00%
Dover sole	3.90%		2.60%
English Sole	7.50%		5.00%
Petrale Sole	4.50%		3.00%
Arrowtooth Flounder	20.00%		10.00%
Starry Flounder	20.00%		10.00%
Other Flatfish	15.00%		10.00%
Pacific Halibut	14.40%	5.40%	5.4%

* If widow rockfish is rebuilt before initial allocation of QS, the vessel limit will be set at 1.5 times the control limit.

** A limit on the amount of unused QP that may be in a vessel account at any one time.

Table 2-2. Elements and options for CFA safe harbor control limits.

Options from November 2010		
1.0 CFA Special Privileges		
	Current Scoping Priority (for March 2011 Council meeting):	<p>Option a: For designated CFAs quota share control limits for some or all QS species categories are 1.5 times the current accumulation limits.</p> <p>Option b: For designated CFAs quota share control limits for some or all QS species categories are 2.0 times the current accumulation limits</p> <p>Option c: There are no specific values for quota share control limits for designated CFAs, rather consider is given to the level of need based on historical harvests or other information in the application. (What does "size of CFA" mean; e.g., shoreline miles, past landings, number or residents?)^a</p> <p>Considered but rejected: increase the control caps only for overfished species.</p>
2.0 CFA Agreements and Activities		
	CFAs will be required to have organizational (charter) agreements and harvesting agreements that meet certain standards. If the Council decides to recognize CFAs under the MSA fishing community provisions, these agreements could form the basis of the "Sustainability Plans" required under Section 303A(c)(3)	
2.1 Organizational Agreements (CFA Charter Agreement):		
2.1.1 - Goals and Objectives	Include a goal of furthering the groundfish FMP and include enforceable performance standards.	<p><i>Possible Objectives:</i></p> <ul style="list-style-type: none">a. Community stabilityb. Facilitate new entry.c. Stabilize business environment (e.g. require landings be made locally).d. Enhance value (e.g. require particular fishing and delivery methods)e. Harvest Sustainability.<ul style="list-style-type: none">i. Minimize bycatchii. Participate in activities intended to successfully manage bycatch on a fishery-wide scale (research, risk pool participation, etc).iii. Minimize adverse fishing gear impacts on habitativ. Enhance stock productivity (e.g. area management or measures to protect age structure).

Options from November 2010

2.1.2 - CFA Geographic Affiliations	Organizational agreements should include a description of the CFA boundaries.. Local government approval	Consider whether a confidentiality waiver might be possible and warranted to reduce reporting and monitoring challenges for small geographic areas. Local government letter designates the CFA eligible to apply for that area (Which governments are authorized for a particular area? Should a local government be allowed to endorse more than one entity? Should a CFA be required to receive an endorsement from every jurisdiction it proposes to cover?)
CFA Boundaries		
Geographic exclusiveness		Overlaps Allowed (i.e. more than one CFA in an area) No Overlap Allowed
Minimum geographic area.		
Maximum geographic area.		Can one CFA cover many ports? If multiple ports are allowed: Is there a limit on the number? Do they have to be contiguous? Should there be a limit on the distance covered by a single CFA?
2.1.3 - CFA Organization		
Type of Legal Organization	CFAs might be organized as corporations, trusts, etc.	a. Require organization as a non-profit corporation, 501(c)(4) social welfare organization. b. Allow CFAs to be organized as another type of entity, i. controlled only by fishermen ii. controlled by fishermen or others. Local government serves as the CFA entity.
Control of CFA	Board of directors	The local municipality must a. Appoint the board b. Endorse an independently formed board via the endorsement of the CFA.
	A minimum number of board members.	At least 5
	Limit vessel owner and processor participation on board.	<i>Some Options Suggested in Public Comment</i> Not mutually exclusive. a. No more than 20% vessel owners or their representatives. b. Alternatively, ensure that fishermen have the lead in CFAs. c. No more than 20% processors or their reps.
	Other	Must be community members (residents?).

2.2 Harvest and Harvest Agreements	Conditions which must be in the agreements between the CFA and those harvesting CFA QP.	Each of the following may be adopted (not mutually exclusive) <ul style="list-style-type: none"> a. Prohibit/allow CFAs from harvesting their own QP (does this mean individual members of the CFA or the CFA entity itself?). b. Require that CFAs contract with co-operatives organized under the Fishermen's Collective Marketing Act. c. Require that individual <u>entities</u> comprising the FCMA coop not receive QP from the CFA that is in excess of the <u>vessel</u> QP accumulation limit. d. Include measures (performance standards) needed for CFAs to meet charter objectives and meet reporting requirements (examples: fishing methods, area and gear restrictions, fishing handling practices, local landing requirements). e. Require participation in fishery-wide efforts for successfully managing overfished species catch
3.0 CFA Reporting Requirements		
	Timing and content.	Require biennial reports to document compliance, progress on goals, and facilitate fishery policy evaluation. ^b Self-certified compliance: Require annual or biennial affidavit of compliance.
4.0 CFA Approval and Renewal		
Initial Application	Required elements of the Initial Application:	<ul style="list-style-type: none"> a. The CFA agreement and bylaws. b. Proposed Harvesting Agreements c. Endorsement letters from local municipalities (if required). d. A statement <ul style="list-style-type: none"> i. Describing the CFA area including infrastructure and the community sectors that would benefit. ii. Explaining how agreements meet criteria. iii. Demonstrating the need for the exception, including supporting data and/pr reports.
	Initial approval	NMFS would review and approve applications and CFA agreements. ^[3] Review and approval standard; i.e., insure required documents are submitted, and that required elements are reflected in the documents, but NMFS does not undertake substantive review for adequacy of elements relative to Council goal compliance.
Ongoing Monitoring		NMFS and PFMC receive required reports and reviews for goal compliance. PFMC initiates program modifications as necessary to insure PFMC goals are met

Options from November 2010		
Renewal	Periodic renewal.	For CFAs for which an application for renewal has been submitted, the CFA will remain in place until action is taken to approve or deny CFA agreements must be resubmitted for approval every.
		Option 1. Two years.
		Option 2. Five years (coinciding with program review cycle).
	Renewal on modification	Resubmit for approval with modification of agreement or change in board of director membership.

^a Also, it was suggested the limits be 60% for sablefish south of 36° 0'N Latitude, and shortspine thornyheads south of 34°27' N Latitude. The alternative view was voiced that if one community accumulated 60% of the QS for a species that this would not leave much for another community in the same area.

^b Items required for the biennial report might include

- Total amount of quota share and quota poundage, by species, held or harvested on behalf of the CFA by year.
- Economic impacts of CFA activities on the community including ex-vessel revenue, location of processing, and distribution of economic activity generated as a result of CFA regulations and harvester/processor activities.
- Social impacts on the community, such as documentation of new entry, creation of local fishermen's cooperatives, or other non-market social effects attributed or related to CFA existence.
- Harvest volume including bycatch and discard quantities by year and month.
- Spatial footprint of fishing effort, including documentation of particular habitat areas that are of interest and measures taken in response to the identification of those areas.
- Other measures taken to enhance sustainability or modify the activities of the harvesting cooperative.

^c Items required for application packet might include:

- Corporate documents (i.e., Articles of Incorporation and Bylaws) for the CFA and for the FCMA cooperative to which the CFA will assign its QP;
- The agreement under which the CFA assigns QP to the FCMA cooperative, which identifies the performance standards to be met by the FCMA cooperative;
- Resolution(s) of support from the municipal governing body of the CFA community or communities in the CFA region.

CHAPTER 3 AFFECTED ENVIRONMENT

TO BE AUGMENTED WITH BASELINE INFORMATION.

CHAPTER 4 IMPACTS ON THE AFFECTED ENVIRONMENT

In this section the direct and indirect of the actions being considered under each issue will be addressed separately. Within the section on each issue, there will also be a discussion of cumulative impacts. Although CEQ regulations reference the need for a cumulative impact analysis to consider “past, present, and reasonably foreseeable future actions,” from an analytical standpoint what is of interest is the net effect on baseline conditions prior to the action proposed under each issue and any ongoing effects of these actions because they continue to exist programmatically.

4.1 Issue: Safe Harbor for Community Fishing Associations

4.1.1 Direct and Indirect Impacts to the Physical Environment, Including Habitat and Ecosystem

No change in impacts expected. This section to be elaborated.

4.1.2 Direct and Indirect Impacts to the Biological Environment

Groundfish, Including Overfished Species

No change in impacts expected. This section to be elaborated.

ESA Listed Salmon

No change in impacts expected. This section to be elaborated.

Other Protected Species

No change in impacts expected. This section to be elaborated.

Other Fish Resources

No change in impacts expected. This section to be elaborated.

4.1.3 Direct and Indirect Impacts to the Socioeconomic Environment

4.1.3.1 Fishery Impacts

To be developed based on analysis in Appendix A and Appendix B.

4.1.3.2 Impacts on Communities

To be developed based on analysis in Appendix A and Appendix B.

4.1.3.3 Impacts on Agencies and Public Decision Processes

Main issue is likely to be the degree of burden imposed on agencies and the Council process to designate and monitor CFAs. Section 1.0 Option c (individualized exceptions to CFA control limits is likely to be most burdensome and will require the development of criteria to guide evaluation of individual applications).

To be developed further based on analysis in Appendix A and Appendix B..

Appendix A. CFA COMPONENTS ANALYSIS: SPECIAL PRIVILEGE EXCEPTION (SECTION 1.0 OF ALTERNATIVE 1)

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Appendix A – CFA Components Analysis: Special privilege Exception

A.1 Executive Summary

A.1.1 Introduction

The limited entry shoreside non-whiting groundfish trawl fishery (the fishery) is expected to consolidate to about half the number of vessels (40-50) currently active in the fishery (100-120), assuming that after consolidation all vessels remaining operate in the fishery on a full time basis. Some ports are expected to gain landings and some ports will lose landings in response to this process. The Council is considering an exception to current control limits for Designated Community Fishery Associations (CFAs), ones that meet specified qualification criteria, which are addressed in Appendix B. The analysis here is limited to the three control cap special privilege options contained in Alternative 1: (a) 1.5 times increase in control limits, (b) 2.0 times increase in control limits and (c) allow increase in control limits based on fishery need. Fishery background information is presented on (1) primary landing ports and revenues for fishery vessels in study years, and (2) the amount of control rule exception that ports would need in order to accommodate past fishery landings. Responses to Council questions regarding CFA special privilege exception from its November 2010 meeting are included as the last section to this report.

A.1.2 Methods

The PacFIN data base was the source of data used in the report. The target species in the analysis included the DTS complex (sablefish, Dover sole and both thornyhead species), English sole and other flatfish. The years used in the analysis were 1996-98 (pre-Rockfish Conservation Area, RCA, years) and 2004-2010 (Post RCA years). The ports used in the analysis were those that had at least one trawler using that port as its primary landing port (where most pounds were delivered) in any year during 2008-2010. This limited the analysis to the Washington ports of Bellingham, Neah Bay and Westport; the Oregon ports of Astoria, Newport, Coos Bay and Brookings; and the California ports of Crescent City, Eureka, Fort Bragg, Bodega Bay, San Francisco, Princeton, Moss Landing, Monterey and Morro Bay. The 13 ports not included in the analysis, but that had some level of non-whiting trawl groundfish landings, generally had landings during 2004-2010 that averaged less the 100,000 pounds of non-whiting groundfish (a list of the ports is provided in Table A-1).

Vessel landings data during 2008-2010 were compiled to show primary landing port for single vessels, frequency of vessels landing at multiple ports, and average fishery revenues by primary landing port.

Port-specific fishery landings data for the study years were converted to QS control limit equivalents (control limits) to show the number of control limits that a Designated CFA would need to acquire to accommodate past fishery landings. The species and species group allocations that were expected to be implemented for the 2011 season (not the ones that were actually used to start the year) were used to convert control limits from QS to QP in order to make comparisons with historic landings in each port for the study years. Converted to QP, the control limits ranged from about 7,000 lbs for shortspine thornyhead in the Conception area to about 2.7 million pounds for arrowtooth flounder. Comparison of the converted control limits to historic landings did not take into account the fact that historic landings do not reflect discards (i.e. in order to cover landed catch at a particular port the amount of QP required would be greater than the amount of pounds landed). As one indicator of the average amount of

discards that might have to be covered, the opportunity to retain discards has been estimated to potentially increase future fishery revenues for all species in combination to between 5% and 9%.

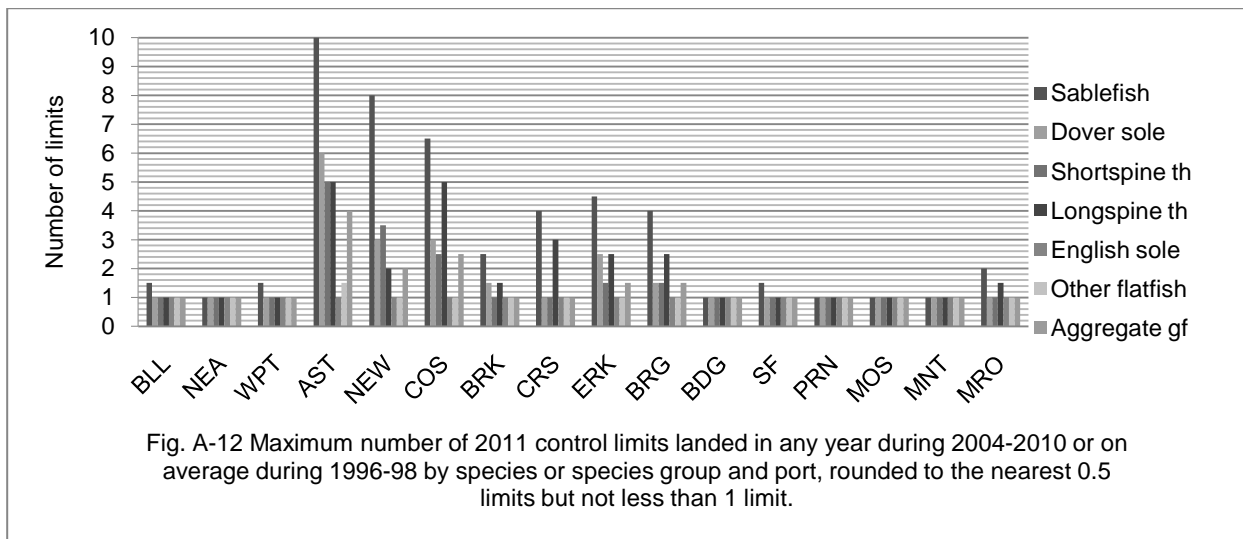
The aggregate groundfish poundage limit expected to be implemented for 2011, exclusive of overfished species but including petrale sole, was about 4.5 million lbs. A hypothetical QS account was constructed for each port based on past fishery landings for that port. However, each account was constrained by species and species group control limits with the aim of exactly meeting the aggregate groundfish QS limit of 2.7%, excluding overfished species but including petrale sole.

A.1.3 Finding and Conclusions

- Port of landings data showed that between 105 and 120 vessels were active in the fishery during 2008-2010, and that 79% to 80% of deliveries for single vessels were made to their primary landing ports. The primary ports for the majority of vessels (54% to 57% depending on year) were the Oregon ports of Astoria, Newport and Coos Bay (18-28 vessels per port per year). There was a secondary center of activity at the port of Eureka, CA (10 or 11 vessels). The other ports supported between one and seven vessels each except for 2010 when two ports had no vessels using that port as their primary landing port (Neah Bay, WA and Morro Bay, CA).
- Vessel revenues ranged from an average of about \$223 thousand to an average of about \$259 thousand per year during 2008-2010. The highest average annual revenues were for the ports of Fort Bragg and Eureka (\$318,565 and \$337,706, respectively); Princeton (Half Moon Bay) had the lowest average (\$42,682).
- One sablefish control limit, based on the 2011 shoreside trawl allocation for this species, would have accommodated landings during any one year from 2004-2010 or on average during 1996-98 of Neah Bay, Bodega Bay, Princeton, Moss Landing and Monterey. About 1.5 sablefish control limits would have been needed to meet the needs during 2004-2010 or on average during 1996-98 of Bellingham, Westport, and San Francisco. The other ports would have required higher sablefish limits to meet their respective needs, ranging from about 2 limits at Morro Bay to over 10 limits at Astoria (Table ES-1 and Fig. ES-1).

Table ES-1. Maximum number of 2011 control limits landed in any year during 2004-2010 or on average during 1996-98 by species or species group and port, rounded to the nearest 0.5 limits but not less than 1 limit.

	Sablefish	Dover sole	Shortspine th	Longspine th	English sole	Other flatfish	Aggregate gf
Bellingham	1.5	1.0	1.0	1.0	1.0	1.0	1.0
Neah Bay	1.0	1.0	1.0	1.0	1.0	1.0	1.0
West port	1.5	1.0	1.0	1.0	1.0	1.0	1.0
Astoria	10.5	6.0	5.0	5.0	1.0	1.5	4.0
Newport	8.0	3.0	3.5	2.0	1.0	1.0	2.0
Coos Bay	6.5	3.0	2.5	5.0	1.0	1.0	2.5
Brookings	2.5	1.5	1.0	1.5	1.0	1.0	1.0
Crescent City	4.0	1.0	1.0	3.0	1.0	1.0	1.0
Eureka	4.5	2.5	1.5	2.5	1.0	1.0	1.5
Fort Bragg	4.0	1.5	1.5	2.5	1.0	1.0	1.5
Bodega Bay	1.0	1.0	1.0	1.0	1.0	1.0	1.0
San Francisco	1.5	1.0	1.0	1.0	1.0	1.0	1.0
Princeton (Halfmoon Bay)	1.0	1.0	1.0	1.0	1.0	1.0	1.0
Moss Landing	1.0	1.0	1.0	1.0	1.0	1.0	1.0
Monterey	1.0	1.0	1.0	1.0	1.0	1.0	1.0
Morro Bay	2.0	1.0	1.0	1.5	1.0	1.0	1.0



- One Dover sole limit based on the 2011 shoreside trawl allocation for this species, would have accommodated landings of all ports during 2004-2010 or on average during 1996-98 except Astoria (up to 6.0 needed), Newport and Coos Bay (up to 3.0 needed), Brookings (up to 1.5 needed), Eureka (up to 2.5 needed), and Fort Bragg (up to 1.5 needed) (Table ES-1 and Fig. ES-1).
- One shortspine thornyhead limit based on 2011 shoreside trawl allocations would have accommodated landings of all ports during 2004-2010 or an average during 1996-98 except Astoria (up to 5.0 needed), Newport (up to 3.5 needed), Coos Bay (up to 2.5 needed), and Eureka and Fort Bragg (up to 1.5 needed) (Table ES-1 and Fig. ES-1).

- One longspine thornyhead limit, based on 2011 shoreside trawl allocations, would have accommodated landings of all ports except Astoria (up to 5.0), Newport (up to 2.0 needed), Coos Bay (up to 5.0 needed), Brookings (up to 1.5 needed), Crescent City (up to 3.0 needed), and Eureka and Fort Bragg (up to 2.5 needed) (Table ES-1 and Fig. ES-1).
- Because of the very large control limit cap for English sole in 2011 (nearly 2.1 million pounds), one control limit would have accommodated landings of all ports based on 2004-2010 landings or 1996-98 average landings (Table ES-1 and Fig. ES-1). The situation was similar (with one exception for Astoria in 2006) for other flatfish which had a 2011 control limit cap of about 900 thousand pounds. (Table ES-1 and Fig. ES-1).
- The aggregate groundfish control limit analysis showed that it would be possible for each QS holder to accrue about 4.5 million pounds of fish based on 2011 trawl allocations depending on the mix of species they desire to have in their account. Such a large amount of fish would cover the annual amounts landed during the study years for every port except Astoria, Newport and Coos Bay, Eureka and Fort Bragg. These ports would have required larger amounts of fish to match recent (2004-2010) or historical (1996-98) trawl groundfish pounds landed (Table ES-1 and Fig. ES-1).
- Whether the hypothetical account holder would actually be able to acquire and harvest the projected amounts of fish (because of availability of fish or of vessels to harvest the fish, facilities to land and process the fish, or other market forces) are separate issues that are not addressed here.
- The analysis shows that an exception to the control limits may be necessary for some ports for certain species if the Council determines it desirable for the CFAs in those ports to control all of the QS needed to accommodate historic landings
- The ports with very high landings included Astoria, Newport, Coos Bay, Eureka and Fort Bragg. For some other ports no exception to the limits appears to be necessary based on the data used in this report. These ports include Neah Bay, Bodega Bay, Princeton, Moss Landing, and Monterey. These ports had landings, both recent and historically, that amounted to one 2011 control limit or less for each of the species or species groups and years or period averages examined. The remaining ports (Bellingham, Westport, Brookings, Crescent City, San Francisco and Morro Bay) were somewhere in between in terms of having levels of historic landings higher than recent control limits ,depending on the species or species group and years used in the analysis.

A.1.4 Specific Questions asked by the Council Regarding the Level of the Exception for CFAs.

At its November 2010 meeting the Council asked that analysts look at a number of specific issues as follows:

- **Historic Participation and Dependence.** Historical participation (past landings) is assessed in the tables and figures of Appendix A which are expressed in terms of QS control limits. Dependence information will be added in the next draft.
- **Ability to Support to Full Time Captain and Crew.** The control limits were designed to allow one individual to control sufficient QS to support two vessels working full time. For the typical vessel, this would include a captain and crew of two individuals. Many of the ports analyzed did not have total landings for any of the species or species groups or for aggregate groundfish in any year or period that exceeded one control limit. These ports included Neah Bay, Bodega Bay,

Princeton, Moss Landing and Monterey. The other ports (Bellingham, Westport, Astoria, Newport, Coos Bay, Brookings, Crescent City, Eureka, Fort Bragg, San Francisco, and Morro Bay) had landings that exceeded one control limit depending on the species or species group. Sablefish landings at these other ports generally exceeded 1.5 control limits to as high as 10.5 control limits.

- **Ability to Support Necessary Infrastructure.** A precise answer to the question regarding ability to support necessary infrastructure would depend on several factors including local port conditions and other fisheries operating out of any particular port. The analysis shows that of all the west coast ports there are several that would appear to need higher control limits (>about 1.5 times) in order to cover all their landings with CFA controlled QS. These ports include Bellingham (sablefish), Westport (sablefish), Astoria (six species or species groups), Newport (five species or species groups), Coos Bay (5 species or species groups), Brookings (3 species), Crescent City (2 species), Eureka (5 species or species groups), Fort Bragg (4 species or species groups), San Francisco (sablefish) and Morro Bay (2 species). If the other ports on the coast (Neah Bay, Bodega Bay, Princeton, Moss Landing and Monterey) are considered to have long-term viability at their recent harvest levels then it appears that the current control limits may be sufficient to support the necessary infrastructure for these latter ports.
- **Potential to Lose or Gain QS Based on Market Forces.** Certain ports have been identified as being more likely to lose QS than other ports. Table 4-69 from the Amendment 20 EIS shows that most of the ports that might potentially benefit from a CFA higher control limit tend to be those that are expected to have a comparative advantage in the trawl rationalization program. These ports include Astoria, Newport, Coos Bay, Brookings, Eureka and Fort Bragg. The ones at a disadvantage include Neah Bay, Princeton, Moss Landing, and Morro Bay.
- **Ability to Use Community-Based Quota to Attract Quota Landings.** Under current control limits, a smaller port could offer to cover all the landings in that port with CFA controlled QS, while a CFA for a larger port would be constrained to covering only a portion of those landings. Raising the control limits would allow larger ports to cover a greater portion of the landings with CFA controlled QS and allow smaller ports to expand operations covered by CFA controlled QS. The ability of larger and smaller ports to acquire QS up to the higher limits would likely depend on the tax base or other funding sources available to support CFA acquisition of QS.

A.2 Introduction

The components analysis for special privilege exception is divided into three sections:

- Methods
- Results
- Findings and Conclusions

The expectation is that under trawl rationalization the non-whiting groundfish trawl fleet (the fishery) will consolidate. If all vessels in the fishery operate on a full-time basis, the fleet is expected to decline from about 100 to 120 active vessels to less than half (40-50) that number, with the less efficient vessels leaving the fishery. The 100% observer coverage requirement will contribute to the consolidation process by increasing each vessel's the overhead cost, which will disproportionately affect the less efficient or low volume harvesters. The consolidated fleet is expected to gross an average of about \$700,000 per vessel-year compared to the current average of about \$200,000 per vessel-year. Each full time vessel in the consolidated fleet is expected to support one vessel captain and a two-person crew that will be able to fish and generate income on a year-round basis. Geographic redistribution of the catch is a likely outcome of the rationalization process due to market forces related to such things as port costs, distance to fishing grounds, overfished species bycatch rates on grounds near port, shifts in processing and distribution channels, etc (PFMC 2010a).

The trawl rationalization environmental impact statement (EIS) (PFMC 2010b) describes the groundfish trawl fishery, associated fisheries, the processor sector, and general port infrastructure in a geographic context circa 2004-2006. The information was used, in part, to project the degree to which ports were dependent on the trawl groundfish fishery and the resilience of ports to change in fishery landings. Here the analysis is limited to the three control cap options of Alternative 1.

Option a: For designated CFAs quota share control limits for some or all QS species categories are 1.5 times the current accumulation limits.

Option b: For designated CFAs quota share control limits for some or all QS species categories are 2.0 times the current accumulation limits

Option c: There are no specific values for quota share control limits for designated CFAs, rather consider is given to the level of need based on historical harvest level. (*Motion said "consider the size of the CFA". What does "size" mean? This is an interpretation of that language.*)

Fishery background information is presented, for recent years showing the distribution of non-whiting limited entry trawl groundfish vessels by primary landing port (where most pounds were landed), the degree of fidelity of vessels to their primary landing ports, and average annual revenues for vessels by primary landing port. Data and analyses are presented on "historical" (1996-1998 average) and "recent" (2004-2010, individual years) fishery landings for selected species and species groups at selected ports. Landings are expressed in terms of the number of QS control limit caps they represent based on trawl sector allocations expected to be implemented for the 2011 season. These data are intended to show the degree to which port communities could guarantee their recent or historical harvest levels by acquiring QS under the existing control rules and the magnitude of the QS control rule adjustments or exceptions that Designated Community Fishing Associations (CFAs) would need in order to be able to directly control enough QS to cover all recent or historical non-whiting trawl fishery landings at a particular port.

A.3 Methods for Analysis of Special Privileges (Level of Exception)

Vessel Distribution and Revenues Analysis. Vessel landings and revenue data by port of delivery were compiled for 2008-2010 to show the primary landing port (where most fish were delivered) for single vessels, frequency of vessels landing in multiple ports in the same year (vessel fidelity analysis), and average non-whiting revenues for vessels by primary landing port. The vessel distribution data correlate with, in part, the skewed distribution in landings by species and species group (expressed as number of control limits) that has occurred between ports during the years used for this analysis.

Conversion of QS to QP. Individual entities (potentially including CFAs) that acquire QS under the groundfish trawl shoreside IFQ program beginning in 2013 will be able to use their own vessel(s) or contract out to vessels to potentially harvest all of the quota pounds in their account except as constrained by control and use limits for individual species, and the overall control and use limits for aggregate non-whiting groundfish. Expressed in QP, control limits projected to be in place for the 2011 season¹ varied widely between species (Table A-1). The maximum control limits projected (expressed in pounds) for the 2011 season ranged from about 7,000 lbs for shortspine thornyhead in the Conception area to about 2.7 million pounds for arrowtooth flounder. The aggregate groundfish poundage limit, explained below, was about 4.5 million pounds (Table A-1).

¹ A set of interim trawl fishery allocations were in place for the start of the 2011 fishing season because the final rule was not yet implemented. The allocations used in this report were based on the trawl fishery allocations shown in the proposed rule for the West Coast Groundfish Fishery for the 2011-2012 season (75 Federal Register 67864) (<http://www.nwr.noaa.gov/Publications/FR-Notices/2010/loader.cfm?csModule=security/getfile&pageid=48404>) and adjusted to show the non-whiting trawl groundfish allocations based on the non-whiting/whiting fishery proportions contained in the Intersector Allocation FEIS (PFMC 2010c, page 96). In addition, the minor shelf rockfish splits for the non-whiting trawl fishery in the northern and southern areas were set at 82.6% and 100%, respectively.

Table A-1. Nonwhiting trawl control limit caps in mts and lbs for 2011 [1]

Species/Species Group/Area	2011 Non-whiting Trawl Allocation (mt)	Control Limits (as a proportion)	Control Limit Cap in mts and pounds	
			mts	pounds
Lingcod	1,858	0.025	46	102,404
Pacific Cod	1,134	0.12	136	300,002
Sablefish N of 36° N lat.	2,501	0.03	75	165,411
Sablefish S of 36° N lat.	531	0.1	53	117,064
Dover sole	22,235	0.026	578	1,274,501
English sole	18,654	0.05	933	2,056,230
PETRALE SOLE	871	0.03	26	57,606
Arrowtooth flounder	12,431	0.1	1,243	2,740,538
Starry Flounder	668	0.1	67	147,267
Other flatfish	4,193	0.1	419	924,389
PACIFIC OCEAN PERCH	107	0.04	4	9,436
WIDOW	235	0.051	12	26,422
Chilipepper S of 40°10' N lat.	1,475	0.1	148	325,179
Splitnose S of 40°10' N lat.	1,381	0.1	138	304,455
Yellowtail N of 40°10' N lat.	2,801	0.05	140	308,754
Shortspine thornyhead N of 34 27' N lat.	1,430	0.06	86	189,155
Shortspine Thornyhead S of 34 27' N lat.	50	0.06	3	6,614
Longspine thornyhead N of 34 27' N lat.	1,966	0.06	118	260,055
DARKBLOTCHED	240	0.045	11	23,810
Minor Shelf Rockfish N of 40°10' N lat.	431	0.05	22	47,509
Minor Shelf Rockfish S of 40°10' N lat.	86	0.09	8	17,064
Minor Slope Rockfish N of 40°10' N lat.	818	0.05	41	90,168
Minor Slope Rockfish S of 40°10' N lat.	377	0.06	23	49,868
Nonwhiting Groundfish Species (excluding overfished rockfish and POP)	75,891	0.027	2,049	4,517,351

[1] A set of interim trawl fishery allocations was in place for the start of the 2011 fishing season because the final rule was not yet implemented. The allocations used in this report were based on the trawl fishery allocations shown in the proposed rule for the West Coast Groundfish Fishery for the 2011-2012 season (75 Federal Register 67864) and adjusted to show the non-whiting trawl groundfish allocations based on the non-whiting/whiting fishery proportions contained in the Trawl Rationalization Program FEIS (PFMC 2010c, page 96). An adjustment to show the conversion based on the entire shoreside allocation will be made in the final version of this document. In addition, the minor shelf rockfish splits for the non-whiting trawl fishery in the northern and southern areas were set at 82.6% and 100%, respectively.

Ports Covered in the Analysis. The 2011 control limits were compared to past port-specific non-whiting groundfish landings for selected species in order to evaluate the need for the special privilege options. The ports used for analysis were those that had at least one vessel using that port as its primary landing port (where most pounds were landed) during 2008-2010 (Table A-2). This approach focused the analysis on the primary ports of trawl fishery activity during recent years, and omitted 13 ports that had non-whiting trawl fishery landings, but were not primary landing ports for any vessels. Most of the excluded ports had relatively small landings (<100,000 pounds) on average during 2004-2010. Three of the excluded ports (Blaine WA, Port Angeles WA, and Avila CA) had higher average trawl landings during 2004-2010 than some of the ports included in the analysis; but all of the vessels that used the excluded ports during 2008-2010 delivered most of their fish to a different port

This port-based analysis was done to show the number of control limits that would have been needed at the respective ports in past years to achieve the same level of non-whiting groundfish landings. This issue is of concern to a number of communities stemming from changes under the trawl rationalization

program. A detailed discussion of the potential negative impacts of trawl rationalization on communities can be found in Chapter 4 to the FEIS (PFMC, 2010b).

QS vs QP Control as a Limiting Factor for CFAs. Vessel use limits were not addressed in this analysis because the limit to be addressed in the proposed Designated CFA safe harbor provision is the amount of quota share (QS) that a CFA would be allowed to control, as opposed to the amount of QP it might acquire during the year. CFAs are expected to contract out for harvest of their quota; vessel owners are permitted to use QP in their vessel accounts up to the vessel use limits. If CFAs were to control their own vessels and permits, they would be able to acquire additional QP for each non-whiting groundfish species up to the corresponding number of vessel limits. Alternatively, an adequately funded CFA could buy additional QP to transfer directly to vessels with which it had contracts, in amounts up to each vessel's limit. There does not appear to be a limit on any organization's ability to arrange for the financing and transfer of QP to any particular vessel or any number of vessels, whether it would be a Designated CFA or any other type of CFA. Consequently, this analysis only addresses the potential for CFAs to own QS for fish to be harvested and landed in the local area.

The PacFIN database was the source of data used in the report. The years selected for analysis were 2004-2010 (the "recent" period following the trawl buyback program when Rockfish Conservation Areas [RCAs] were in place) and 1996-98 ("historical" pre-RCA years). The data used for analysis were for non-whiting groundfish landed shoreside by vessels on trawl groundfish trips while fishing under LE trawl permits. The ports included in the analysis were those that had one or more vessels that used the port as its primary landing port for non-whiting groundfish in any year during 2008-10 (Table A-2). By this approach 13 ports that supported some level of non-whiting trawl fleet activity were not included. Some of the omitted ports historically had much higher trawl landings than shown in recent years. Aggregation of port-level data to the port group level is possible but was not used because the expectation is (based on public input) that CFA proposals will focus at the port level.

Species Breakouts Used for the Analysis. The species or species groups selected for analysis included the DTS complex (sablefish [north of Conception area], longspine thornyhead, shortspine thornyhead and Dover sole), English sole and other flatfish. These are the primary target species of the non-whiting trawl fishery. Other trawl species or species groups not included in the analysis have regulations that substantially impede trawl access to them. These included all shelf and slope rockfish species, because of association with overfished rockfish species (Boccaccio, canary rockfish, cowcod, darkblotched rockfish, Pacific ocean perch, widow rockfish, and yelloweye rockfish); petrale sole because of spawning stock constraints; and Pacific cod and arrowtooth flounder because of limited geographic distributions. However, all non-whiting species, excluding overfished species other than petrale sole, were included in calculations related to the non-whiting control limits. Additionally, data on all species by port are provided in the attachment to this appendix.

Table A-2. Abbreviations for landing port names included and not included in the analysis, and average annual non-whiting groundfish pounds landed by limited entry trawl vessels in each port, 2004-2010 [1].

Abbreviation	Name	AVG lbs 2004-2010 (millions)
<u>Ports Used in Analysis</u>		
BLL	Bellingham, WA	2.4
NEA	Neah Bay, WA	0.5
WPT	Westport, WA	1.6
AST	Astoria, OR	14.1
NEW	Newport, OR	5.1
COS	Coos Bay, OR	6.1
BRK	Brookings, OR	2.1
CRS	Crescent City, CA	1.4
ERK	Eureka, CA	4.9
BRG	Fort Bragg, CA	3.0
BDG	Bodega Bay, CA	0.1
SF	San Francisco, CA	1.3
PRN	Princeton/Half Moon Bay, CA	0.4
MOS	Moss Landing, CA	0.6
MNT	Monterey, CA	0.3
MRO	Morro Bay, CA	0.5
<u>Ports Not Used in Analysis</u>		
BLN	Blaine, WA	1.3
PAG	Port Angeles, WA	0.4
LAP	La Push, WA	<0.1
LWC	Lower Columbia R, WA	<0.1
TLL	Tillamook, OR	<0.1
FLR	Florence, OR	<0.1
WIN	Winchester, OR	<0.1
OSM	Other Sonoma, Mendocino Co. ports	<0.1
TML	Tomales Bay, CA	<0.1
OAK	Oakland, CA	<0.1
CRZ	Santa Cruz, CA	<0.1
AVL	Avila/Port San Luis, CA	0.6
SB	Santa Barbara, CA	<0.1
Total All Ports		46.8

[1] Pounds are inclusive of all non-whiting groundfish caught and landed shoreside by vessels on directed trawl non-whiting groundfish trips while fishing under LE trawl permits.

Evaluation of Historic Landings Against Control Limits. Control limits define the maximum annual harvest level of each groundfish species that a quota share holder (including a CFA) is able to control long term. Landings in each port during 2004-2010 and on average during 1996-98 were used to illustrate the degree to which control limits would constrain each port from controlling enough QS to cover its harvest over these periods. For each species and year (or multiyear period) a port's annual landings were converted to QS control limit equivalents by dividing the port's landings (pounds) by the pounds derived from applying the QS control limit to the 2011 shoreside trawl allocations. Specifically, landings were converted to QS control limit equivalent (c) by species or species group *i*, port *j* and period *k*, by dividing pounds landed (b) of species or species group *i* at port *j* in period *k* by the corresponding control limit (B) for species or species group *i* from Table A-1, which can be expressed as follows:

$$c_{ijk} = b_{ijk}/B_i$$

It is important to note that the control limits in Table A-1 are inclusive of landed catch and associated discard mortality, while the data used for analysis were landed catch only, excluding discard mortality. Switching to the total catch accounting system required under trawl rationalization was projected to increase fishery revenues due to retention of target species that formerly would have been discarded. This was estimated to increase annual ex-vessel revenues between 5% and 9% (PFMC 2010b, page 323). This was for all species in combination and would vary by species. Thus the analysis presented here using landed catch probably fairly closely illustrates what the impacts on past fishery practices may have been had they been subject to total catch accounting and the 2011 QS control limits.

Construction of Hypothetical QS Accounts and Calculation of Aggregate Groundfish QS. Annual landings of each quota share species category during 2004-2010 and on average during 1996-98 were used as the basis for constructing a hypothetical quota share account for each port. Each port's hypothetical quota share account was constructed by proportionally adjusting landings of each species category until no individual species control limits were exceeded, and the aggregate non-whiting groundfish control limit (2.70%) was exactly met. So the mix and quantity of species in each port's hypothetical quota share account reflects its recent average landings history subject to the QS control limits. The species mix also affects (to a very small degree) the amount of fish that can be held in each account because of the species and species group weighting factors. The formula used for the adjustment algorithm is shown below.

Each port's aggregate non-whiting groundfish quota share ($QS_{aggregate}$) was calculated as the weighted average of quota share for each individual quota species in the port's hypothetical account; where quota share for each species (p_i) was calculated as the lesser of each port's annual average 2004-2010 landings and the corresponding species control limit; and the weights (l_i/L) were calculated as each species' proportionate contribution (l_i) to the non-whiting trawl sector's aggregate allocation of non-whiting groundfish species in 2011 (L).

Or:

$$QS_{aggregate} = \sum_{i=1}^n p_i * l_i / L$$

Where:

$QS_{aggregate}$ = Aggregate non-whiting groundfish species quota share in each port's hypothetical account,

l_i = Total 2011 allocation (weight) to the non-whiting trawl sector for species i ,

$L (= \sum_{i=1}^n l_i)$ = Total 2011 allocation (weight) to the non-whiting trawl sector for all non-whiting groundfish quota species combined,

p_i = Proportion of 2011 allocation to the non-whiting trawl sector for species i held in each port's hypothetical account.

A.4 Results

A.4.1 Analysis of Vessel Distribution and Revenues

Totals of 120, 117 and 105 trawlers made non-whiting groundfish landings (from directed non-whiting groundfish trips while fishing under LE trawl permits) in the PFMC area during 2008, 2009 and 2010, respectively (Tables A-3a, A-3b, and A-3c). These tables show for each port the total number of vessels with that port as their principle port and the number of other ports to which those vessels also delivered. For example, in 2008 a total of 28 vessels had Astoria as their principle port and of these 23 delivered only to Astoria and 5 delivered to one other port (Table A-3a). The vessels made landings at ports between Bellingham WA in the north and Morro Bay CA in the south. Based on primary port of landing (port where most fish were landed) the center of fishery activity was at the Oregon ports of Astoria, Newport and Coos Bay (18-28 vessels per port per year; Fig. A-1). There was a secondary center of activity at the port of Eureka CA (10 or 11 vessels). The aforementioned Oregon group accounted for 54%, 56% and 57% of the total fleet in the respective years. The Eureka proportion represented between 9% and 10% of the fleet in those same years. The other coastal ports supported between one and seven vessels each, except for 2010 when two ports had no trawl vessels using them as their primary port for trawl caught fish (Neah Bay WA and Morro Bay CA). Five ports had zero, one, or two vessels in each of the three years (Neah Bay WA, Bodega Bay CA, Moss Landing CA, Monterey CA, and Morro Bay CA).

Table A-3a. Number of vessels landing in 1, 2, 3, 4, 5 or 6 ports during 2008 by vessels' primary port of landing [1].

Port	Number of ports of delivery						Total vessels delivering to port
	1	2	3	4	5	6	
	Number of vessels delivering to the indicated number of ports						
BLL	3	0	1	0	0	0	4
NEA	2	0	0	0	0	0	2
WPT	5	1	0	0	0	0	6
AST	23	5	0	0	0	0	28
NEW	17	1	0	1	0	0	19
COS	17	0	0	0	1	0	18
BRK	2	4	0	0	0	0	6
CRS	3	1	1	1	0	0	6
ERK	7	3	0	0	0	1	11
BRG	6	1	0	0	0	0	7
BDG	1	0	0	0	0	0	1
PRN	5	0	0	0	0	0	5
SF	3	0	0	0	0	0	3
MOS	1	0	0	0	0	0	1
MNT	1	0	1	0	0	0	2
MRO	0	1	0	0	0	0	1
Total	96	17	3	2	1	1	120
%	80.0	14.2	2.5	1.7	0.8	0.8	100.0

[1] primary port is where the vessel landed the most non-whiting groundfish.

Table A-3b. Number of vessels landing in 1, 2, 3, 4, 5 or 6 ports during 2009 by vessels' primary port of landing [1].

Port	Number of ports of delivery						Total vessels delivering to port
	1	2	3	4	5	6	
	<u>Number of vessels delivering to the indicated number of ports</u>						
BLL	1	3	0	0	0	0	4
NEA	0	1	0	0	0	0	1
WPT	2	2	1	0	0	0	5
AST	23	3	0	0	0	0	26
NEW	19	3	0	0	0	0	22
COS	16	1	1	0	0	0	18
BRK	3	3	0	0	0	0	6
CRS	5	1	1	0	0	0	7
ERK	8	1	0	1	0	0	10
BRG	6	1	0	0	0	0	7
BDG	0	1	0	0	0	0	1
PRN	3	0	0	0	0	0	3
SF	3	1	0	0	0	0	4
MOS	1	0	0	0	0	0	1
MNT	1	0	0	0	0	0	1
MRO	1	0	0	0	0	0	1
Total	92	21	3	1	0	0	117
%	78.6	17.9	2.6	0.9	0.0	0.0	100.0

[1] primary port is where the vessel landed the most non-whiting groundfish.

Table A-3c. Number of vessels landing in 1, 2, 3, 4, 5 or 6 ports during 2010 by vessels' primary port of landing [1].

Number of ports of delivery							Total vessels delivering to port
Port	1	2	3	4	5	6	
<u>Number of vessels delivering to the indicated number of ports</u>							
BLL	2	2	0	0	0	0	4
NEA	0	0	0	0	0	0	0
WPT	3	1	0	0	0	0	4
AST	18	5	0	0	0	0	23
NEW	13	5	0	0	0	0	18
COS	16	1	2	0	0	0	19
BRK	5	1	0	0	0	0	6
CRS	2	1	0	0	0	0	3
ERK	8	0	2	1	0	0	11
BRG	7	0	0	0	0	0	7
BDG	0	1	0	0	0	0	1
PRN	3	0	0	0	0	0	3
SF	4	0	0	0	0	0	4
MOS	1	0	0	0	0	0	1
MNT	1	0	0	0	0	0	1
MRO	0	0	0	0	0	0	0
Total	83	17	4	1	0	0	105
%	79.0	16.2	3.8	1.0	0.0	0.0	100.0

[1] primary port is where the vessel landed the most non-whiting groundfish.

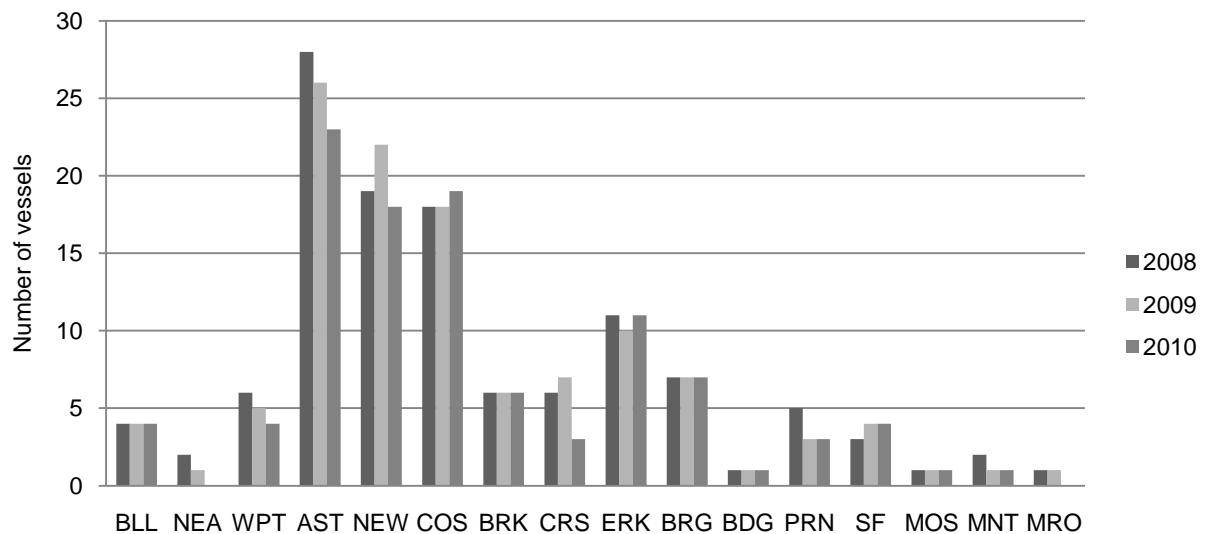


Fig. A-1. Number of non-whiting groundfish trawlers by primary landing port, 2008-2010

A large majority of vessels (79%-80%) made all landings at a single port, with a lesser proportion (14%-18%), making landings at two ports (Tables A-3a, A-3b, and A-3c). Some vessels made landings at three or more ports, but these represented a relatively small proportion (3%-6%) of the fleet.

Coastwide average non-whiting groundfish revenues per vessel during 2008-2010 ranged from an average of about \$223 thousand to about \$259 thousand per vessel per year (Table A-4; Fig A-2). Some ports had fewer than 3 vessels and so they have been omitted from the following port-based analysis for confidentiality reasons. Eureka and Fort Bragg vessels had the highest average annual revenues (\$337,706 and \$318,565, respectively) while Princeton had the lowest average (\$42,682). Other ports with vessel averages that were substantially below the coastwide three-year average of \$246,433 were Westport (\$167,490), and Crescent City (\$166,206).

Table A-4. Average non-whiting groundfish revenues per trawler by primary port and year, 2008-2010 1/

	2008	2009	2010	2008-10 AVG
BLL	\$275,359	\$311,676	\$165,087	\$250,707
NEA	\$0	\$0	\$0	\$0
WPT	\$132,829	\$233,424	\$136,218	\$167,490
AST	\$305,572	\$296,972	\$287,295	\$296,613
NEW	\$232,522	\$235,536	\$201,753	\$223,270
COS	\$244,862	\$221,352	\$209,766	\$225,327
BRK	\$300,661	\$262,243	\$244,288	\$269,064
CRS	\$174,921	\$211,063	\$78,563	\$154,849
ERK	\$361,258	\$351,670	\$300,190	\$337,706
BRG	\$327,632	\$377,173	\$250,890	\$318,565
BDG	\$0	\$0	\$0	\$0
PRN	\$47,530	\$52,990	\$27,524	\$42,682
SF	\$342,489	\$179,289	\$164,916	\$228,898
MOS	\$0	\$0	\$0	\$0
MNT	\$0	\$0	\$0	\$0
MRO	\$0	\$0	\$0	\$0
Coastwide	\$257,166	\$258,811	\$223,322	\$246,433

1/ \$\$ inclusive of all port landings; fewer than 3 vessels show \$0; coastwide avgs inclusive of all vessels

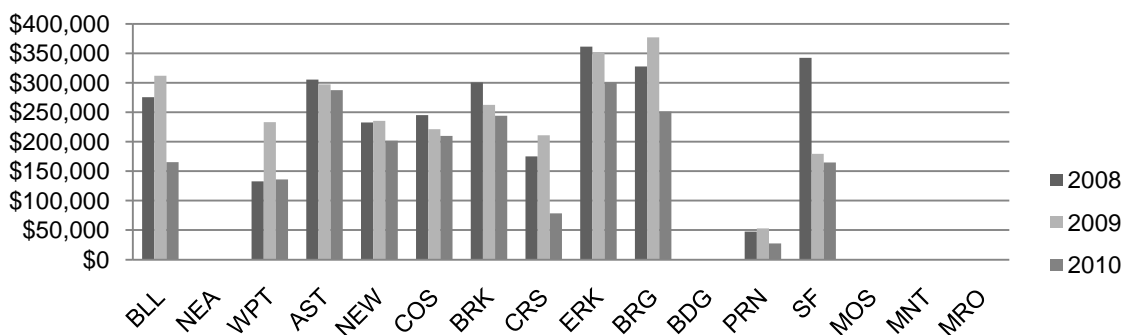


Fig A-2. Average annual revenues of non-whiting groundfish for LE trawl vessels by primary port and year. Ports with less than 3 vessels show \$0.

The expectation is that under rationalization, if only full time vessels participate, the fleet will reduce to 40-50 vessels, each with the potential to harvest \$700,000 of non-whiting groundfish on average per year (given current prices and trawl sector allocations). Under trawl rationalization, some ports are expected to gain landings and revenues and others are expected to lose. The pattern and direction in

which consolidation and redistribution takes place will depend on many factors such as distribution of target stocks, constraints caused by overfished species and Pacific halibut, incidental catch concerns, price competition for fish by buyers and processors, alternative fishing opportunities for QS holders, and factors affecting vessel operating efficiency and overhead costs.

A.4.2 Analysis of Special Privilege Options (Level of Exception)

The analysis of the level of the exception that would be required as a special privilege for CFAs focused on past fishery landings by port and year using the control limits translated to QP and assuming the allocations that were expected to be in place for 2011. CFAs developed for ports that received annual landing amounts less than one control limit during the study years (1996-98 and 2004-2010) have the ability under existing regulations to maintain fishery landings via direct control of quota share. CFAs for ports that had landings amounting in excess of one control limit would not be able to directly control all the QS necessary to ensure that they do not lose landings due to control limit constraints. However, they could potentially arrange for the acquisition and transfer of QP each year to vessels willing to deliver to their port.

Past data are analyzed in the context of control limit equivalent landings by port and period for selected target species: the DTS complex (sablefish, Dover sole, shortspine thornyhead and longspine thornyhead), English sole and other flatfish. Control limit equivalent landings by port and period for target and non-target species are calculated and shown in Attachment tables AT-1 through AT-16.

A.4.2.1 Sablefish

The number of sablefish control limits (2011 limit = 165,411 lbs and 117,064 lbs for the northern and Conception area stocks, respectively) that were landed at ports by trawlers during 2004-2010 was highly variable between areas, with three ports Astoria, Newport and Coos Bay having the highest landings in the range of four to ten annual limits each year 2004-2010 (Table A-5; Fig A-3). Eureka and Fort Bragg had landings in the two to five annual limit range, and Brookings had landings in the one to three annual limit range. The other 10 ports had landings of 1.5 annual limits or less.

Table A-5. Number of SABLEFISH 2011 control limits landed by port and year 2004-2010 including the 1996-98 average [1].

	Period							
	1996-98 AVG	2004	2005	2006	2007	2008	2009	2010
BLL	0.84	1.04	1.31	1.51	1.09	1.20	1.02	0.58
NEA	0.70	0.33	0.53	0.22	0.00	0.07	0.02	0.00
WPT	1.66	0.32	0.23	0.18	0.64	0.79	1.63	0.63
AST	7.54	6.64	7.55	7.95	7.22	10.47	10.17	8.29
NEW	5.22	7.70	5.08	5.43	6.44	7.67	8.24	5.81
COS	6.56	4.53	4.38	5.32	5.06	5.63	5.71	5.08
BRK	2.13	1.13	1.76	1.98	2.07	2.43	2.62	2.73
CRS	4.01	0.59	1.07	0.84	1.17	1.21	1.66	0.54
ERK	2.91	2.82	2.90	3.89	4.46	4.31	4.37	4.23
BRG	3.36	2.51	3.52	3.04	2.28	2.70	3.86	2.53
BDG	0.76	0.04	0.00	0.12	0.03	0.02	0.03	0.00
PRN	0.58	0.02	0.04	0.06	0.04	0.03	0.01	0.01
SF	0.92	1.47	0.92	0.94	1.35	1.11	0.73	0.46
MOS	0.45	0.78	0.81	0.99	0.31	0.34	0.36	0.29
MNT	0.54	0.08	0.09	0.09	0.17	0.09	0.05	0.14
MRO-N	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00
MRO-S	2.10	0.57	1.06	0.22	0.14	0.33	0.37	0.00

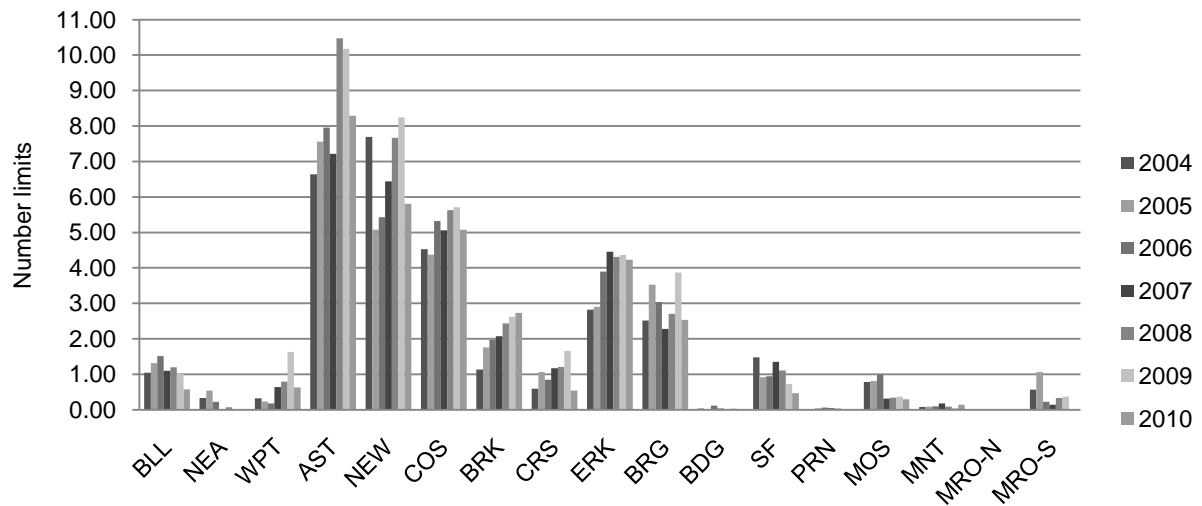


Fig. A-3. Number of control limits landed by port and year, 2004-2010: SABLEFISH

The 1996-98 average was similar to 2004-2010 for the ports of Astoria, Newport, Coos Bay, Brookings, Eureka and Fort Bragg (Table A-5). Landings over one control limit occurred at Westport (1.66), Crescent City (4.01), and Morro Bay (2.1 for Conception area stock). All other ports (Bellingham, Neah Bay, Bodega Bay, Princeton, San Francisco, Moss Landing and Monterey) had averages of 0.92 limits or less.

A.4.2.2 Dover sole

Astoria was the leading port for Dover sole landings during 2004-10 with landings (control limit = 1,274,501 lbs) in the range of 3.01-5.77 times the control limit (Table A-6, Fig A-4). Coos Bay ranged between 1.66 and 3.19 control limits, and Newport and Eureka were both in the 0.84-2.81 control limit range. All other ports had Dover sole landings of less than 1.25 control limit with most ports less than one control limit. Historical data showed average Dover sole landings during 1996-98 lower than 1.2 control limits for all ports except Astoria (2.94), Coos Bay (2.33) and Fort Bragg (1.57) (Table A-6).

Table A-6. Number of DOVER SOLE control limits landed by port and year 2004-2010 including the 1996-98 annual average [1].

	Period							
	1996-98 AVG	2004	2005	2006	2007	2008	2009	2010
BLL	0.38	0.34	0.59	0.48	0.57	0.61	0.85	0.80
NEA	0.20	0.03	0.08	0.08	0.01	0.01	0.01	0.00
WPT	0.60	0.24	0.20	0.14	0.52	0.62	0.87	0.52
AST	2.94	3.12	3.56	3.01	4.38	5.77	5.64	4.86
NEW	1.06	1.19	0.91	0.84	1.81	2.55	2.81	2.08
COS	2.33	1.75	1.74	1.66	2.43	3.00	3.19	3.10
BRK	0.62	0.51	0.66	0.58	0.98	1.24	1.24	1.41
CRS	0.94	0.30	0.42	0.34	0.68	0.80	1.02	0.19
ERK	1.03	1.14	1.37	1.28	2.62	2.58	2.74	2.31
BRG	1.57	1.09	1.25	0.86	0.89	1.12	1.22	0.90
BDG	0.63	0.03	0.00	0.03	0.01	0.01	0.01	0.00
SF	0.62	0.59	0.26	0.16	0.53	0.57	0.42	0.46
PRN	0.30	0.00	0.00	0.01	0.01	0.00	0.00	0.00
MOS	0.40	0.40	0.30	0.31	0.04	0.00	0.00	0.00
MNT	0.33	0.04	0.00	0.01	0.00	0.04	0.02	0.14
MRO	1.19	0.16	0.22	0.02	0.00	0.06	0.03	0.00

[1] The Dover sole control limit in 2011= 1,274,501 lbs

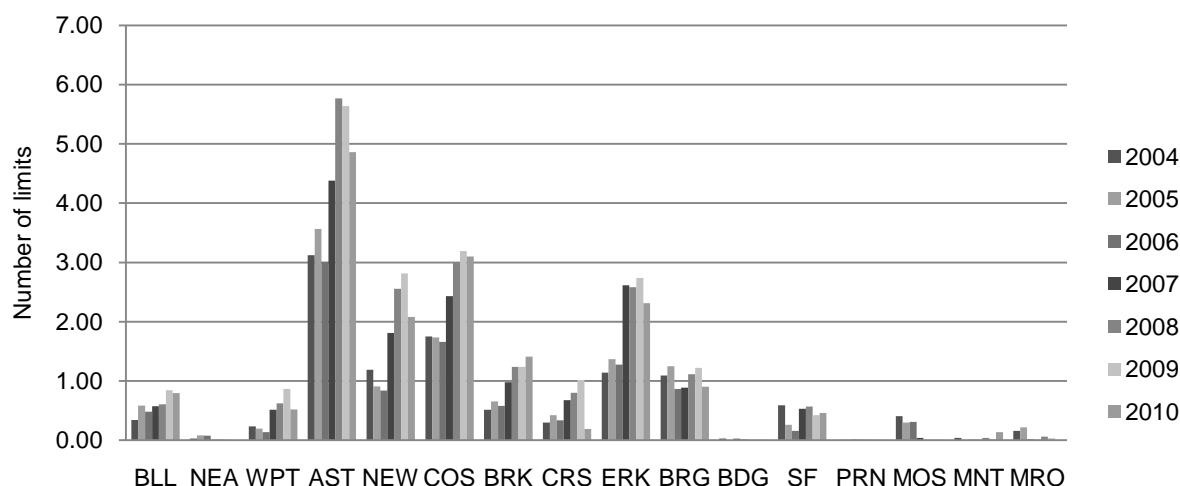


Fig A-4. Number of control limits landed by port and year, 2004-2010: DOVER SOLE

A.4.2.3 Shortspine thornyhead

The primary landing ports for shortspine thornyhead during 2004-2010 were Astoria, Newport and Coos Bay, in that order (Table A-7; Fig. A-5). Eureka and Fort Bragg were next in importance with annual landings ranging between 0.64 and 1.40 control limits. All other ports had annual landings of less than 0.67 control limit. The only ports to exceed one control limit on average during 1996-98 were Astoria (2.38), Coos Bay (2.32), Newport (1.39), Fort Bragg (1.32) and Crescent City (1.19) (Table A-7).

Table A-7. Number of SHORTSPINE THORNYHEAD control limits landed by port and year 2004-2010 including the 1996-98 annual average [1].

	Period							
	1996-98 AVG	2004	2005	2006	2007	2008	2009	2010
BLL	0.26	0.13	0.13	0.17	0.21	0.27	0.31	0.29
NEA	0.16	0.00	0.03	0.01	0.00	0.02	0.00	0.00
WPT	0.58	0.03	0.01	0.00	0.11	0.16	0.53	0.27
AST	2.38	1.08	1.10	1.21	2.73	5.03	4.79	3.83
NEW	1.39	1.40	0.89	1.02	2.20	3.07	3.63	2.66
COS	2.32	0.96	0.86	0.98	1.18	1.76	1.79	1.62
BRK	0.69	0.17	0.28	0.31	0.46	0.62	0.63	0.66
CRS	1.19	0.12	0.14	0.07	0.27	0.30	0.64	0.12
ERK	0.94	0.65	0.64	0.96	1.17	1.32	1.35	1.40
BRG	1.32	1.35	0.78	0.79	0.65	0.70	1.00	0.91
BDG	0.36	0.01	0.00	0.02	0.00	0.00	0.01	0.00
SF	0.44	0.38	0.30	0.15	0.33	0.32	0.25	0.18
PRN	0.13	0.00	0.00	0.00	0.00	0.01	0.01	0.00
MOS	0.33	0.35	0.30	0.40	0.14	0.22	0.24	0.21
MNT	0.24	0.03	0.00	0.00	0.01	0.04	0.00	0.05
MRO	0.96	0.20	0.32	0.06	0.02	0.12	0.09	0.00

[1] the SS Thornyhead vessel limit north of Pt. Conception in 2011= 189,155 lbs

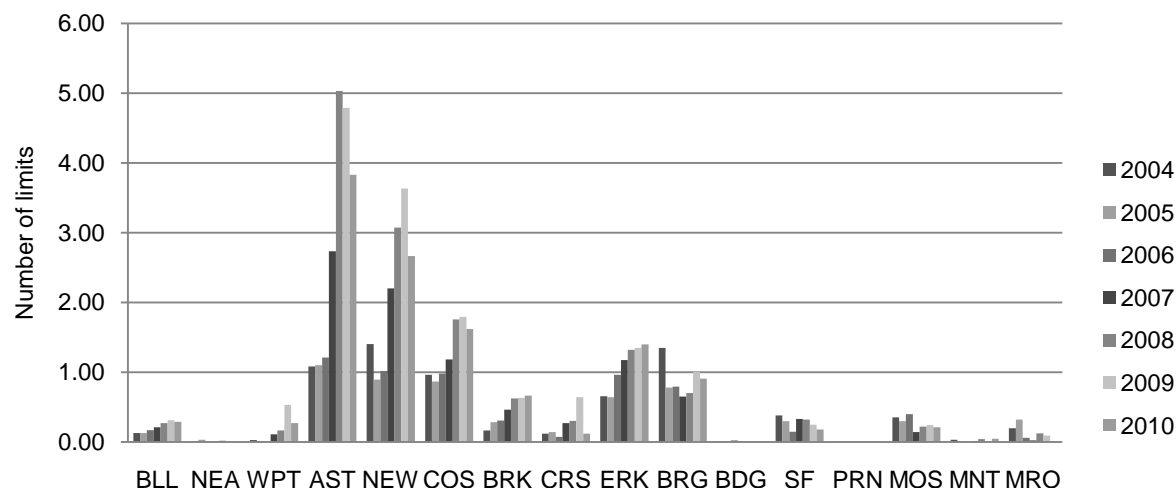


Fig A-5 Number of control limits landed by port and year, 2004-2010: SHORTSPINE THORNEYHEAD

A.4.2.4 Longspine thornyhead

Eureka, Fort Bragg, and Coos Bay were the major landing ports for longspine thornyhead with landings generally ranging between 1.0 to 2.44 control limits during 2004-2010 (Table A-8; Fig. A-6). Astoria and Newport had landings above 1.0 control limit in several years during the period. No other ports reached the 1.0 control limit level in any year during 2004-2010. The pre-RCA data (1996-98 averages) showed seven central coast ports with average annual landings above 1.6 control limits, ranging as high as 4.90 control limits (Astoria, Newport, Coos Bay, Brookings, Crescent City, Eureka, and Fort Bragg). The 1996-1998 average for Morro Bay was 1.44 control limits; while all other ports were below 1.0 (Table A-6).

Table A-8. Number of LONGSPINE THORNYHEAD control limits landed by port and year 2004-2010 including the 1996-98 annual average [1].

	Period							
	1996-98 AVG	2004	2005	2006	2007	2008	2009	2010
BLL	0.40	0.05	0.00	0.01	0.06	0.04	0.02	0.03
NEA	0.12	0.01	0.00	0.00	0.00	0.00	0.00	0.00
WPT	0.98	0.01	0.00	0.00	0.02	0.07	0.32	0.17
AST	4.84	0.37	0.14	0.26	0.80	1.72	1.17	2.13
NEW	1.97	0.30	0.12	0.22	0.33	0.74	1.25	1.49
COS	4.90	1.13	0.73	0.88	1.05	1.65	1.96	2.11
BRK	1.62	0.19	0.21	0.49	0.58	0.67	0.58	0.90
CRS	2.90	0.00	0.20	0.09	0.17	0.74	0.72	0.15
ERK	2.27	0.97	0.96	1.81	2.15	2.44	1.99	1.98
BRG	2.63	0.80	1.86	1.79	0.89	1.46	0.98	1.27
BDG	0.69	0.01	0.00	0.02	0.00	0.00	0.00	0.00
SF	0.86	0.81	0.31	0.14	0.40	0.54	0.35	0.15
PRN	0.19	0.00	0.00	0.00	0.00	0.00	0.00	0.00
MOS	0.66	0.31	0.36	0.48	0.23	0.38	0.37	0.28
MNT	0.51	0.03	0.00	0.01	0.03	0.07	0.00	0.06
MRO	1.44	0.30	0.47	0.03	0.00	0.02	0.01	0.00

[1] The LS Thornyhead vessel limit in 2011=260,055 lbs

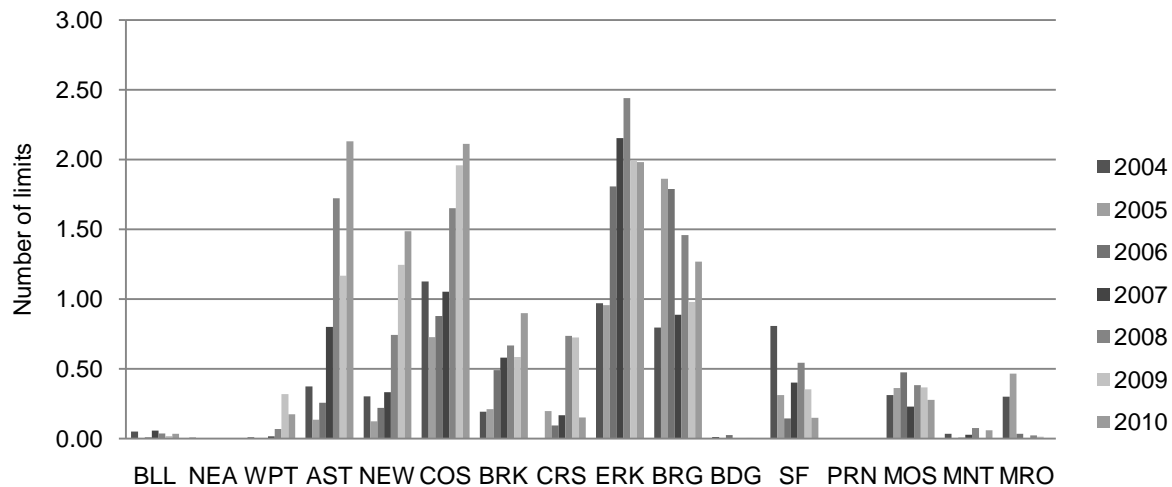


Fig A-6. Number of control limits landed by port and year, 2004-2010: LONGSPINE THORNEYHEAD

A.4.2.5 English sole

The control limit for this species in 2011 is very high at nearly 2.1 million pounds. Data for recent years (2004-2010) and the pre-RCA years (1996-98) show that landings in no port came close to approaching the English sole control limit (Table A-9; Fig. A-7).

Table A-9. Number of ENGLISH SOLE control limits landed by port and year 2004-2010 including the 1996-98 annual average [1].

	Period							
	1996-98 AVG	2004	2005	2006	2007	2008	2009	2010
BLL	0.02	0.07	0.09	0.02	0.04	0.00	0.01	0.00
NEA	0.11	0.06	0.10	0.07	0.02	0.01	0.01	0.00
WPT	0.07	0.02	0.02	0.01	0.03	0.03	0.01	0.00
AST	0.21	0.27	0.22	0.37	0.30	0.12	0.10	0.09
NEW	0.09	0.03	0.06	0.03	0.01	0.01	0.04	0.02
COS	0.16	0.10	0.12	0.08	0.07	0.03	0.04	0.02
BRK	0.03	0.00	0.01	0.02	0.01	0.00	0.00	0.00
CRS	0.10	0.05	0.04	0.05	0.02	0.00	0.01	0.00
ERK	0.04	0.17	0.16	0.20	0.10	0.07	0.03	0.00
BRG	0.09	0.01	0.02	0.01	0.02	0.03	0.01	0.00
BDG	0.04	0.00	0.00	0.00	0.01	0.01	0.00	0.00
SF	0.10	0.01	0.01	0.01	0.01	0.01	0.01	0.00
PRN	0.05	0.02	0.02	0.03	0.02	0.02	0.01	0.00
MOS	0.01	0.01	0.01	0.00	0.00	0.00	0.01	0.00
MNT	0.07	0.02	0.01	0.01	0.00	0.00	0.00	0.00
MRO	0.00	0.03	0.01	0.00	0.00	0.00	0.00	0.00

[1] The English sole control limit in 2011= 2,056,230 lbs

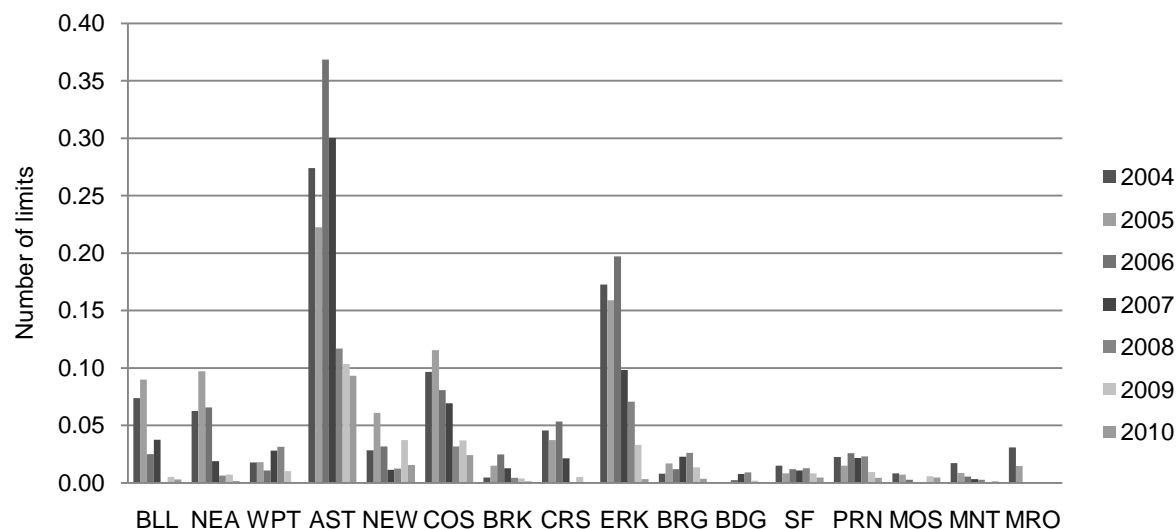


Fig A-7. Number of control limits landed by port and year, 2004-2010: ENGLISH SOLE

A.4.2.6 Other flatfish

The data for other flatfish look similar to the data for English sole because the control limit poundage cap for 2011 is also very high at 924,389 lbs. When compared to the 2004-2010 data only one port exceeded the one control limit level in any year: Astoria in 2006 at 1.28 control limits (Table A-10; Fig. A-8). Data for 1996-1998 showed no port came close to the one control limit level (Table A-10).

Table A-10. Number of OTHER FLATFISH control limits landed by port and year 2004-2010 including the 1996-98 annual average [1].

	Period							
	1996-98 AVG	2004	2005	2006	2007	2008	2009	2010
BLL	0.02	0.00	0.02	0.01	0.01	0.01	0.03	0.02
NEA	0.06	0.04	0.08	0.06	0.03	0.00	0.01	0.00
WPT	0.05	0.06	0.06	0.02	0.02	0.04	0.05	0.01
AST	0.37	0.77	0.82	1.28	0.65	0.47	0.84	0.60
NEW	0.16	0.11	0.09	0.06	0.08	0.11	0.14	0.13
COS	0.58	0.37	0.28	0.26	0.32	0.30	0.41	0.43
BRK	0.06	0.08	0.11	0.09	0.14	0.12	0.09	0.09
CRS	0.29	0.31	0.29	0.13	0.13	0.08	0.12	0.02
ERK	0.21	0.20	0.26	0.22	0.29	0.27	0.14	0.07
BRG	0.21	0.10	0.13	0.07	0.06	0.05	0.04	0.01
BDG	0.05	0.01	0.00	0.00	0.01	0.00	0.00	0.00
SF	0.21	0.13	0.07	0.07	0.07	0.06	0.04	0.06
PRN	0.68	0.37	0.10	0.14	0.25	0.20	0.14	0.04
MOS	0.11	0.10	0.10	0.05	0.00	0.00	0.00	0.01
MNT	0.35	0.12	0.08	0.01	0.01	0.02	0.03	0.02
MRO	0.13	0.02	0.07	0.00	0.00	0.02	0.02	0.00

[1] The Other Flatfish control limit in 2011= 924,389 lbs

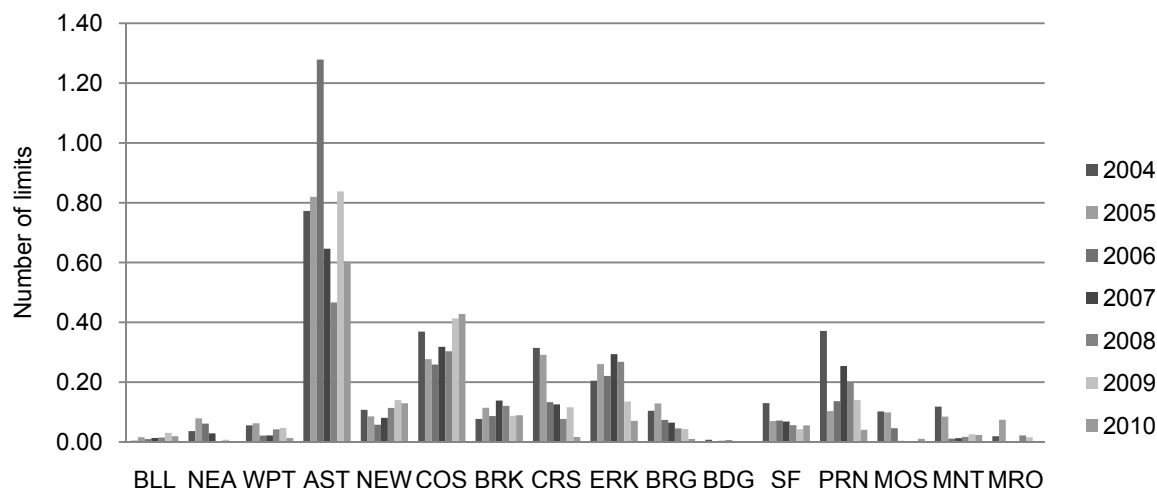


Fig A-8. Number of control limits landed by port and year, 2004-2010: OTHER FLATFISH

A.4.2.7 Aggregate Non-whiting Groundfish

The purpose of this analysis was to show the pounds and species mix of fish that an entity (such as a CFA) could accrue in a hypothetical account using expected 2011 control limits for LE trawl-caught non-whiting groundfish on a port-specific basis. The analysis used recent port-specific landings data to reflect the likely mix of fish in each account, which varied widely for some species from north to south. As described in the methods section, for those ports which would need amounts of fish in excess of the control limits in order to cover their historic harvests, the accounts were capped at the aggregate non-whiting accumulation limits.

The non-whiting groundfish control limit analysis showed aggregate pounds per account of about 4.5 million (with variations due to primarily to rounding and species mixes). One aggregate groundfish limit of 4.5 million pounds would have accommodated the-average annual pounds landed at every port during 2004-2010 except for Astoria, Newport, Coos Bay, and Eureka. Historically, Astoria received over 3 aggregate poundage limits on average while Newport and Coos Bay received 1.12 and 1.34 control limits, respectively. One aggregate groundfish limit would have also accommodated or approximately met (within 13%) the historical (1996-1998 average) landings of every port except Westport Astoria, Newport, Coos Bay, and Fort Bragg. These ports would have required between 1.14 and 4.04 aggregate limits to match their respective port actual landings (Table A-11, Fig. A-9).

Certain species had greater impact on the accounts than others because of their respective control limits and coastal distributions. A summary of findings by species or species group follows (Table A-11, Fig A-9):

- The lingcod poundage cap was met at Brookings and all ports between Fort Bragg and Morro Bay.
- The Pacific cod poundage cap was met at only two ports: Bellingham and Neah Bay.
- The sablefish and petrale sole poundage caps were met at all ports.
- The chilipepper rockfish poundage cap was met at all ports between Fort Bragg and Monterey.
- The splitnose rockfish limit was met at all ports between Fort Bragg and Morro Bay except Bodega Bay and Princeton.
- The yellowtail rockfish poundage cap was met at only one port: Westport.

- The shortspine thornyhead limit was met at all ports between Astoria and Morro Bay except Princeton.
- The longspine thornyhead poundage cap was met at all ports between Newport and Moss Landing except Princeton.
- The northern shelf rockfish poundage cap was not reached at any port while the southern shelf rockfish poundage cap was met at all ports between Fort Bragg and Morro Bay except Bodega Bay.
- The slope rockfish limits, both north and south, were met at all ports except Neah Bay.
- The Dover sole poundage cap was met at all ports except Neah Bay and Princeton.
- The English sole and starry flounder poundage limits were met at only one port, Princeton, while the arrowtooth flounder poundage cap was not met at any port.
- The other flatfish poundage cap was reached at every port between Brookings and Moss Landing except Eureka and Bodega Bay.

The species or species groups that were common to most accounts included lingcod, sablefish, Dover sole, thornyheads, petrale sole shelf and slope rockfish and other flatfish. The ones of limited distribution include Pacific cod, arrowtooth flounder, chilipepper and splitnose rockfish, and starry flounder. Whether the account holder would actually be able to acquire and harvest these fish (because of availability of fish or of vessels to harvest the fish, facilities to land and process the fish, or other market forces) are separate issues that are not addressed here.

Table A-11. Hypothetical account pounds that would meet the non-whiting groundfish control limit and stay within species limits by port and species or species group. Based on 2004-2010 port landing proportions and 2011 species limits. Highlighted values show species limits that were met.

Species	BLL	NEA	WPT	AST	NEW	COS	BRK	CRS	ERK	BRG	BDG	SF	PRN	MOS	MNT	MRO
Lingcod	29,678	101,251	59,534	41,123	60,875	73,673	102,404	81,095	67,931	102,404	102,404	102,404	102,404	102,404	102,404	102,404
P cod	300,002	300,002	91,552	187,928	19,246	5,000	534	0	98	0	0	0	0	0	0	0
N Sablefish	165,411	165,411	165,411	165,411	165,411	165,411	165,411	165,411	165,411	165,411	165,411	165,411	165,411	165,411	165,411	0
S Sablefish	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	117,064
Chilipepper	0	0	0	31	1,781	99	42	194,968	92,897	325,179	325,179	325,179	325,179	325,179	325,179	104,681
Splitnose	1,101	683	1,527	4,422	35,061	5,309	30,088	98,091	38,968	304,455	286,156	304,455	163,128	304,455	304,455	304,455
Yellowtail	8,286	81,505	308,754	63,965	68,244	11,302	379	4,377	7,933	0	0	0	0	0	0	0
Shortspine th	108,299	27,588	147,615	189,155	189,155	189,155	189,155	189,155	189,155	189,155	189,155	189,155	45,886	189,155	189,155	189,155
Longspine th	20,339	3,622	106,203	132,283	260,055	260,055	260,055	260,055	260,055	260,055	260,055	260,055	18,332	260,055	260,055	260,055
N Shelf RF	6,001	16,146	13,063	6,020	14,086	10,984	6,451	17,384	6,644	0	0	0	0	0	0	0
S Shelf RF	0	0	0	0	0	0	0	0	0	17,064	12,660	17,064	17,064	17,064	17,064	17,064
N Slope RF	90,168	9,728	90,168	90,168	90,168	90,168	90,168	90,168	90,168	0	0	0	0	0	0	0
S Slope RF	0	0	0	0	0	0	0	0	0	49,868	49,868	49,868	49,868	49,868	49,868	49,868
Dover sole	1,274,501	668,343	1,274,501	1,274,501	1,274,501	1,274,501	1,274,501	1,274,501	1,274,501	1,274,501	1,274,501	1,274,501	446,047	1,274,501	1,274,501	1,274,501
English sole	183,966	1,302,777	168,347	234,919	227,536	380,820	733,366	785,354	1,001,472	771,369	1,202,951	755,977	2,056,230	840,573	824,308	1,108,620
Petrale sole	57,606	57,606	57,606	57,606	57,606	57,606	57,606	57,606	57,606	57,606	57,606	57,606	57,606	57,606	57,606	57,606
Arrowtooth fl	2,239,997	1,288,529	1,859,367	1,653,964	1,673,614	1,109,631	680,904	380,486	361,342	81,384	15,399	373	0	0	0	0
Starry fl	42	2,617	10,140	25,618	5,412	779	1,026	0	11,067	0	79,803	91,865	147,267	12,023	18,588	0
Other flatfish	37,303	487,398	169,902	387,343	370,122	888,985	924,389	924,389	891,210	924,389	497,121	924,389	924,389	924,389	924,389	924,389
Total ^a	4,522,700	4,513,205	4,523,689	4,514,459	4,512,872	4,523,479	4,516,479	4,523,040	4,516,458	4,522,840	4,518,268	4,518,302	4,518,811	4,522,682	4,512,982	4,509,862
Historic Total Pounds Landed																
2004-10 avgs:	2,375,463	410,995	1,573,314	14,091,296	5,059,197	6,121,332	2,075,853	1,335,017	4,940,727	3,010,359	105,172	1,270,051	402,212	605,924	287,621	344,366
1996-98 avgs:	3,786,118	2,364,099	5,138,066	18,258,767	10,054,064	10,973,067	2,702,619	4,687,698	4,320,161	6,651,736	2,282,930	3,734,516	1,852,615	1,406,992	2,696,594	3,192,186
Ratio of Historic Pounds to Control Limits																
2004-10/Total:	0.53	0.09	0.35	3.12	1.12	1.35	0.46	0.30	1.09	0.67	0.02	0.28	0.09	0.13	0.06	0.08
1996-98/Total:	0.84	0.52	1.14	4.04	2.23	2.43	0.60	1.04	0.96	1.47	0.51	0.83	0.41	0.31	0.60	0.71

^a Total pounds capped at the aggregate nonwhiting control limit.

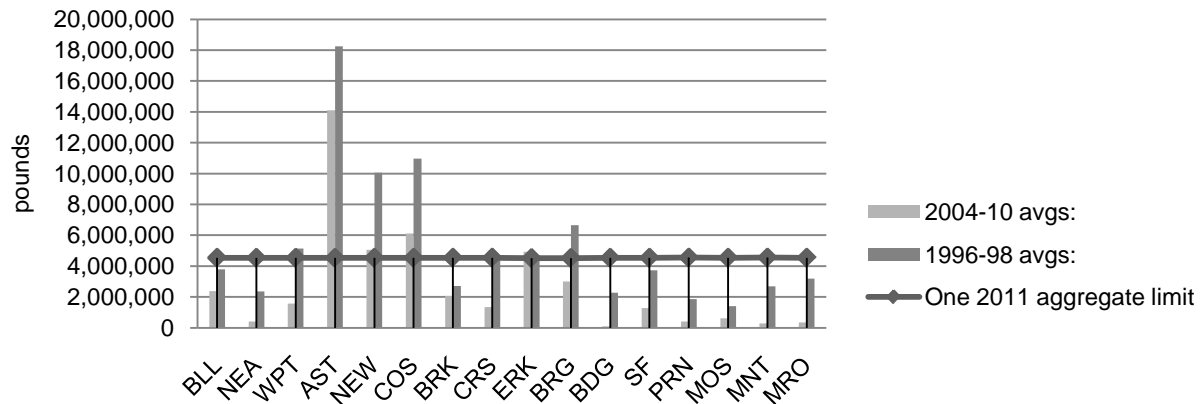


Fig. A-9: Average trawl fishery landings during specified periods compared to one 2011 aggregate groundfish poundage limit by species or species group and port

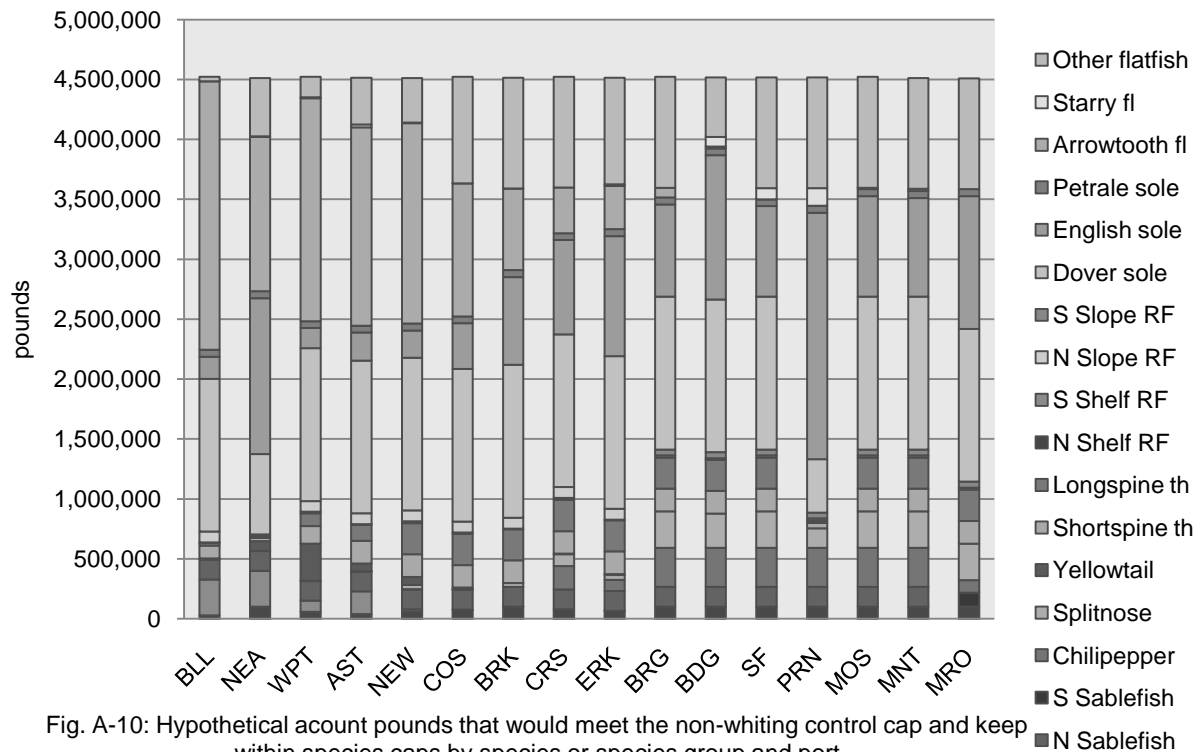


Fig. A-10: Hypothetical account pounds that would meet the non-whiting control cap and keep within species caps by species or species group and port

A.5 Findings and Conclusions

A.5.1 General

There were two centers of non-whiting trawl fishery activity during 2008-2010: the central/northern Oregon area (Coos Bay, Newport and Astoria) and the Eureka area. Average revenues varied widely between ports and years with highest averages calculated for Fort Bragg and Eureka (over \$300 thousand on average, and in all years except one) and lowest for Neah Bay and Princeton (\$30-40 thousand range on average). The years 2008-

2009 had similar coastwide averages (\$257 thousand and \$259 thousand, respectively), but 2010 dropped about 16% (to \$223,000) compared to the previous year.

One sablefish control limit, based on the 2011 allocation cap for this species, would have met the needs during 2004-2010 or on average during 1996-98 of Neah Bay, Bodega Bay, Princeton, Moss Landing and Monterey (Table A-12 and Fig. A-11). About 1.5 sablefish control limits would have been needed to meet the needs during 2004-2010 or on average during 1996-98 of Bellingham, Westport, and San Francisco. The other ports would have required higher sablefish limits to meet their respective needs, ranging from about 2 limits at Morro Bay to over 10 limits at Astoria (Table A-12 and Fig. A-11).

Table A-12. Maximum number of 2011 control limits landed in any year during 2004-2010 or an average during 1996-98 by species or species group and port. [1]

	Sablefish	Dover sole	Shortspine th	Longspine th	English sole	Other flatfish	Aggregate gf
BLL	1.51	0.85	0.31	0.40	0.09	0.03	0.84
NEA	0.70	0.20	0.16	0.12	0.11	0.08	0.52
WPT	1.66	0.87	0.58	0.98	0.07	0.06	1.14
AST	10.4	5.77	5.03	4.84	0.37	1.28	4.04
NEW	7	2.81	3.63	1.97	0.09	0.16	2.23
COS	8.24	3.19	2.32	4.90	0.16	0.58	2.43
BRK	6.56	1.41	0.69	1.62	0.03	0.14	0.62
CRS	2.73	1.02	1.19	2.90	0.10	0.31	1.04
ERK	4.01	2.74	1.40	2.44	0.20	0.29	1.37
BRG	4.46	1.57	1.35	2.63	0.09	0.21	1.47
BDG	3.86	0.63	0.36	0.69	0.04	0.05	0.51
SF	0.76	0.62	0.44	0.86	0.10	0.21	0.83
PRN	1.47	0.30	0.13	0.19	0.05	0.68	0.41
MOS	0.58	0.40	0.40	0.66	0.01	0.11	0.31
MNT	0.99	0.33	0.24	0.51	0.07	0.35	0.60
MRO	0.54	1.19	0.96	1.44	0.03	0.13	0.71

[1] Based on tables A-5, A-6, A-7, A-8, A-9 and A-10 for sablefish, Dover sole, shortspine thornyhead, longspine thornyhead, English sole and other flatfish, respectively. The aggregate groundfish (gf) values were calculated separately for this table.

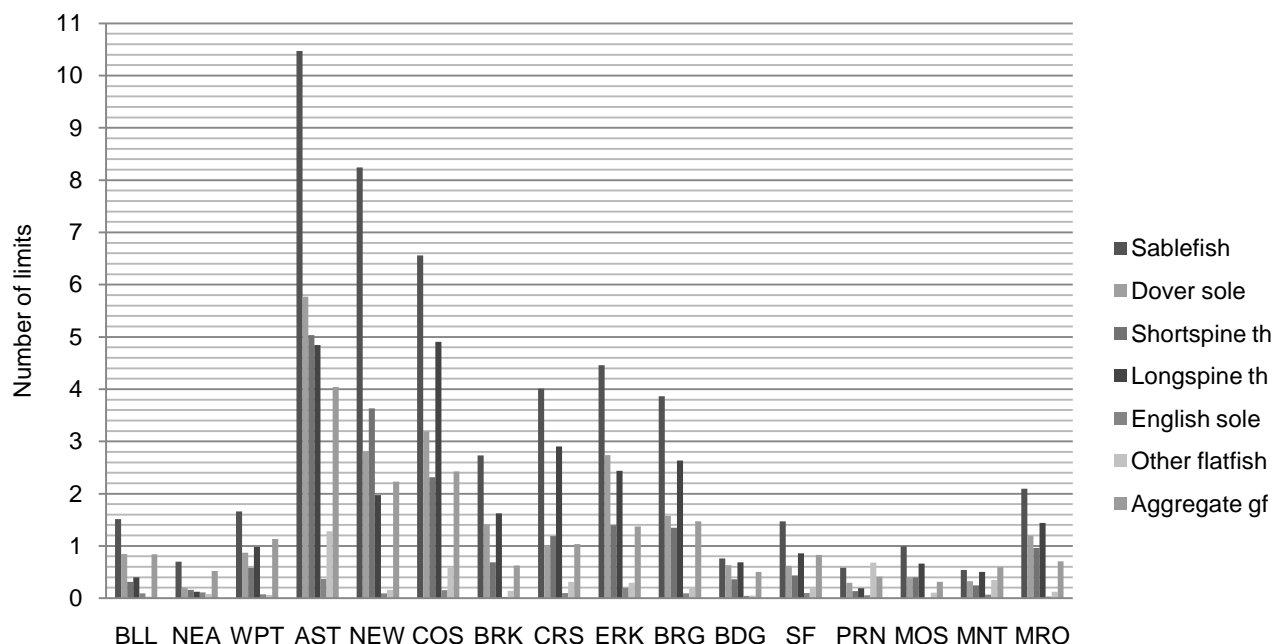


Fig A-11. Maximum number of 2011 control limits in any year during 2004-2010 or on average during 1996-98 by species or species group and port. See footnote Table A-10.

One Dover sole limit based on the 2011 allocation cap for this species would have met the needs of all ports during 2004-2010 or on average during 1996-98 except Astoria (up to 5.77 needed), Newport (up to 2.81 needed), Coos Bay (up to 3.19 needed), Brookings (up to 1.41 needed), Eureka (up to 2.74 needed), and Fort Bragg (up to 1.57 needed) (Table A-12; Fig. A-11).

One shortspine thornyhead limit based on 2011 allocations would have met the needs of all ports during 2004-2010 or an average during 1996-98 except Astoria (up to 5.03 needed), Newport (up to 3.63 needed) Coos Bay (up to 2.32 needed), Eureka (up to 1.40 needed) and Fort Bragg (up to 1.35 needed) (Table A-12; Fig.A-11)

One longspine thornyhead limit, based on 2011 allocations, would have met the needs of all ports except Astoria (up to 4.84 needed), Newport (up to 1.97 needed), Coos Bay (up to 4.90 needed), Brookings (up to 1.62 needed, Crescent City (up to 2.90 needed), Eureka (up to 2.44 needed), Fort Bragg (up to 2.63 needed) and Morro Bay (up to 1.44 needed) (Table A-12-; Fig.A-11).

Because of the very large control limit cap for English sole in 2011 (nearly 2.1 million pounds), one control limit would have met the needs of all ports based on 2004-2010 landings or 1996-98 average landings (Table A-12; Fig.A-11). The situation was similar (with one exception for Astoria in 2006) for other flatfish which has a 2011 control limit cap of about 900 thousand pounds. (Table A-10; Fig.A-11).

The aggregate groundfish control limit analysis showed that it would be possible for each QS holder to accrue about 4.5 million pounds of fish based on 2011 control limits depending on the mix of species they desire to have in their account. Such a large amount of fish would cover the annual amounts landed during the study years for every port except Astoria, Newport and Coos Bay, Eureka and Fort Bragg. These ports would have required larger amounts of fish to match recent (2004-2010) or historical (1996-98) trawl groundfish pounds landed (Table A-12; Fig A-11)).

To facilitate comparison of control limit data in Table A-12 with the special privilege alternatives, 1a (1.5 times current accumulation limits), 1b (2.0 times current accumulation limits), and 1c (consider only the level of accumulation limit need), the following table and figure show the maximum annual landings during the study period rounded to the nearest 0.5 control limits. Furthermore, since in theory every port is eligible to hold at least once control limit, no entry less than one control limit is shown for any species and port Table A-13 and Fig. A-12.

Table A-13. Maximum number of 2011 control limits landed in any year during 2004-2010 or on average during 1996-98 by species or species group and port, rounded to the nearest 0.5 limits but not less than 1 limit.

	Sablefish	Dover sole	Shortspine th	Longspine th	English sole	Other flatfish	Aggregate gf
BLL	1.5	1.0	1.0	1.0	1.0	1.0	1.0
NEA	1.0	1.0	1.0	1.0	1.0	1.0	1.0
WPT	1.5	1.0	1.0	1.0	1.0	1.0	1.0
AST	10.5	6.0	5.0	5.0	1.0	1.5	4.0
NEW	8.0	3.0	3.5	2.0	1.0	1.0	2.0
COS	6.5	3.0	2.5	5.0	1.0	1.0	2.5
BRK	2.5	1.5	1.0	1.5	1.0	1.0	1.0
CRS	4.0	1.0	1.0	3.0	1.0	1.0	1.0
ERK	4.5	2.5	1.5	2.5	1.0	1.0	1.5
BRG	4.0	1.5	1.5	2.5	1.0	1.0	1.5
BDG	1.0	1.0	1.0	1.0	1.0	1.0	1.0
SF	1.5	1.0	1.0	1.0	1.0	1.0	1.0
PRN	1.0	1.0	1.0	1.0	1.0	1.0	1.0
MOS	1.0	1.0	1.0	1.0	1.0	1.0	1.0
MNT	1.0	1.0	1.0	1.0	1.0	1.0	1.0
MRO	2.0	1.0	1.0	1.5	1.0	1.0	1.0

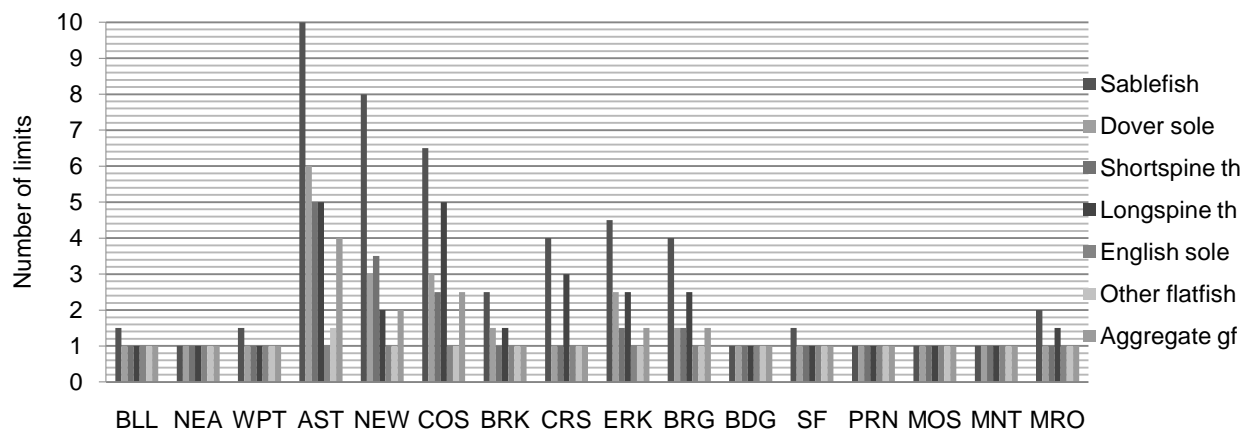


Fig. A-12 Maximum number of 2011 control limits landed in any year during 2004-2010 or on average during 1996-98 by species or species group and port, rounded to the nearest 0.5 limits (but not less than 1 control limit).

The analysis shows (as displayed in tables A-12 and A-13; figures, A-11 and A-12) that an exception to the control limits may be appropriate for some ports for certain species if the Council determines it desirable for the CFAs in those ports to control all of the QS needed to accommodate historic landings. This is because recent (2004-2010) or historical (1996-98 average) landings of some species such as sablefish, Dover sole, thornyheads and aggregate groundfish have exceeded the current control limits (caps) in past years. The ports with very high landings included Astoria, Newport, Coos Bay, Eureka and Fort Bragg. For some other ports no exception to

the limits appears to be necessary based on the data used in this report. These ports included Neah Bay, Bodega Bay, Princeton, Moss Landing, and Monterey. These ports had landings, both recent and historically, that amounted to one 2011 control limit or less for each of the species or species groups and years or period averages examined. The remaining ports (Bellingham, Westport, Brookings, Crescent City, San Francisco and Morro Bay) were somewhere in between in terms of need for special privilege consideration depending on the species or species group and year(s) used in the analysis.

A total of 13 ports were omitted from the analysis because they were not primary landing ports during 2008-2010. Some of these ports historically had much higher landings than in recent years. Avila (Port San Luis) for example averaged 1.7 million pounds per year during 1996-98, which was higher than Moss Landing, a port included in the expanded analysis, on average during the same period (1.5 million pounds). The Council may wish to consider ports that were not included in the analysis for Designated CFA status based on their historical landings.

The analysis did not extend to overfished species. If the decision is made to increase control limit caps for target species to Designated CFAs, it may also be appropriate to consider higher control limits for overfished species that are associated with target species for which a special exception is under consideration. Otherwise, due to overfished species constraints, the CFA may be unable to provide sufficient bycatch to harvest its additional target species (which may be a problem anyway).

A.5.2 Specific Questions asked by the Council Regarding the Level of the Exception for CFAs.

At its November 2010 meeting the Council asked that analysts look at a number of specific issues regarding the effects of higher accumulation limits. The following reviews those issues and provides relevant information.

Historical participation and dependence.

Historical participation (past landings) is assessed in the preceding tables and figures which are expressed in terms of QS control limits. Dependence information will be added in the next draft.

Ability to support a full time captain and crew.

The control limits were designed to allow one individual to control sufficient QS to support two vessels working full time. For the typical vessel, this would include a captain and crew of two individuals. Many of the ports analyzed did not have total landings for any of the species or species groups or for aggregate groundfish in any year or period that exceeded one control limit. These ports included Neah Bay, Bodega Bay, Princeton, Moss Landing and Monterey. The other ports (Bellingham, Westport, Astoria, Newport, Coos Bay, Brookings, Crescent City, Eureka, Fort Bragg, San Francisco, and Morro Bay) had landings that exceeded one control limit depending on the species or species group. Sablefish landings at these other ports generally exceeded 1.5 control limits to as high as 10.5 control limits.

Ability to support necessary infrastructure, such as processing capacity, port facilities etc.

A precise answer to this question would depend on several factors including local port conditions and other fisheries operating out of any particular port. The analysis shows that of all the west coast ports there are several that would appear to need higher control limits (>about 1.5 times) in order to cover all their landings with CFA controlled QS. These ports include Bellingham (sablefish), Westport (sablefish), Astoria (six species or species groups), Newport (five species or species groups), Coos Bay

(5 species or species groups), Brookings (3 species), Crescent City (2 species), Eureka (5 species or species groups), Fort Bragg (4 species or species groups), San Francisco (sablefish) and Morro Bay (2 species).. If the other ports on the coast (Neah Bay, Bodega Bay, Princeton, Moss Landing and Monterey) are considered to have long-term viability at their recent harvest levels then it appears that the current control limits may be sufficient to support the necessary infrastructure for smaller ports.

The potential to lose or gain quota share based on market forces.

Certain ports have been identified as being more likely to lose QS than other ports. Table 4-69 from the Amendment 20 EIS is reproduced here as Table A-14. This table shows that most of the ports that might potentially benefit from a CFA higher control limit tend to be those that are expected to have a comparative advantage in the trawl rationalization program. These ports include Astoria, Newport, Coos Bay, Brookings, Eureka and Fort Bragg. The ones at a disadvantage include Neah Bay, Princeton, Moss Landing, and Morro Bay

Table A-14. Comparative advantage of nonwhiting trawl communities under rationalization.

Port	Fleet Efficiency Score	Bycatch Dependent Area Score	Shore-based Infrastructure	Initial Allocation of Groundfish	Score
Bellingham	?	- -	+ +	+	
Neah Bay	-	- -	- -	-	-
Westport	-	+	+	-	
Astoria	+	+	+ +	+ +	+
Newport	+	-	+ +	+	
Charleston (Coos Bay)	+	+	+ +	+	+
Brookings	+	+	-	+	
Crescent City	-	+	+	-	
Eureka	+	+	+	+	+
Fort Bragg	-	+	+	+	
San Francisco	-	-	+ +	+	
Moss Landing	-	- -	+	+	
Princeton/Half Moon Bay	-	- -	+	+	
Morro Bay	?	+	-	-	

The ability to use community-based quota to attract quota landings.

Under current control limits, a smaller port could offer to cover all the landings in that port with CFA controlled QS, while a CFA for a larger port would be constrained to covering only a portion of those landings. Raising the control limits would allow larger ports to cover a greater portion of the landings with CFA controlled QS and allow smaller ports to expand operations covered by CFA controlled QS. The ability of larger and smaller ports to acquire QS up to the higher limits would likely depend on the tax base or other funding sources available to support CFA acquisition of QS.

A.6 Literature Cited

Pacific Fishery Management Council (PFMC). 2010a. Analysis of components, elements, and options for the individual fishing quota alternative trawl individual quota components: Appendix A to the rationalization of the Pacific coast groundfish limited entry trawl fishery final environmental impact statement. PFMC, Portland OR 97220.

_____. 2010b. Rationalization of the Pacific coast groundfish limited entry trawl fishery: Final environmental impact statement including regulatory impact review and initial regulatory flexibility analysis. PFMC, Portland OR 97220.

_____. 2010c. Groundfish Fishery Management Plan Amendment 21 (Intersector Allocation): Final environmental impact statement. PFMC, Portland OR 97220

A.7 Attachments

Table AT-1. Numbers of control limit equivalent landings for Bellingham (BLL) by period and species.

	96- 98 AVG	2004	2005	2006	2007	2008	2009	2010
Lingcod	1.14	0.05	0.08	0.15	0.09	0.06	0.20	0.12
P cod	0.35	1.36	1.30	0.22	0.12	0.00	0.14	0.25
N Sablefish	0.84	1.04	1.31	1.51	1.09	1.20	1.02	0.58
S Sablefish	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00
Chilipepper	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00
Splitnose	0.01	0.00	0.00	0.00	0.00	0.00	0.00	0.00
Yellowtail	0.99	0.04	0.01	0.01	0.00	0.00	0.00	0.00
Shortspine th	0.26	0.13	0.13	0.17	0.21	0.27	0.31	0.29
Longspine th	0.40	0.05	0.00	0.01	0.06	0.04	0.02	0.03
N Shelf RF	6.76	0.26	0.06	0.01	0.00	0.00	0.00	0.00
S Shelf RF	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00
N Slope RF	6.94	0.65	0.29	0.56	0.57	0.33	0.48	0.45
S Slope RF	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00
Dover sole	0.38	0.34	0.59	0.48	0.57	0.61	0.85	0.80
English sole	0.02	0.07	0.09	0.02	0.04	0.00	0.01	0.00
Petrals sole	2.41	6.08	9.42	5.59	2.90	2.15	2.96	0.99
Arrowtooth fl	0.49	0.60	0.31	0.14	0.15	0.20	0.40	0.34
Starry fl	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00
Other flatfish	0.02	0.00	0.02	0.01	0.01	0.01	0.03	0.02
Aggregate gf	0.84	0.73	0.67	0.40	0.38	0.39	0.60	0.51

Table AT-2. Numbers of control limit equivalent landings for Neah Bay (NEA) by period and species.

	96- 98 AVG	2004	2005	2006	2007	2008	2009	2010
Lingcod	0.65	0.07	0.13	0.11	0.06	0.01	0.02	0.00
P cod	1.42	0.81	1.00	0.69	0.05	0.02	0.16	0.04
N Sablefish	0.70	0.33	0.53	0.22	0.00	0.07	0.02	0.00
S Sablefish	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00
Chilipepper	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00
Splitnose	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00
Yellowtail	0.86	0.04	0.04	0.03	0.00	0.00	0.00	0.00
Shortspine th	0.16	0.00	0.03	0.01	0.00	0.02	0.00	0.00
Longspine th	0.12	0.01	0.00	0.00	0.00	0.00	0.00	0.00
N Shelf RF	3.93	0.04	0.05	0.03	0.01	0.01	0.00	0.00
S Shelf RF	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00
N Slope RF	4.62	0.00	0.02	0.02	0.00	0.01	0.00	0.00
S Slope RF	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00
Dover sole	0.20	0.03	0.08	0.08	0.01	0.01	0.01	0.00
English sole	0.11	0.06	0.10	0.07	0.02	0.01	0.01	0.00
Petrals sole	2.73	1.01	1.31	0.70	0.30	0.07	0.36	0.04
Arrowtooth fl	0.05	0.01	0.12	0.05	0.00	0.00	0.00	0.00
Starry fl	0.01	0.00	0.00	0.00	0.00	0.00	0.00	0.00
Other flatfish	0.06	0.04	0.08	0.06	0.03	0.00	0.01	0.00
Aggregate gf	0.52	0.13	0.27	0.17	0.03	0.01	0.02	0.00

Table AT-3. Numbers of control limit equivalent landings for Westport (WPT) by period and species.

	96-98 AVG	2004	2005	2006	2007	2008	2009	2010
Lingcod	1.68	0.07	0.11	0.14	0.16	0.16	0.15	0.04
P cod	0.59	0.26	0.14	0.02	0.00	0.01	0.00	0.00
N Sablefish	1.66	0.32	0.23	0.18	0.64	0.79	1.63	0.63
S Sablefish	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00
Chilipepper	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00
Splitnose	0.02	0.00	0.00	0.00	0.00	0.00	0.00	0.00
Yellowtail	2.30	0.56	0.50	0.55	0.99	0.27	0.33	0.66
Shortspine th	0.58	0.03	0.01	0.00	0.11	0.16	0.53	0.27
Longspine th	0.98	0.01	0.00	0.00	0.02	0.07	0.32	0.17
N Shelf RF	4.78	0.03	0.02	0.04	0.06	0.04	0.04	0.17
S Shelf RF	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00
N Slope RF	10.60	0.26	0.27	0.19	1.43	0.78	1.95	0.61
S Slope RF	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00
Dover sole	0.60	0.24	0.20	0.14	0.52	0.62	0.87	0.52
English sole	0.07	0.02	0.02	0.01	0.03	0.03	0.01	0.00
Petrale sole	5.47	2.80	2.72	1.91	2.00	2.85	2.62	0.73
Arrowtooth fl	0.35	0.01	0.00	0.00	0.12	0.15	0.36	0.31
Starry fl	0.02	0.02	0.03	0.03	0.01	0.00	0.00	0.00
Other flatfish	0.05	0.06	0.06	0.02	0.02	0.04	0.05	0.01
Aggregate gf	1.14	0.21	0.17	0.13	0.39	0.40	0.68	0.45

Table AT-4. Numbers of control limit equivalent landings for Astoria (AST) by period and species.

	96-98 AVG	2004	2005	2006	2007	2008	2009	2010
Lingcod	3.23	0.47	0.55	1.03	0.90	0.86	0.78	0.60
P cod	0.47	3.79	2.06	1.31	0.15	0.05	0.37	0.38
N Sablefish	7.54	6.64	7.55	7.95	7.22	10.47	10.17	8.29
S Sablefish	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00
Chilipepper	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00
Splitnose	0.10	0.05	0.05	0.02	0.03	0.02	0.01	0.01
Yellowtail	8.40	0.63	0.47	0.39	0.34	0.07	0.20	0.57
Shortspine th	2.38	1.08	1.10	1.21	2.73	5.03	4.79	3.83
Longspine th	4.84	0.37	0.14	0.26	0.80	1.72	1.17	2.13
N Shelf RF	23.02	0.20	0.25	0.54	0.11	0.10	0.17	0.28
S Shelf RF	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00
N Slope RF	41.95	4.69	2.71	2.51	4.48	2.95	3.50	4.05
S Slope RF	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00
Dover sole	2.94	3.12	3.56	3.01	4.38	5.77	5.64	4.86
English sole	0.21	0.27	0.22	0.37	0.30	0.12	0.10	0.09
Petrale sole	8.71	22.99	34.12	33.20	22.67	18.13	15.23	8.17
Arrowtooth fl	0.81	0.56	0.76	0.82	1.03	1.38	1.89	1.39
Starry fl	0.49	0.96	0.21	0.72	0.11	0.04	0.06	0.14
Other flatfish	0.37	0.77	0.82	1.28	0.65	0.47	0.84	0.60
Aggregate gf	4.04	2.54	2.75	2.78	2.99	3.63	3.92	3.24

Table AT-5. Numbers of control limit equivalent landings for Newport (NEW) by period and species.

	96-98 AVG	2004	2005	2006	2007	2008	2009	2010
Lingcod	4.02	0.12	0.24	0.19	0.12	0.12	0.20	0.07
P cod	0.04	0.09	0.02	0.00	0.00	0.00	0.00	0.01
N Sablefish	5.22	7.70	5.08	5.43	6.44	7.67	8.24	5.81
S Sablefish	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00
Chilipepper	0.00	0.00	0.00	0.00	0.00	0.00	0.01	0.00
Splitnose	0.12	0.01	0.02	0.00	0.01	0.01	0.02	0.13
Yellowtail	3.55	0.01	0.18	0.11	0.03	0.01	0.01	0.03
Shortspine th	1.39	1.40	0.89	1.02	2.20	3.07	3.63	2.66
Longspine th	1.97	0.30	0.12	0.22	0.33	0.74	1.25	1.49
N Shelf RF	15.52	0.06	0.11	0.16	0.03	0.05	0.09	0.03
S Shelf RF	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00
N Slope RF	43.19	2.65	2.12	1.16	1.59	1.90	2.32	2.66
S Slope RF	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00
Dover sole	1.06	1.19	0.91	0.84	1.81	2.55	2.81	2.08
English sole	0.09	0.03	0.06	0.03	0.01	0.01	0.04	0.02
Petrale sole	4.67	4.49	8.55	7.02	4.26	5.60	9.78	4.07
Arrowtooth fl	0.09	0.10	0.16	0.13	0.11	0.18	0.25	0.15
Starry fl	0.04	0.02	0.04	0.00	0.00	0.00	0.01	0.00
Other flatfish	0.16	0.11	0.09	0.06	0.08	0.11	0.14	0.13
Aggregate gf	2.23	0.91	0.81	0.73	1.04	1.42	1.70	1.24

Table AT-6. Numbers of control limit equivalent landings for Coos Bay (COS) by period and species.

	96-98 AVG	2004	2005	2006	2007	2008	2009	2010
Lingcod	1.70	0.11	0.15	0.32	0.34	0.36	0.27	0.22
P cod	0.00	0.04	0.00	0.00	0.00	0.00	0.00	0.00
N Sablefish	6.56	4.53	4.38	5.32	5.06	5.63	5.71	5.08
S Sablefish	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00
Chilipepper	0.07	0.00	0.00	0.00	0.00	0.00	0.00	0.00
Splitnose	0.20	0.01	0.00	0.01	0.01	0.00	0.01	0.01
Yellowtail	1.51	0.01	0.03	0.03	0.00	0.00	0.01	0.00
Shortspine th	2.32	0.96	0.86	0.98	1.18	1.76	1.79	1.62
Longspine th	4.90	1.13	0.73	0.88	1.05	1.65	1.96	2.11
N Shelf RF	14.41	0.06	0.11	0.08	0.05	0.12	0.10	0.05
S Shelf RF	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00
N Slope RF	21.44	1.45	1.08	0.82	0.94	0.67	0.74	1.27
S Slope RF	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00
Dover sole	2.33	1.75	1.74	1.66	2.43	3.00	3.19	3.10
English sole	0.16	0.10	0.12	0.08	0.07	0.03	0.04	0.02
Petrale sole	11.86	8.12	10.82	16.55	13.13	13.46	10.64	5.17
Arrowtooth fl	0.11	0.11	0.12	0.12	0.17	0.17	0.13	0.19
Starry fl	0.10	0.00	0.00	0.00	0.00	0.00	0.00	0.00
Other flatfish	0.58	0.37	0.28	0.26	0.32	0.30	0.41	0.43
Aggregate gf	2.43	1.09	1.07	1.15	1.37	1.59	1.63	1.56

Table AT-7. Numbers of control limit equivalent landings for Brookings (BRK) by period and species.

	96-98 AVG	2004	2005	2006	2007	2008	2009	2010
Lingcod	0.49	0.01	0.02	0.09	0.09	0.08	0.06	0.02
P cod	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00
N Sablefish	2.13	1.13	1.76	1.98	2.07	2.43	2.62	2.73
S Sablefish	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00
Chilipepper	0.01	0.00	0.00	0.00	0.00	0.00	0.00	0.00
Splitnose	0.03	0.00	0.00	0.00	0.00	0.00	0.00	0.00
Yellowtail	0.27	0.00	0.00	0.00	0.00	0.00	0.00	0.00
Shortspine th	0.69	0.17	0.28	0.31	0.46	0.62	0.63	0.66
Longspine th	1.62	0.19	0.21	0.49	0.58	0.67	0.58	0.90
N Shelf RF	2.67	0.00	0.00	0.00	0.00	0.02	0.00	0.00
S Shelf RF	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00
N Slope RF	5.40	0.06	0.06	0.12	0.23	0.24	0.15	0.35
S Slope RF	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00
Dover sole	0.62	0.51	0.66	0.58	0.98	1.24	1.24	1.41
English sole	0.03	0.00	0.01	0.02	0.01	0.00	0.00	0.00
Petrale sole	1.86	0.47	1.36	2.63	3.92	5.54	2.96	1.26
Arrowtooth fl	0.01	0.01	0.01	0.01	0.01	0.00	0.01	0.00
Starry fl	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00
Other flatfish	0.06	0.08	0.11	0.09	0.14	0.12	0.09	0.09
Aggregate gf	0.60	0.23	0.33	0.35	0.50	0.61	0.57	0.62

Table AT-8. Numbers of control limit equivalent landings for Crescent City (CRS) by period and species.

	96-98 AVG	2004	2005	2006	2007	2008	2009	2010
Lingcod	0.67	0.04	0.07	0.09	0.07	0.02	0.04	0.01
P cod	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00
N Sablefish	4.01	0.59	1.07	0.84	1.17	1.21	1.66	0.54
S Sablefish	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00
Chilipepper	0.08	0.03	0.01	0.03	0.01	0.02	0.02	0.14
Splitnose	0.12	0.02	0.00	0.00	0.00	0.00	0.01	0.10
Yellowtail	0.38	0.00	0.00	0.00	0.00	0.01	0.00	0.00
Shortspine th	1.19	0.12	0.14	0.07	0.27	0.30	0.64	0.12
Longspine th	2.90	0.00	0.20	0.09	0.17	0.74	0.72	0.15
N Shelf RF	2.44	0.05	0.00	0.09	0.00	0.02	0.00	0.00
S Shelf RF	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00
N Slope RF	8.08	0.17	0.07	0.04	0.21	0.57	0.15	0.24
S Slope RF	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00
Dover sole	0.94	0.30	0.42	0.34	0.68	0.80	1.02	0.19
English sole	0.10	0.05	0.04	0.05	0.02	0.00	0.01	0.00
Petrale sole	3.67	0.97	3.17	3.27	2.31	1.39	1.76	0.39
Arrowtooth fl	0.02	0.02	0.01	0.01	0.00	0.00	0.00	0.01
Starry fl	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00
Other flatfish	0.29	0.31	0.29	0.13	0.13	0.08	0.12	0.02
Aggregate gf	1.04	0.23	0.30	0.24	0.33	0.37	0.47	0.12

Table AT-9. Numbers of control limit equivalent landings for Eureka (ERK) by period and species.

	96-98 AVG	2004	2005	2006	2007	2008	2009	2010
Lingcod	0.67	0.08	0.10	0.25	0.21	0.21	0.12	0.03
P cod	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00
N Sablefish	2.91	2.82	2.90	3.89	4.46	4.31	4.37	4.23
S Sablefish	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00
Chilipepper	0.24	0.12	0.18	0.07	0.04	0.02	0.01	0.00
Splitnose	0.16	0.03	0.00	0.03	0.12	0.00	0.01	0.00
Yellowtail	0.18	0.02	0.00	0.00	0.00	0.01	0.00	0.00
Shortspine th	0.94	0.65	0.64	0.96	1.17	1.32	1.35	1.40
Longspine th	2.27	0.97	0.96	1.81	2.15	2.44	1.99	1.98
N Shelf RF	2.45	0.09	0.06	0.04	0.00	0.00	0.01	0.00
S Shelf RF	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00
N Slope RF	8.54	1.14	0.39	0.41	0.53	0.63	0.43	0.23
S Slope RF	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00
Dover sole	1.03	1.14	1.37	1.28	2.62	2.58	2.74	2.31
English sole	0.04	0.17	0.16	0.20	0.10	0.07	0.03	0.00
Petrals sole	5.55	7.59	11.73	11.33	10.41	12.95	5.89	1.85
Arrowtooth fl	0.01	0.01	0.02	0.02	0.04	0.03	0.03	0.04
Starry fl	0.00	0.06	0.00	0.02	0.01	0.02	0.01	0.00
Other flatfish	0.21	0.20	0.26	0.22	0.29	0.27	0.14	0.07
Aggregate gf	0.96	0.77	0.89	0.96	1.36	1.37	1.25	1.05

Table AT-10. Numbers of control limit equivalent landings for Fort Bragg (BRG) by period and species.

	96-98 AVG	2004	2005	2006	2007	2008	2009	2010
Lingcod	1.07	0.03	0.13	0.07	0.38	0.30	0.43	0.28
P cod	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00
N Sablefish	3.36	2.51	3.52	3.04	2.28	2.70	3.86	2.53
S Sablefish	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00
Chilipepper	2.29	0.11	0.11	0.03	0.08	0.29	0.80	0.97
Splitnose	0.80	0.51	0.24	0.09	0.15	0.12	0.16	0.10
Yellowtail	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00
Shortspine th	1.32	1.35	0.78	0.79	0.65	0.70	1.00	0.91
Longspine th	2.63	0.80	1.86	1.79	0.89	1.46	0.98	1.27
N Shelf RF	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00
S Shelf RF	19.17	0.03	0.69	0.12	0.12	0.19	0.45	0.20
N Slope RF	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00
S Slope RF	22.54	4.92	2.16	1.99	3.54	2.98	3.67	2.60
Dover sole	1.57	1.09	1.25	0.86	0.89	1.12	1.22	0.90
English sole	0.09	0.01	0.02	0.01	0.02	0.03	0.01	0.00
Petrals sole	3.92	0.23	2.45	2.82	8.06	7.82	6.12	1.62
Arrowtooth fl	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00
Starry fl	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00
Other flatfish	0.21	0.10	0.13	0.07	0.06	0.05	0.04	0.01
Aggregate gf	1.47	0.63	0.74	0.58	0.60	0.72	0.80	0.59

Table AT-11. Numbers of control limit equivalent landings for Bodega Bay (BDG) by period and species.

	96-98 AVG	2004	2005	2006	2007	2008	2009	2010
Lingcod	0.28	0.00	0.00	0.00	0.04	0.06	0.02	0.01
P cod	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00
N Sablefish	0.76	0.04	0.00	0.12	0.03	0.02	0.03	0.00
S Sablefish	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00
Chilipepper	0.75	0.00	0.00	0.01	0.01	0.05	0.04	0.08
Splitnose	0.12	0.00	0.00	0.01	0.01	0.00	0.01	0.00
Yellowtail	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00
Shortspine th	0.36	0.01	0.00	0.02	0.00	0.00	0.01	0.00
Longspine th	0.69	0.01	0.00	0.02	0.00	0.00	0.00	0.00
N Shelf RF	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00
S Shelf RF	10.34	0.00	0.00	0.01	0.01	0.00	0.00	0.00
N Slope RF	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00
S Slope RF	8.47	0.04	0.00	0.12	0.06	0.08	0.24	0.04
Dover sole	0.63	0.03	0.00	0.03	0.01	0.01	0.01	0.00
English sole	0.04	0.00	0.00	0.00	0.01	0.01	0.00	0.00
Petrale sole	1.05	0.00	0.00	0.27	2.05	2.86	0.88	0.50
Arrowtooth fl	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00
Starry fl	0.00	0.00	0.00	0.00	0.00	0.00	0.02	0.00
Other flatfish	0.05	0.01	0.00	0.00	0.01	0.00	0.00	0.00
Aggregate gf	0.51	0.01	0.00	0.02	0.04	0.05	0.02	0.01

Table AT-12. Numbers of control limit equivalent landings for San Francisco (SF) by period and species.

	96-98 AVG	2004	2005	2006	2007	2008	2009	2010
Lingcod	1.25	0.05	0.03	0.08	0.07	0.06	0.03	0.03
P cod	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00
N Sablefish	0.92	1.47	0.92	0.94	1.35	1.11	0.73	0.46
S Sablefish	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00
Chilipepper	1.97	0.07	0.05	0.04	0.09	0.09	0.25	0.51
Splitnose	0.67	0.18	0.05	0.10	0.17	0.12	0.07	0.09
Yellowtail	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00
Shortspine th	0.44	0.38	0.30	0.15	0.33	0.32	0.25	0.18
Longspine th	0.86	0.81	0.31	0.14	0.40	0.54	0.35	0.15
N Shelf RF	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00
S Shelf RF	17.30	0.53	0.43	0.17	0.60	0.22	0.07	0.03
N Slope RF	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00
S Slope RF	13.37	2.83	1.08	0.73	0.45	0.90	0.26	0.25
Dover sole	0.62	0.59	0.26	0.16	0.53	0.57	0.42	0.46
English sole	0.10	0.01	0.01	0.01	0.01	0.01	0.01	0.00
Petrale sole	2.84	2.02	1.72	3.93	5.64	4.54	2.04	1.65
Arrowtooth fl	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00
Starry fl	0.00	0.00	0.02	0.02	0.03	0.04	0.01	0.01
Other flatfish	0.21	0.13	0.07	0.07	0.07	0.06	0.04	0.06
Aggregate gf	0.83	0.39	0.20	0.18	0.36	0.35	0.24	0.24

Table AT-13. Numbers of control limit equivalent landings for Princeton/Halfmoon Bay (PRN) by period and species.

	96-98 AVG	2004	2005	2006	2007	2008	2009	2010
Lingcod	0.04	0.01	0.01	0.03	0.08	0.04	0.02	0.02
P cod	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00
N Sablefish	0.58	0.02	0.04	0.06	0.04	0.03	0.01	0.01
S Sablefish	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00
Chilipepper	0.45	0.01	0.00	0.01	0.03	0.09	0.24	0.23
Splitnose	0.54	0.00	0.00	0.00	0.03	0.00	0.00	0.00
Yellowtail	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00
Shortspine th	0.13	0.00	0.00	0.00	0.00	0.01	0.01	0.00
Longspine th	0.19	0.00	0.00	0.00	0.00	0.00	0.00	0.00
N Shelf RF	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00
S Shelf RF	3.62	0.02	0.06	0.00	2.41	0.06	0.04	0.01
N Slope RF	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00
S Slope RF	1.80	0.00	0.01	0.09	0.26	0.30	0.01	0.01
Dover sole	0.30	0.00	0.00	0.01	0.01	0.00	0.00	0.00
English sole	0.05	0.02	0.02	0.03	0.02	0.02	0.01	0.00
Petrals sole	1.70	1.60	2.84	3.77	4.24	3.10	1.48	0.34
Arrowtooth fl	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00
Starry fl	0.00	0.00	0.03	0.04	0.04	0.02	0.02	0.07
Other flatfish	0.68	0.37	0.10	0.14	0.25	0.20	0.14	0.04
Aggregate gf	0.41	0.11	0.07	0.10	0.14	0.11	0.07	0.03

Table AT-14. Numbers of control limit equivalent landings for Moss Landing (MOS) by period and species.

	96-98 AVG	2004	2005	2006	2007	2008	2009	2010
Lingcod	0.05	0.03	0.02	0.03	0.00	0.00	0.00	0.00
P cod	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00
N Sablefish	0.45	0.78	0.81	0.99	0.31	0.34	0.36	0.29
S Sablefish	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00
Chilipepper	0.29	0.01	0.01	0.02	0.02	0.02	0.13	0.07
Splitnose	0.80	0.28	0.23	0.54	0.07	0.06	0.02	0.07
Yellowtail	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00
Shortspine th	0.33	0.35	0.30	0.40	0.14	0.22	0.24	0.21
Longspine th	0.66	0.31	0.36	0.48	0.23	0.38	0.37	0.28
N Shelf RF	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00
S Shelf RF	2.45	0.10	0.02	0.43	0.07	0.01	0.02	0.04
N Slope RF	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00
S Slope RF	1.30	0.50	0.38	1.28	0.28	0.04	0.63	0.08
Dover sole	0.40	0.40	0.30	0.31	0.04	0.00	0.00	0.00
English sole	0.01	0.01	0.01	0.00	0.00	0.00	0.01	0.00
Petrals sole	0.50	0.78	2.42	1.61	0.05	0.01	0.34	0.35
Arrowtooth fl	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00
Starry fl	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00
Other flatfish	0.11	0.10	0.10	0.05	0.00	0.00	0.00	0.01
Aggregate gf	0.31	0.24	0.22	0.25	0.05	0.05	0.07	0.06

Table AT-15. Numbers of control limit equivalent landings for Monterey (MNT) by period and species.

	96-98 AVG	2004	2005	2006	2007	2008	2009	2010
Lingcod	0.43	0.05	0.02	0.02	0.07	0.05	0.02	0.02
P cod	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00
N Sablefish	0.54	0.08	0.09	0.09	0.17	0.09	0.05	0.14
S Sablefish	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00
Chilipepper	2.06	0.03	0.04	0.05	0.06	0.07	0.14	0.13
Splitnose	1.22	0.12	0.10	0.12	0.04	0.24	0.07	0.06
Yellowtail	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00
Shortspine th	0.24	0.03	0.00	0.00	0.01	0.04	0.00	0.05
Longspine th	0.51	0.03	0.00	0.01	0.03	0.07	0.00	0.06
N Shelf RF	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00
S Shelf RF	6.61	0.33	0.17	0.07	0.12	0.07	0.08	0.04
N Slope RF	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00
S Slope RF	4.02	0.19	0.22	0.36	0.19	1.32	1.13	0.58
Dover sole	0.33	0.04	0.00	0.01	0.00	0.04	0.02	0.14
English sole	0.07	0.02	0.01	0.01	0.00	0.00	0.00	0.00
Petrale sole	2.68	1.28	1.85	1.61	2.01	1.07	0.96	0.28
Arrowtooth fl	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00
Starry fl	0.00	0.00	0.01	0.00	0.00	0.00	0.00	0.00
Other flatfish	0.35	0.12	0.08	0.01	0.01	0.02	0.03	0.02
Aggregate gf	0.60	0.08	0.06	0.05	0.05	0.08	0.05	0.08

Table AT-16. Numbers of control limit equivalent landings for Morro Bay (MRO) by period and species.

	96-98 AVG	2004	2005	2006	2007	2008	2009	2010
Lingcod	0.08	0.05	0.04	0.00	0.00	0.00	0.00	0.00
P cod	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00
N Sablefish	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00
S Sablefish	2.10	0.57	1.06	0.22	0.14	0.33	0.37	0.00
Chilipepper	0.49	0.01	0.00	0.00	0.00	0.01	0.00	0.00
Splitnose	0.38	0.03	0.01	0.00	0.01	0.03	0.02	0.00
Yellowtail	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00
Shortspine th	0.96	0.20	0.32	0.06	0.02	0.12	0.09	0.00
Longspine th	1.44	0.30	0.47	0.03	0.00	0.02	0.01	0.00
N Shelf RF	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00
S Shelf RF	3.55	0.03	0.08	0.06	0.00	0.04	0.06	0.00
N Slope RF	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00
S Slope RF	6.58	0.75	1.61	0.29	0.19	1.97	0.97	0.00
Dover sole	1.19	0.16	0.22	0.02	0.00	0.06	0.03	0.00
English sole	0.00	0.03	0.01	0.00	0.00	0.00	0.00	0.00
Petrale sole	1.26	3.92	2.77	0.03	0.31	1.61	0.72	0.00
Arrowtooth fl	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00
Starry fl	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00
Other flatfish	0.13	0.02	0.07	0.00	0.00	0.02	0.02	0.00
Aggregate gf	0.71	0.17	0.21	0.02	0.01	0.08	0.05	0.00

Appendix B. DESIGNATED CFA QUALIFYING CRITERIA AND OTHER ELEMENTS (SECTIONS 2.0 THROUGH 4.0 OF ALTERNATIVE 1)

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B.1 Introduction and Method

Overview

The Council is considering whether or not to create special provisions for CFAs (a safe harbor exception from the quota share (QS) control limits for designated CFAs). The purpose need, alternatives and general impacts are described in the main text. An analysis of the level of exception to be provided is described in Appendix A. This appendix provides an analysis of the provisions and options related to CFA qualifying criteria, reporting requirements, and the approval and renewal process (including program monitoring), contained in Alternative 1. These provisions are described in full in Table 2-2 (Sections 2.0 through 4.0) of the main text. The section numbers of this appendix correspond to the section numbers of Table 2.2 (e.g. Section B.2.1.2 of this appendix corresponds to Section 2.1.2 of Table 2-2).

What is provided at this time is only partial analysis. It will be completed for the Council when this document is ready for use in the selection of the preliminary preferred alternative, currently scheduled for its June 2011 meeting.

Method

For most options contained in each section there is a counterpart (negative) option, which when reworded would *not* allow for that provision. For example the “pro” side of the discussion under B.2.1.2 Local Government Approval is in support of the issue while the “con” side is in opposition, which is an option in itself. Thus, for each element of the qualifying criteria there are more options discussed below than are actually enumerated. This approach sets up a framework for the development of additional or more specific options. The expectation is that some options described will lead to multiple options. At the same time, in some cases the level of detail analyzed to this point is not such that the “pros” and “cons” define implicit options. For example, it seems inevitable that there must be CFA approval and renewal process. The “pros” and “cons” for sections like these, where there is not much specificity at this time, should be considered as impacts that will be included in the cost-benefit analysis rather than indicators of a decision point.

Terminology

For clarification, the term CFA is used in the context of “Designated CFA” as opposed to “General CFA” (which does not require a QS exception), as explained in Chapter 2. The term “fishery” is used to mean the non-whiting groundfish trawl fishery.

B.2 CFA Agreements and Activities (Including Consideration of Community Stability Plan)

The Council requested analysis of the pros and cons of including a community stability plan in the CFA provisions. At this time, a community stability plan, labeled as such, has not been included.

The Council has a choice as to whether to designate CFAs under

- (a) the Fishing Community provisions of the MSA (Section 303A(c)(3), Table B-1), or
- (b) under the general authority provided by the MSA (as described in the NMFS limited access privilege program guidelines (Table B-2).

Table B-1 MSA 303A(c)(3) Provisions on fishing communities.

<p>MSA 303A(c)(3) FISHING COMMUNITIES.—</p> <p>(A) IN GENERAL.—</p> <p>(i) ELIGIBILITY.—To be eligible to participate in a limited access privilege program to harvest fish, a fishing community shall—</p> <ul style="list-style-type: none"> (I) be located within the management area of the relevant Council; (II) meet criteria developed by the relevant Council, approved by the Secretary, and published in the Federal Register; (III) consist of residents who conduct commercial or recreational fishing, processing, or fishery-dependent support businesses within the Council's management area; and (IV) develop and submit a community sustainability plan to the Council and the Secretary that demonstrates how the plan will address the social and economic development needs of coastal communities, including those that have not historically had the resources to participate in the fishery, for approval based on criteria developed by the Council that have been approved by the Secretary and published in the Federal Register. <p>(ii) FAILURE TO COMPLY WITH PLAN.—The Secretary shall deny or revoke limited access privileges granted under this section for any person who fails to comply with the requirements of the community sustainability plan. Any limited access privileges denied or revoked under this section may be reallocated to other eligible members of the fishing community.</p> <p>(B) PARTICIPATION CRITERIA.—In developing participation criteria for eligible communities under this paragraph, a Council shall consider—</p> <ul style="list-style-type: none"> (i) traditional fishing or processing practices in, and dependence on, the fishery; (ii) the cultural and social framework relevant to the fishery; (iii) economic barriers to access to fishery; (iv) the existence and severity of projected economic and social impacts associated with implementation of limited access privilege programs on harvesters, captains, crew, processors, and other businesses substantially dependent upon the fishery in the region or subregion; (v) the expected effectiveness, operational transparency, and equitability of the community sustainability plan; and (vi) the potential for improving economic conditions in remote coastal communities lacking resources to participate in harvesting or processing activities in the fishery.
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Table B-2 The Design and Use of Limited Access Privilege Program (NMFS, November 2007)..

<p>Page 42. In summary, the revised MSA sets up procedures which allows Councils to create FCs [fishing communities] or RFAs [regional fishing associations] using a specific set of eligibility criteria and a second set of considerations for developing participation criteria. Once formed, both can hold LAPs if they meet the legally recognized criteria, however only FCs can receive LAPs in an initial allocation. Apparently, Councils can also develop LAP programs whereby LAPs can be held by or allocated to any other legally recognized entity, which do not necessarily have to be specified as RFAs or FCs. The program would have to comply with the general LAP mandates contained in the revised MSA. If community-based entities are used, Councils have the option of requiring operation plans to ensure stated criteria are met.</p>

If the Council chooses to designate fishing communities under the provisions of Section 303A(c)(3), then a community stability plan would be required. At this time NMFS has not provided specific guidance on the requirements such plans would have to meet. Additionally, if submitted under 303A(c)(3), other parts of that section would apply, such as a requirement that “The Secretary shall deny or revoke limited access privileges granted under this section for any person who fails to comply with the requirements of the community sustainability plan.”

If the Council chooses not to submit the CFA provisions for approval under 303A(c) (3) then it has a choice as to whether or not to require a community stability plan. Rather than considering whether to require such a plan, the Council may wish to simply determine what documents and reports a CFA should be required to submit in order to meet the Council’s intent for CFAs and the general standards and criteria of the MSA, and then decide what kind of a label to apply to those requirements. Right now, CFA Alternative 1 mentions that a CFA would

have to submit charter agreements and harvesting agreements that have certain required provisions related to goals and objectives for the CFA. If these provisions are adopted, the Council might want to determine whether or not these provisions constitute a community stability plan.

At present there are few specific requirements for the community stability plan and there appear to be no particular benefits for setting up the CFA under the MSA provisions related to Fishing Communities (303A(c)(3)). If such requirements and benefits are developed in the future, the Council's FMP might have to be amended to meet new requirements or take advantage of new benefits that are created for 303A(c)(3) fishing communities through future legislation.

B.2.1 Organizational Agreements (CFA Charter Agreement)

The organizational agreement should include, but not be limited to:

- a. a statement of goals and objectives for the fishery and associated community;
- b. a description of the proposed CFA including geographic limits and local government endorsements; and
- c. organization bylaws specifying the type of legal organization and its control.

As specified in the section on application (Section 4.0), the CFA will also need to

- a. Provide proposed harvesting agreements
- b. Describe the CFA area including infrastructure and the community sectors that would benefit.
- c. Explain how agreements meet criteria.
- d. Demonstrate the need for the exception, including supporting data and/pr reports.

The ability of groups to organize and prepare charter agreements will be substantially enhanced by the adoption of specific qualifying criteria that are addressed in the options below. These agreements and the requirements of the application, provided in Section

Pro: A charter agreement and attachments as described provide clarity of intent of the applicant for CFA designation and explains how all qualifying criteria have been met. The statement of need for special privilege exception, with supporting data or reports, may be needed to provide a basis for action relative to CFA approval criteria.

Con: Preparation of such a document may be burdensome and require professional technical assistance, at a cost, for data analysis and document preparation. This would be one of the negative impacts to be included in the cost-benefit analysis.

B.2.1.1 Goals and Objectives

B.2.1.2 Geographic Affiliations

Local Government Approval

Require endorsement from local municipality in support of CFA application. The appropriate municipality for documentation of support would be the one that has principal governance over the CFA area and might be the city council. If it is desired that there be only one CFA in any area, the local government endorsement requirement (with a provision that any local governing entity could only endorse one CFA) would reduce the chance of multiple applications for the same area (see Section 2.1.2 Geographic Boundaries, Exclusiveness, Minimum, and Maximum Areas). To eliminate the chances of multiple CFA applications for similar areas, the type of municipalities whose endorsements would be recognized might need to be restricted. For example,

recognizing designations by counties, cities, and port districts could result in competing applications for the same area. Alternatively, a hierarchy might be established to determine which local governing authority would take precedence.

Pro: Such a provision will aid the process by reducing the opportunity for more than one group to obtain CFA designation for the same area, unless the decision is made to allow for overlapping CFAs (see Section 2.1.2 –Geographic Boundaries). Engaging a local government in the application process, could lead to that government offering to provide the CFA with other benefits, such as offers of facilities or staff to aid the CFA in its application process. A requirement for a local governing district endorsement of the CFA introduces an element of local accountability, which may reduce the chances for abuse of the CFA provisions. For example, if a local government has endorsed a CFA but the CFA and the safe harbor provision were being abused for private gain to the detriment of others in the community, the situation might become an issue resolved through local political processes. Hence, requiring local government involvement introduces another level of accountability into the system.

Con: The process of asking for and obtaining city approval could politicize the process; e.g., the city could influence who sits on the board and/or terms and conditions for contracts to harvest CFA pounds. The act of requesting local government approval is a work load in itself and could be burdensome if it involves a city council of a large metropolitan area with many high (or higher) priority issues. The requirement is additionally burdensome if the request spans multiple jurisdictions and an endorsement would be required from each jurisdiction, as might be the case if CFAs are allowed to include two or more ports (see Section 2.1.2 – Geographic Boundaries).

Geographic Boundaries, Exclusiveness, Minimum, and Maximum Areas

Establish physical boundaries for CFAs (options to be developed). The minimum and maximum physical boundaries for CFAs may be important decision points. A major consideration in the approval process is the availability of data to show need for CFA designation. The lowest level of fishery landings resolution in the PacFIN database subject to public disclosure is at the area port level, which in some areas may include several landing facilities or sub-areas/ports within the port area. Any request for CFA designation for sub areas within ports (e.g., certain docks) would be more difficult to evaluate and to monitor because of confidentiality restrictions.¹ The Council may want to discuss the possibility that confidentiality waivers might be required as a condition of establishing the CFA. Consideration might also be given to limiting the number and distribution of ports for included in CFA applications. If multiple ports are acceptable for consideration and local government endorsements are required, it is presumed that the CFA applicant would have to have an endorsement from each jurisdiction that it covers. Another requirement might be that the ports be contiguous with one another, or within a certain distance, in order to minimize potential enforcement and monitoring costs. Another decision point under this option is whether to allow for overlapping CFAs (e.g., whether a port could be included in more than one CFA) and the degree of overlap that should be allowed.

Pro: This requirement will focus applicants on the database that can/will be used to evaluate individual proposals, establish boundaries for areas that will be considered for CFA designation, and clarify the rules that apply to overlapping boundaries.

- a. Covering Multiple Ports: Allowing one designated-CFA to represent multiple ports could introduce cost savings.²
- b. Overlapping CFAs - Multiple CFAs Covering the Same Port. If there are competing business interests in a single port it might be beneficial to encourage that competition by allowing the formation of separate CFAs to benefit the same port. If overlapping CFAs are to be allowed, there would be less

¹ Further, given that the CFA might itself be considered an entity, it would probably be worth putting some thought into the type of information that might be considered subject to confidentiality provisions.

need for requiring that the local government endorse the CFA. It should be noted that overlapping non-designated (general) CFAs is allowed under status quo, and that even if overlapping of designated CFAs is not allowed, a single designated CFA may overlap with one or more non-designated CFAs.

Con: The data limitations identified here might preclude CFA designation for sub-areas within ports. This could hinder the city council approval process if there are multiple jurisdictions in a port.

- a. Covering Multiple Ports: Allowing a single designated-CFA to cover multiple ports, combined with a provision that does not allow overlapping designated-CFAs, would reduce the number of designated-CFAs available for a vessel to work with.
- b. Overlapping CFAs - Multiple CFAs Covering the Same Port: Multiple designated-CFAs in the same port would allow interests in a single port to control more of the QS than might have been intended by the safe harbor provision. Given the opportunity for local governments to endorse multiple CFAs such endorsements could become pro forma and not cultivate the desired local scrutiny of CFA proposals and CFA management.

B.2.1.3 CFA Organization

Type of Legal Organization

Require each CFA board to obtain legal status (options to be developed). Under status quo, a CFA would be required to have some type of federally or state recognized legal status in order to acquire QS. This would continue, unless an exception to that requirement is made for designated-CFAs. Such an exception would probably not be needed since CFAs will likely have to contract out for permitted vessels to harvest their CFA pounds. This may require that the board obtain legal status as a responsible entity. Several possibilities for legal status exist including: (1) non-profit corporation (501(c) (4) social welfare organization), (2) partnership, (3) corporation or (4) trust. The type of entity selected or required for legal status designation could have major impact on how the board conducts its business and whether board members, including individuals closely associated with board members, can participate in the harvest or processing of CFA pounds.

Pros: Legal status designation for the CFA commits the board to responsible management of CFA pounds as it makes them legally responsible for their actions such as the issuance and monitoring of harvest contracts. It also meets the legal requirement for opening and holding a QS account.

Cons: Obtaining legal status comes at a price in terms of time and expense. Professional assistance would likely be required to complete and file the necessary documents. The type of legal status adopted could affect the ability of board members to participate in the harvest of CFA pounds. A fish processor board member, for example, might not be eligible to process fish landed under a harvest contract approved by the board if the board has legal status as a non-profit organization. The same might be true for a board member that is a vessel owner: they might not be eligible to harvest fish approved by the board to harvest CFA pounds. These kinds of situations could lead to disincentive for board member participation. It could also lead to conflict of interest in board decisions if the legal status designation allows board members to participate in the harvest or processing of CFA pounds (unless precluded under some other provision for CFA designation). A preferred alternative to the board obtaining legal status might be for the local municipality to assume responsibility as an established legal entity for all business activities and to use the board in an advisory capacity. The local entity could then charge overhead in CFA contracts to cover their administrative costs, such as contracting out for use of quota pounds. However, extensive governmental involvement in the CFA process has political implications and may not be possible because of staffing limitations and concerns about potential

² If the reason for considering larger designated-CFAs is to reduce administrative burden, such burden might also be reduced if a single organization provides administrative services for a number of smaller independent CFAs.

legal repercussions. With or without CFA board input, cities will be eligible to acquire and manage quota shares under existing rules for future quota share acquisition.

Control of CFA

Require CFA board be composed of representatives of specific interest meeting certain other criteria. The following options have been suggested.

Board of directors	The local municipality must <ol style="list-style-type: none">Appoint the boardEndorse an independently formed board via the endorsement of the CFA.
A minimum number of board members.	At least 5
Limit vessel owner and processor participation on board.	<i>Some Options Suggested in Public Comment</i> <ol style="list-style-type: none">No more than 20% vessel owners or their representatives.Alternatively, ensure that fishermen have the lead in CFAs.No more than 20% processors or their reps.
Other	Must be community members (residents?).

A board of directors will likely be needed to conduct CFA business activities. Board composition may be an important consideration to provide community balance in board decisions. The principal interest groups are commercial fishermen and groundfish buyers and processors. However, other groups are potentially affected by or may have an interest in board decisions. These include fishery crew, support industry representatives, environmental groups, and the public at large. One proposal would have each board composed of at least five members representing the following interest groups: harvest sector (with controlling interest $\leq 20\%$), processor sector (with controlling interest $\leq 20\%$), and public at large (one member). The residency requirement is intended to influence decisions in favor of local area interests. Local area might mean the same county as the CFA. Under this option the board would appoint and organize itself and seek a local governmental endorsement. Another option would place the local municipality in charge of board appointments.

Pros: Having diverse board representation gives credibility to the CFA decision process and reduces the chances that the CFA will be “captured” and used primarily for private purposes. Having multiple individuals involved in the process results in a shared and, presumably, more informed decision process. The local area residency requirement may add credibility to the board selection and decision making process.

Cons: It may not always be possible to find enough qualified people willing to commit time and resources to the process if a large number of seats are required to constitute the board. The task is even more difficult if a fixed number of seats are reserved for particular interest groups. Interest in the process is likely to wane over time if a large group is required to constitute a forum and, in particular, if they receive no direct benefit from the process. An executive director may be required at a cost to the CFA to facilitate meetings, maintain business records, ensure reports are prepared, and keep the board on track. Flexibility in number of board seats and interest group composition may be preferred to a fixed formula. A requirement that board members must be appointed by the local municipality may be very onerous for a large community where fishery issues may be overshadowed by other more pressing issues. It may get even more difficult if multiple

jurisdictions (i.e., multiple ports) are covered by the CFA proposal and the program required the endorsement of each port or municipality covered within the geographic area of the CFA.

B.2.2 Harvest and Harvest Agreements

Specify conditions for harvest of CFA pounds (options to be developed). Harvest agreements (contracts) are likely to be the primary tool for harvest of quota pounds. However, depending on the provision the Council includes, CFAs may be able to acquire vessels and permits to harvest their own pounds. In either case there are several terms and conditions that could be required for harvest of CFA pounds. Some of these (shown in Table 2-2) are:

- a. Prohibit/allow CFAs from harvesting their own QP (does this mean individual members of the CFA or the CFA entity itself?).
- b. Require that CFAs contract with co-operatives organized under the Fishermen's Collective Marketing Act.
- c. Require that individual entities comprising the FCMA coop not receive QP from the CFA that is in excess of the vessel QP accumulation limit.
- d. Include measures (performance standards) needed for CFAs to meet charter objectives and meet reporting requirements (examples: fishing methods, area and gear restrictions, fishing handling practices, local landing requirements).
- e. Require participation in fishery-wide efforts for successfully managing overfished species catch
- f. Another possible option is to give contract preference to fishermen that do not own quota shares or who have a small QS account. This would be done to enhance fishery incomes of those individuals and to facilitate QS acquisition by new or recent fishery entrants.

Pro: Prohibiting (or limiting) the amount of CFA pounds that may be harvested or processed by board members may reduce the potential for conflict of interest in issuing harvest contracts. To the degree that processors are prohibited from participating in fishermen's co-ops, requiring that CFAs only contract with fisherman coops will limit processor participation in harvesting operations.. Inclusion of measures in the harvesting agreement that further the goals and objectives of the CFA charter is an explicit (and logical) approach to ensuring that the program goals and objectives will be met. Requiring the utilization of a co-op for the harvest of CFA quota may help make optimal use of limited amounts of overfished species and Pacific halibut quota via real time information exchange and the application of methods and procedures to avoid or minimize contact with overfished species. Information exchange is important to ensure full utilization of CFA quota pounds. The local area landing area requirement would be intended to bolster the local economy, including support industries, as opposed to a neighboring or distant community. A provision for contract preference to new or recent fishery entrants would be aimed at helping those that cannot afford to buy quota on the open market, by providing them the opportunity to harvest contract fish.

Con: Board members may lose interest in board membership or refuse board participation if they are not allowed or are limited in the amount of CFA pounds they are allowed to access. This could substantially reduce the pool of qualified representatives for the available board seats. Under the provision for contracting only with fishery coops, independent fishermen and processing sector vessel owners would be precluded from bidding on quota pounds. This reduces competition in the bidding process and has the potential to reduce revenues for contract fish. Requiring vessels to land their catch or a large portion of their catch in the local area could depress ex-vessel price, due to limited bidding competition for fish. Giving contract preference to new fishery entrants could result in reduced harvest efficiency and reduced ex-vessel value of fish due to the inexperience and/or inefficiency of new or recent fishery entrants.

B.3 CFA Reporting Requirements

Biennial report requirement and content (options to be developed): The CFA would be required under this provision to submit a report every two years. Report content would address progress in meeting charter goals and objectives and might include, but not be limited, to:

- a. total amount of quota share and quota poundage, by species, held or harvested on behalf of the CFA by year,
- b. economic impacts of CFA activities on the community including ex-vessel revenue, location of processing, and distribution of economic activity generated as a result of CFA regulations and harvesting/processing activities,
- c. social impacts on the community, such as documentation of new entry, creation of local fishermen's cooperatives, or other non-market social effects attributed or related to CFA existence
- d. harvest volume including bycatch and discarded quantities by year and month,
- e. spatial footprint of fishing effort, including documentation of fishing in particular habitat areas that are of interest and measures taken in response to the identification of those areas,
- f. other measures taken to enhance sustainability or modify the activities of the harvesting cooperative.

An alternative to a detailed report every two years would be to require the CFA to submit an affidavit of compliance with the goals and objectives of the charter and CFA approval criteria.

Pro: The biennial report requirement as described provides a basis for continuation or modification of CFA agreements.

Con: The report data and writing requirement could be burdensome to the CFA and would likely require assistance with data analysis and technical report writing, at a cost.

B.4 CFA Approval and Renewal (additional options possible)

The application should include the charter agreement and the charter agreement attachments showing compliance with CFA approval criteria (addressed in above options). NMFS would review and approve applications and CFA agreements for completeness. Other items to be submitted might include corporate documents for the fishery coop to which pounds will be assigned and letters of agreement between the CFA and the coop. CFA agreements must be resubmitted for renewal every two or five years, possibly coinciding with the trawl rationalization review cycle.⁰ Agreements will remain in place until action is taken to modify or terminate the agreement.

Pro: This option explains the rules that applicants must follow in seeking CFA designation and is a necessary step in the approval and renewal process.

Con: The paperwork required under this option may be cumbersome to the applicant and may require professional administrative help, at a cost, to fulfill this requirement.

SAFE HARBOR FROM CONTROL RULE: RISK POOL OPTIONS

During the development of the trawl rationalization program, there was much concern about how industry might organize itself to make best use of the limited amounts of overfished species (OFS) quota share/quota pound (QS/QP) that may be available. Since then, the concern has expanded to include Pacific halibut. One concept that received much attention was the possibility that fishermen might organize themselves into risk pools, with each member of the pool contributing toward the total amount of overfished species QS/QP in the pool. In a footnote to Section A-2.2.3.e of Appendix E, the Council stated:

It is the Council intent that control limits should not constrain the formation of risk pools to help the fishermen deal with overfished species constraints, so long as the pools do not undermine the effectiveness of the accumulation limits. A risk pool is one in which two or more people enter into an agreement whereby if one person does not have the QP the others would agree to provide the QP, if they have them. Whether these kinds of agreements are informal or formal, as other considerations and conditions are added to the agreements they may begin to constitute control. It is the Council intent to allow for these pooling agreements, so long as they do not become control.

Risk pools have begun to form and the organizers of the risk pools have expressed continuing concern that the QS control rules could interfere with the effective development and operation of such pools. While the QS control rule is intended to restrict control over QS, and not control of QP, the regulations implementing the QS control rule reference the control of QP as a possible indicator of control of the underlying QS (see Agenda Item I.6.a, Attachment 3 for control rule language). It has been proposed that provisions be added to create a clearly delineated safe harbor for those who may desire to form risk pools. At its November 2010 meeting, there was some uncertainty about whether or not risk pools would require an exception from the control limits in order to operate. The Council provided very general guidance on the development of a risk pool option and expressed hope that dialogue occurring over the winter might shed more light on the type of exceptions that might be appropriate for risk pools.

The following risk pool alternative is based on one that was presented in public comment at the September 2010 Council meeting. Some modifications have been made, noted by underlining (inserted text) or footnotes (deleted text). This alternative, as revised, covers the guidance provided by the Council at its November 2010 meeting.

Exception, Element, or Criteria	Description
<u>Risk Pool Definition</u>	<ul style="list-style-type: none">• <u>A risk pool is an entity developed to manage overfished species and Pacific halibut QS for a group of QS owners and limited entry trawl vessels. To be a risk pool for the purposes of qualifying for a safe harbor from control limits, the risk pool must meet all the terms and conditions of all of the criteria contained in this option.</u>• <u>The below references to risk pools pertain to only those risk pools that wish to be provided an exception from control limits.</u>
Accumulation Limits	<ul style="list-style-type: none">• Risk pool agreements which govern use of quota by members are not held to an accumulation limit.• Each of the individuals making up the risk pool structure, or operating under the risk pool structure, are held to accumulation limits individually
Eligible members	<ul style="list-style-type: none">• Risk pools are composed of limited entry trawl licensed vessel owners and quota share owners, or their representatives (such as an association). Risk pool 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 share 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	<ul style="list-style-type: none">• 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.
Duration of arrangement	<ul style="list-style-type: none">• Risk pools may forge agreements dictating the use and transferability requirement of quota pounds held by members which extend beyond a single year. The duration of those arrangements is not limited by regulation, but is the subject of private negotiation.¹

¹ The following language was in the alternative presented in public comment but has been removed because it appears to be more a matter related to private agreements than regulatory issues:

If vessel owners wish to leave the risk pooling arrangement, they must give other members at least:

A) 12 months notice, or
B) 24 months notice

Departure from the risk pool may be conditioned on satisfying all obligations to the pool that have been incurred as of the date of the withdrawal notice and may not be formally recognized until the start of the calendar year following the date on which such obligations are satisfied.

Exception, Element, or Criteria	Description
Enforcement and Monitoring	<ul style="list-style-type: none"> • <u>Option a:</u> 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. • <u>Option b:</u> 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. 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. • <u>Option c:</u> Risk pools are able to function only after being approved by the Council. The Council will evaluate applications for risk pool safe harbors based on the following criteria [TO BE DEVELOPED] • <u>All options:</u> Contractual terms which violate standards subject all participants in the risk pool to the possibility of an enforcement action due to joint and several liability which applies to any such agreement.
Limited Scope of Agreement	<ul style="list-style-type: none"> • Risk pools which exceed specified accumulation limits may only be set up to manage risk of overfished species <u>and Pacific halibut</u> catch events. This includes active and reactive risk management terms such as: OFS <u>and Pacific halibut IBQ</u> 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. Risk pools may not include provisions which dictate delivery terms for harvested groundfish.
Risk Pool Agreement	<ul style="list-style-type: none"> • 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. ²

² The following language was in the alternative presented in public comment but has been removed because it appears to be more a matter related to private agreements than regulatory issues: All members of the risk pool must hold signed copies (original or copied) of the governance agreement.

SAFE HARBOR FROM CONTROL RULE: LENDER OPTIONS

Public comment on the proposed initial allocation rule expressed concern that the control rules could inhibit financial institutions that might have an interest in quota shares (QS)/quota pounds (QP) as loan collateral. In response, National Marine Fisheries Service modified the final initial allocation rule to address this issue. The following is an excerpt from the final initial allocation rule published in the *Federal Register* on October 1, 2010. Underlining has been added to highlight the additions made in the final rule to address the concern about the effect of the control rule on financial institutions.

<p>660.140(d)(4) <i>Accumulation limits</i>—(i) <i>QS and IBQ control limits.</i> QS and IBQ control limits are accumulation limits and are the amount of QS and IBQ that a person, individually or collectively, may own or control. QS and IBQ control limits are expressed as a percentage of the Shorebased IFQ Program’s allocation. (A) <i>Control limits for individual species.</i> No person may own or control, or have a controlling influence over, by any means whatsoever an amount of QS or IBQ for any individual species that exceeds the Shorebased IFQ Program accumulation limits. (B) <i>Control limit for aggregate . . .</i> (C) The Shorebased IFQ Program accumulation limits are as follows: [see Table of QS Control Limits]</p> <p>(ii) <i>Ownership—individual and collective rule.</i> The QS or IBQ that counts toward a person’s accumulation limit will include:</p> <p>(A) The QS or IBQ owned by that person, and</p> <p>(B) That portion of the QS or IBQ owned by an entity in which that person has an economic or financial interest, where the person’s share of interest in that entity will determine the portion of that entity’s QS or IBQ that counts toward the person’s limit.</p>	<p>(iii) <i>Control.</i> Control means, but is not limited to, the following:</p> <p>(A) The person has the right to direct, or does direct, in whole or in part, the business of the entity to which the QS or IBQ are registered;</p> <p>(B) The person has the right to limit the actions of or replace, or does limit the actions of 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 IBQ are registered;</p> <p>(C) The person has the right to direct, or does direct, and/or the right to prevent or delay, or does prevent or delay, the transfer of QS or IBQ, or the resulting QP or IBQ pounds;</p> <p>(D) The person, through loan covenants or any other means, has the right to restrict, or does restrict, and/or has a controlling influence over the day to day business activities or management policies of the entity to which the QS or IBQ are registered;</p>	<p>(E) The person, <u>excluding banks and other financial institutions that rely on QS or IBQ as collateral for loans</u>, through loan covenants or any other means, has the right to restrict, or does restrict, any activity related to QS or IBQ or QP or IBQ pounds, including, but not limited to, use of QS or IBQ, or the resulting QP or IBQ pounds, or disposition of fish harvested under the resulting QP or IBQ pounds;</p> <p>(F) The person, <u>excluding banks and other financial institutions that rely on QS or IBQ as collateral for loans</u>, 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 IBQ, or the resulting QP or IBQ pounds, are registered;</p> <p>(G) The person, <u>excluding banks and other financial institutions that rely on QS or IBQ as collateral for loans</u>, has the right to cause or prevent, or does cause or prevent, the sale, lease or other disposition of QS or IBQ, or the resulting QP or IBQ pounds; and</p> <p>(H) The person has the ability through any means whatsoever to control or have a controlling influence over the entity to which QS or IBQ is registered.</p>
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In response to the modifications in the final rule, concern has been expressed that those lending money and taking QS as collateral could be allowed to exert considerable influence over how that QS is used. For example, under paragraph (iii)(E) banks and other financial institutions could impose restrictions on the disposition of fish harvested under the resulting QP or individual bycatch quota pounds. While it seems unlikely that any purely financial institution might have an interest in imposing performance constraining conditions on the use of QP from QS it holds as collateral (e.g. requiring delivery to a particular port or processor or at a particular price), there is a question about what types of entities might qualify as a “bank or other financial institution?” For example, it is traditional in the fishery for processors to lend harvesters money for capital

acquisitions. Under what circumstances would such a lender qualify as a “bank or other financial institution.” As a step in developing alternatives pertaining to lenders, the Council staff has asked National Oceanic and Atmospheric Administration General Counsel for guidance on the criteria for meeting this exception.

The Council has provided no specific guidance on developing options on this issue. The following options have been developed by staff to facilitate discussion.

No Action Alternative. Control rule provisions as listed above.

Straw Dog Alternative 1: Modify the above alternatives to indicate that the only activity a bank or financial institution may influence with respect to QS it holds as collateral, and in excess of control limits, is the transfer of that QS. All associated QP will be distributed to the borrower unless the bank or financial institution provides evidence that the borrower is in default on the loan, in which case the related QP will be distributed to the adaptive management program until such time as any the QS held by the bank or financial institution is sold, or the QS holdings of the bank or financial institution are below the QS control limits.

After reviewing the guidance for defining “bank or other financial institutions,” it would be helpful for the Council to provide additional guidance on this issue, including the further development of options, if the Council decides to proceed.

PFCMC
03/25/11

ADAPTIVE MANAGEMENT PROGRAM QUOTA POUND PASS-THROUGH OPTIONS

The Council's trawl catch share program includes a set aside of 10 PERCENT of the nonwhiting quota shares (QS) for an adaptive management program (AMP). For the first two years of the program, the annually issued quota pounds (QP) derived from this set-aside will be passed through to the QS holders in proportion to their holdings of QS. The catch share program specifies that the Council will develop alternative criteria for distribution the adaptive management QP beginning in year 3 of the program. There is concern that such alternative criteria may not be ready by 2013 in which case there is no procedure in place for distribution of the AMP QP. At its November 2010 meeting, the Council provided guidance for the development of a range of options. Based on that guidance, the following options are presented for Council consideration. Absent additional guidance from the Council, these options and an accompanying analysis will be presented at the Council's June 2011 meeting. At that time, the Council is expected to adopt a preliminary preferred alternative for this issue.

No Action Alternative (status quo): Beginning in 2013, the QP associated with the QS set-aside for AMP purposes will be distributed in accordance with procedures developed under the AMP provisions. If such procedures are not developed, there is no guidance on how these QP will be distributed.

Alternative 1: Same as No Action, except that if AMP procedures are not developed for 2013, the pass-through procedures used in 2011 and 2012 will be continued for 2013.

Alternative 2: Same as No Action, except that if AMP procedures are not developed for 2013, the pass-through procedures used in 2011 and 2012 will be continued until procedures are developed under the AMP.

Preliminary Identification of Primary Impacts

Physical and Biological Environment: Under the No Action Alternative, there may be a reduction of trawl sector impacts starting in 2013, if no alternative means is developed for distribution of the AMP QP is developed and assuming that resolution of the situation would not qualify for emergency action. Under Alternatives 1 and 2 there would be no impacts relative to a 2011-2012 baseline and the trawl allocation authorized under the 2013-2014 groundfish specifications.

Socioeconomic Impacts: The main impact of the no action alternative is the possibility of a 10 percent reduction in the shoreside nonwhiting trawl harvest starting in 2013 and the attendant adverse social and economic impacts. Continuation of the automatic pass-through beyond 2012 may introduce some uncertainty and variability in QS pricing. Transaction prices are likely to vary depending on whether traders anticipate a long-term continuation of the pass-through. If a long-term continuation of the pass-through is built into QS prices, this would likely generate resistance to future proposals for alternative distributions.

Recommended FMP and Regulatory Amendatory Language That Complies with the Council's Intent Regarding Superseding Amendment 6 Allocations with Amendment 21 Allocations and Annual Management of Fishery Set-Asides

The Council adopted Amendment 21 in April 2009, which specified formal allocations of select groundfish species to trawl and non-trawl sectors of the west coast groundfish fishery. The Secretary of Commerce partially approved Amendment 21 in 2010, which was implemented in January 2011. Based on a procedural concern and ambiguities in the record, NMFS disapproved the provisions in Amendment 21 that addressed Amendment 21's effect on limited entry and open access allocations established in the FMP. NMFS guidance on Amendment 21 superseding Amendment 6 for Amendment 21 species has been to clarify the record and move forward with a technical and conforming FMP amendment in an open and timely manner.

The Council may consider two issues under this agenda item.

1. Review of the revised FMP and regulatory language implementing Amendment 21 explicitly stating that, for Amendment 21 species, formal allocations decided under Amendment 21 supersede formal allocations decided under Amendment 6.
2. Further clarify the management of "off-the-top" yields set aside for research catches, exempted fishing permit activities, catches in tribal fisheries, and groundfish bycatch in non-groundfish fisheries (i.e., incidental open access fisheries) when deciding harvest specifications and management measures .

The Council revisited these two issues at its March 2011 meeting and affirmed its intent under Amendment 21 was to have allocations for Amendment 21 species supersede Amendment 6 allocations and to maintain more flexible management of set aside amounts as part of its preliminary preferred alternative (PPA). A more detailed description of the action with recommended FMP and regulatory amendments that comply with the Council's intent follow.

Superseding Amendment 6 Allocations with Amendment 21 Allocations

Because of NMFS' partial disapproval, the FMP and current regulations implementing Amendment 21 trawl/non-trawl allocations do not state that they supersede the limited entry/open access allocations originally decided under Amendment 6 for those species subject to Amendment 21. While it was generally understood through the Amendment 21 process that Amendment 6 allocations were part of the No Action Alternative, which was rejected in favor of the preferred Amendment 21 allocations, there were multiple interpretations from the action alternatives in the EIS and FMP language (as drafted through April 2010) on how Amendment 21 related to the limited entry/open access allocations. As NMFS was drafting allocation

regulations for deeming, NMFS brought interpretations on this issue to the Council at its March and April 2010 meetings (see issue #2 in Agenda Item E.6.b, Supplemental REVISED NMFS Report 1, March 2010; and issue #1 in Agenda Item I.1.b, Supplemental NMFS Report 3, April 2010). At the Council's April 2010 meeting, the Council made a motion to clarify that Amendment 21 allocations supersede the limited entry/open access allocations for Amendment 21 species and that, if the draft EIS is ambiguous, Council staff were directed to clear it up. In the Council's transmittal of Amendment 21 to the FMP, new language that had not previously been adequately available for public inspection or Council consideration appeared in the FMP language and clarified that Amendment 21 supersedes the limited entry/open access allocations for Amendment 21 species.

In NMFS' partial disapproval letter, dated August 9, 2010, NMFS explained there were ambiguities in the record associated with the relationship of Amendment 21 to the limited entry/open access allocations, generating a procedural issue. Thus, NMFS concluded that it was necessary and prudent to partially disapprove Amendment 21 so the ambiguity could be addressed in an open and timely manner through a technical and conforming amendment. NMFS disapproved of the process but noted that there was no apparent disagreement amongst the members of the Council on the intent of the Council in its design of Amendment 21. The procedural issue relates most directly to the question of the adequacy of the notice to the public of the intended effect of Amendment 21 on these underlying allocations and the adequacy of the opportunity for meaningful public review and comment. **Therefore, under this agenda item, the Council is provided an opportunity to make a clear record of its intent that Amendment 21 allocations supersede the limited entry/open access allocations for Amendment 21 species and providing numerical examples of the implications of alternative interpretations.**

NMFS and Council staffs both have concerns with the interpretation that Amendment 6 allocations could be applied in addition to the Amendment 21 allocations. The option of specifying both Amendment 21 and Amendment 6 allocations for Amendment 21 species could result in an over-allocation of a stock's OY or ACL or the inability to fully allocate a sector's share of the harvestable surplus. This result could be realized in cases where a stock's ACL is fully accessible. Table 1 depicts a theoretical example of allocating chilipepper rockfish using both Amendment 21 and Amendment 6 allocations. In this example there is a 1,000 mt fishery harvest guideline that can be allocated to directed groundfish sectors. The limited entry (LE) trawl sector allocation is first determined by applying the Amendment 21 allocation of 75% to trawl sectors and 25% to non-trawl sectors. The next step is deducting the estimated recreational sector mortality of chilipepper (3 mt) from the non-trawl share. The 247 mt left over for non-trawl commercial sectors (i.e., directed open access (OA) and limited entry fixed gear (LEFG)) is further divided by applying the open access allocation to the commercial harvest guideline (fishery HG minus recreational amount) ($997 * 0.443$ in this example). Because 247 is less than the amount that would be allocated to the open access sector (directed and incidental) under the Amendment 6 structure, all 247 mt would go to the directed open access fishery, leaving zero for

LEFG. In fact, the disadvantaged sectors in this example depend on the order of operations in applying these disparate allocation schemes. If the Amendment 6 allocation was first applied to the 1,000 mt fishery HG, then 557 mt would be allocated to LE sectors and 443 mt would be allocated to the directed OA sector (in this example the incidental OA sector does not have a set aside). This order would leave the LE trawl sectors short of their Amendment 21 allocation. Regardless, it is clear that there are species, like chilipepper rockfish in this example, where it doesn't make sense to apply both allocation schemes.

Table 1. An example using chilipepper rockfish of the negative consequences of applying both Amendment 21 and Amendment 6 allocations.

Amendment 21 Allocation		Amendment 6 Allocation	
Trawl	Non-Trawl	LE	OA
75.0%	25.0%	55.7%	44.3%
Sector Allocations Assuming a 1,000 mt Fishery HG for Chilipepper			
Apply the Am 21 allocation:			
LE Trawl		Non-Trawl	
750		250	
Deduct the recreational amount from non-trawl using the 2011 amount:			
LE Trawl	Rec.	Comm. Non-Trawl	
750	3	247	
Apply the Am 6 allocation to the Commercial HG to calculate amount available to OA, leftover amount to LEFG:			
LE Trawl	Rec.	OA	LEFG
750	3	247	0

Table 2 uses the same chilipepper example with Amendment 21 allocations superseding the limited entry/open access allocations.

Table 2. An example using chilipepper rockfish and applying only Amendment 21 allocations.

Amendment 21 Allocation		
Trawl	Non-Trawl	
75.0%	25.0%	
Sector Allocations Assuming a 1,000 mt Fishery HG for Chilipepper		
Apply the Am 21 allocation:		
LE Trawl	Non-Trawl	
750	250	
Deduct the recreational amount from non-trawl using the 2011 amount:		
LE Trawl	Rec.	Comm. Non-Trawl (shared dir. OA & LEFG)
750	3	247

Suggested Revisions to the FMP and the Regulations

The Pacific Coast Groundfish FMP and federal regulations will need to be modified to implement the Council PPA. Excerpted portions of the FMP and the Code of Federal Regulations (CFR) that apply to Amendment 21 and Amendment 6 allocations are provided below followed by recommended changes to these excerpted parts to comply with the Council's PPA.

The recommended FMP language that complies with the Council's stated intent under its PPA and is identical to what was transmitted to NMFS in April 2010 makes it explicit in section 6.3.2.3 and 11.2.2 that Amendment 21 allocations supersede Amendment 6 allocations as follows with new language underscored.

"6.3.2.3 Limited Entry Trawl Allocations for Amendment 21 Species

"... The remainder of the OYs/ACLs are then allocated according to the percentages in Table 6-1 [Table 6-1 provides the schedule of allocations adopted by the Council under Amendment 21]. The trawl percentage is for the non-treaty trawl fishery managed under Amendment 21. The non-treaty, non-trawl percentage is for the limited entry fixed gear fishery, the open access fishery, and the recreational fishery. Amendment 6 limited entry and open access allocations are superseded by these allocation percentages. Allocations to the directed non-trawl sectors (i.e., limited entry fixed gear, directed open access, and recreational) for the species allocated Table 6-1 are decided, if needed, in the biennial harvest specifications and management measures process."

"11.2.2 Allocations Between the Limited and Open Access Fisheries and Management of the Open Access Fishery

1. The division of the fleet into limited and open access participants will require that separate allocations be established for each group where management measures are required to prevent harvest in excess of annual catch limits. For those species, species groups and areas covered by the trawl/-non-trawl allocations provided in Table 6- 1 and for which the Council determines an allocation is necessary, ad hoc allocations to the directed open access sector will be established as needed through the biennial specifications process.
2. For those species for which trawl/non-trawl allocations are not established in Table 6- 1, allocations for the open access fishery will be based on historical catch levels for the period July 11, 1984 to August 1, 1988 by exempted, longline and fishpot gears used by vessels which did not receive an endorsement for the gear...."

Federal regulations governing formal allocations are found at 50 CFR 660.55 and are described as follows with possible changes underscored.

“660.55 Allocations. {revised at 75 FR 78344, 12/15/2010; revised at 75 FR 82296, 12/30/2010}

(a) General. An allocation is the apportionment of a harvest privilege for a specific purpose, to a particular person, group of persons, or fishery sector. The opportunity to harvest Pacific Coast groundfish is allocated among participants in the fishery when the OYs for a given year are established in the biennial harvest specifications. For any stock that has been declared overfished, any formal allocation may be temporarily revised for the duration of the rebuilding period. For certain species, primarily trawl-dominant species, beginning with the 2011–2012 biennial specifications process, separate allocations for the trawl fishery and non-trawl fishery (which for this purpose includes limited entry fixed gear, open access, and recreational fisheries) will be established biennially or annually using the standards and procedures described in Chapter 6 of the PCGFMP. Chapter 6 of the PCGFMP provides the allocation structure and percentages for species allocated between the trawl and non-trawl fisheries. Also, separate allocations for the limited entry and open access fisheries may be established for those species not subject to the trawl/non-trawl allocations specified under Amendment 21 (see the table in paragraph c, subsection (1) of this section for the list of Amendment 21 species) using the procedures described in Chapters 6 and 11 of the PCGFMP and this subpart. Allocation of sablefish north of 36° N. lat. is described in paragraph (h) of this section and in the PCGFMP. Allocation of Pacific whiting is described in paragraph (i) of this section and in the PCGFMP. Allocation of black rockfish is described in paragraph (l) of this section. Allocation of Pacific halibut bycatch is described in paragraph (m) of this section. Allocations not specified in the PCGFMP are established in regulation through the biennial harvest specifications and are listed in Tables 1 a through d and Tables 2 a through d of this subpart.”

A further amendment of the regulations at 660.55(e)(2) should also be considered to clarify the Council’s intent under Amendment 21. The following is an excerpt of the current regulatory language with the possible amended regulatory language underscored.

“(2) Species with LE/OA allocations. For species with LE/OA allocations that are not subject to Amendment 21 allocations, the allocation between the limited entry (both trawl and fixed gear) and the open access fisheries is determined by applying the percentage for those species with a LE/OA allocation to the commercial harvest guideline plus the amount set-aside for the non-groundfish fisheries.”

“Off-the-Top” Fishery Set-Asides

The term “set-asides” has been used to refer to the amounts of fish deducted “off the top” from the ACL (previously termed OY) and, for the whiting fishery, off the trawl sector. There has been some question about the flexibility that set-asides do or don’t provide. A GMT statement from the Council’s June 2010 meeting clarified some of the flexibility related to set-asides as follows (Agenda Item B.7.b, Supplemental GMT Report, June 2010):

The sum of these [off-the-top] amounts (tribal, research, incidental open access, EFP) should be specified in regulation through the biennial specifications and management measures process so that it is clear how the fishery harvest guideline has been determined. Similarly, in cases where a commercial harvest guideline is specified, the recreational estimates should be documented so that it is clear how the commercial harvest guideline has been determined. However, these amounts that are deducted from the ACL to come up with the fishery harvest guideline are somewhat flexible as long as the summed amount that is deducted from the ACL is not exceeded. For example, if research catch is higher than originally estimated, but incidental open access amounts are lower than expected and the sum of all amounts deducted from the ACL is not exceeded, no action needs to be taken.

The amount of fish deducted from the ACL to determine the fishery harvest guideline is not available to be allocated to other sectors (trawl or non-trawl). However, if either of those sectors (trawl or non-trawl) exceeds their allocation, or conversely, the amount of fish that comes “off the top” is exceeded, no sector is held harmless from that overage as stated in the Am 21 DEIS. ... If either the trawl or non-trawl exceeds their allocation or an estimate or set-aside amount is exceeded, there is no harm as long as the ACL for that species is not exceeded.

The regulations implementing the above interpretations of Amendment 21 were deemed through the Council during the trawl rationalization deeming process. The current regulations are a change in the way the Council and NMFS manage set-aside amounts or yields that are deducted to cover non-directed fishing activities before allocations to directed groundfish fisheries are applied. The change is that these “off-the-top” amounts are no longer available to be changed inseason or re-allocated to the trawl or non-trawl sectors. This effectively strands resources that could otherwise be utilized in directed fisheries if there are cases where it is not needed to cover the proposed activity. For instance, if there is a set-aside for EFPs during the biennial specifications process but EFPs are not approved or are conducted and completed without using the entire yield set aside to cover EFPs, this resource cannot be used for directed fisheries.

The Council could reconsider its intent under Amendment 21 that the amounts of yield set aside to cover these sources of fishing-related mortality can be routinely changed downward, as appropriate, by the Council and NMFS in an inseason action. In such cases, the set-aside yield could be re-allocated to directed groundfish fisheries. The Council and NMFS would need to

consider in their deliberations regarding an inseason adjustment of a set-aside whether there is an increased risk of exceeding an ACL by re-allocating yield to directed fisheries that was originally set aside to accommodate expected bycatch or catch in research and EFP activities. For example, in cases where yield is set aside to cover expected bycatch in a fishery (e.g., a tribal fishery), it is unlikely that an inseason action can be considered to decrease the set aside if the fishery is ongoing and there is still a chance that the bycatch could occur. This is because the timing of bycatch events is inherently unpredictable.

The following excerpted regulatory language from CFR 660.55(j) describing fishery set-asides provides the possible amended regulatory language in strikeout and underscoring that clarifies the Council's intent under Amendment 21. Note that the use of the term "tribal fishing activities" and how those set-asides are managed will need to be discussed in further detail with the treaty tribes.

"Fishery set-asides. Annual set-asides are not formal allocations but they are amounts which are not available to the other fisheries ~~during~~ at the start of the fishing year. For the catcher/processor and mothership sectors of the at-sea Pacific whiting fishery, set-asides will be deducted from the limited entry trawl fishery allocation. Set-aside amounts will be specified in Tables 1a through 2d of this subpart and may be adjusted through the biennial harvest specifications and management measures process. In the case of set-asides to accommodate planned research activities, fishing activities authorized under approved exempted fishing permits, tribal fishing activities, or projected bycatch in non-groundfish fisheries, set-aside amounts may be adjusted downward inseason and, if practicable, can be re-allocated to directed groundfish fisheries."

Additional Background Information on CFA Issues

This document contains additional information on community fishing association issues:

1. Historic Southern Sablefish Harvest Levels
2. Maps showing
 - a. the location of PacFIN ports and those to which trawlers have made deliveries in recent years ,
 - b. the location of municipal governments and independent harbor/port districts.

Review of Conception Area Sablefish Fisheries and Landings, 1995-2010

Fishery Management

Conception area sablefish have been managed based on optimum yield (OY) specifications since before 1995. The annual OYs since 1995 have averaged 453 mt with a range of 210 mt to 1,371 mt (Table 1, section titled: Table 4-3). The Conception area sablefish OY has averaged about 6% of the coastwide sablefish OY (Table 1, section titled: Table 4-3). The trend southern sablefish OYs, total landings by all sectors and trawl sector landings is provided in Figure 1. Under the trawl fishery rationalization program, the Conception area trawl fishery is allocated 42% of the Conception area OY (A-21). Prior to the 2011 season, there was no allocation of Conception area sablefish; the LE trawl fishery was managed under the same regulations as the trawl fishery to the north while the Conception area LE and OA fixed gear sablefish fisheries were managed under the same regulations including the same daily and weekly trip limits (FR notices). Very minor amounts of Conception area sablefish were taken in the exempted trawl and recreational fisheries. During 1995-2005, the combined directed fisheries harvested an average of 62% of annual Conception area OYs (range 26%-83%) broken down as follows: 27% in the LE trawl fishery, 27% in the LE fixed gear fishery and 8% in OA fixed gear fishery (Table 1, sections titled: Tables 4-5, 4-6, and 4-7 and Figure 1).

Distribution and Trends in Trawl Fishery Landings (selected years)

Conception area LE trawl sablefish were primarily landed at the ports of Morro Bay and Avila during 1996-98 and 2004-2010 except that no sablefish were landed in the Conception area in 2010 (Table 2; Figure 2). Morro Bay was the major landing port (56%) followed by Avila (44%). A very minor amount (negligible) was landed in the Santa Barbara area. The 10-yr average for the years examined for the Conception area was about 143 thousand pounds (Table 2; Figure 2). The data for all ports and overall showed a strong downward trend in landings from a high of about 471 thousand pounds in 1996 to zero pounds in 2010 (Table 2; Figure 2). Expressed in terms of 2011 Conception area sablefish control limit equivalents (control limit $t=117,064$ lbs), average landings for those same years was 1.22 limits with a range of from 4.02 limits in 1996 to zero limits in 2010 (Table 3; Figure 3).

Table 1: Pertinent sablefish tables from Groundfish Plan Amendment 21.

Table 4-3. Optimum yield (mt) for groundfish FMP species subject to intersector allocations, 1995-2010.

	1995	1996	1997	1998	1999	2000	2001	2002	2003	2004	2005	2006	2007	2008	2009	2010	MAX	MIN	AVG
Sablefish N. of 36°	7,800	7,800	7,800	5,200	7,919	7,919	6,895	4,367	6,500	7,510	7,486	7,363	5,723	5,723	7,052	6,471	7,919	4,367	6,846
Sablefish S. of 36°	425	425	425	425	472	472	212	229	294	276	275	271	210	210	1,371	1,258	1,371	210	453
Coastwide sablefish																			7,299

Table 4-4. Landings or deliveries of groundfish species subject to intersector allocations as a share of annual catch limits by ALL DIRECTED GROUND FISH sectors combined (including treaty), 1995-2005. PROPORTIONS

	1995	1996	1997	1998	1999	2000	2001	2002	2003	2004	2005	2006	2007	2008	2009	2010	MAX	MIN	AVG
Sablefish N. of 36°	0.97	1.03	0.99	0.81	0.82	0.79	0.80	0.84	0.82	0.77	0.82						1.03	0.77	0.86
Sablefish S. of 36°	0.77	0.80	0.62	0.50	0.39	0.26	0.67	0.83	0.75	0.67	0.53	.070	0.91	1.03	0.55	0.74	0.83	0.26	0.62

Table 4-5. Landings or deliveries of groundfish species subject to intersector allocations as a share of annual catch limits by all LIMITED ENTRY TRAWL, 1995-2005. PROPORTIONS

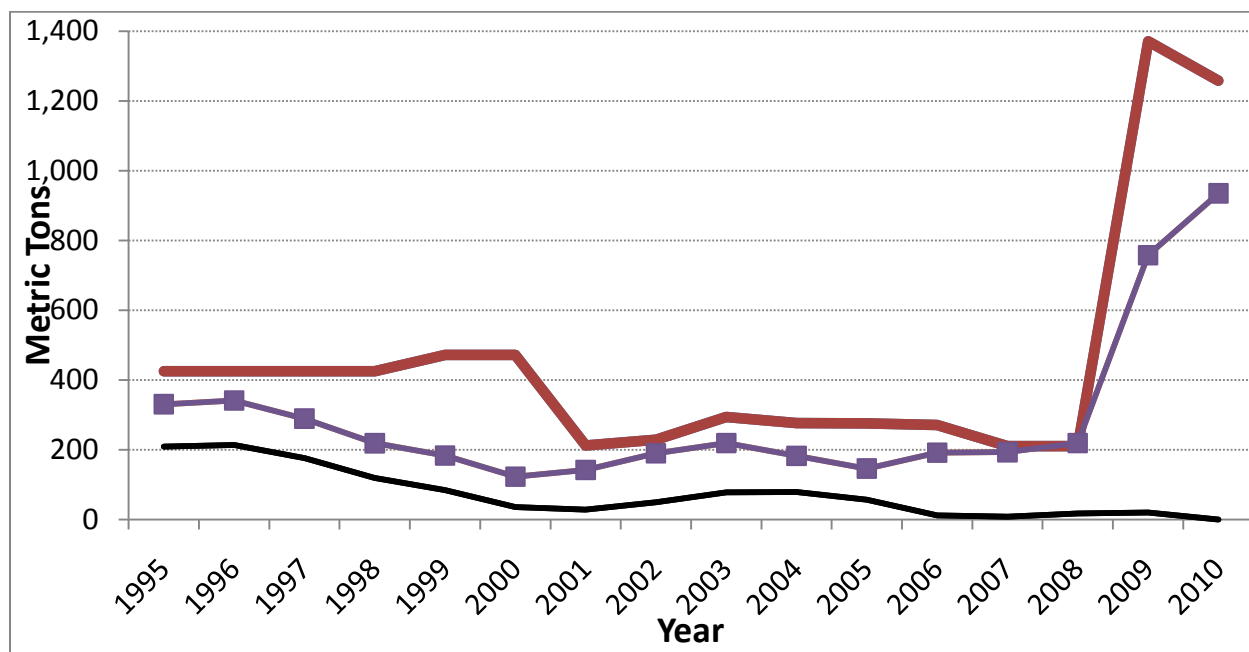
	1995	1996	1997	1998	1999	2000	2001	2002	2003	2004	2005	2006	2007	2008	2009	2010	MAX	MIN	AVG
Sablefish N. of 36°	0.46	0.51	0.46	0.40	0.39	0.34	0.37	0.36	0.35	0.34	0.31						0.51	0.31	0.39
Sablefish S. of 36°	0.49	0.50	0.36	0.27	0.18	0.08	0.13	0.21	0.26	0.29	0.20	.04	.04	.08	0.01	0.00	0.50	0.08	0.27

Table 4-6. Landings or deliveries of groundfish species subject to intersector allocations as a share of annual catch limits by the LIMITED ENTRY FIXED GEAR sector, 1995-2005. PROPORTIONS

	1995	1996	1997	1998	1999	2000	2001	2002	2003	2004	2005	2006	2007	2008	2009	2010	MAX	MIN	AVG
Sablefish N. of 36°	0.34	0.32	0.35	0.29	0.30	0.30	0.26	0.30	0.28	0.27	0.29						0.35	0.26	0.30
Sablefish S. of 36°	0.10	0.20	0.24	0.22	0.18	0.15	0.47	0.48	0.36	0.28	0.26	0.23	0.30	0.36	0.15	0.15	0.48	0.10	0.27

Table 4-7. Landings or deliveries of groundfish species subject to intersector allocations as a share of annual catch limits by the OPEN ACCESS sector (directed groundfish plus incidental groundfish fisheries), 1995-2005. PROPORTIONS

	1995	1996	1997	1998	1999	2000	2001	2002	2003	2004	2005	2006	2007	2008	2009	2010	MAX	MIN	AVG
Sablefish N. of 36°	0.07	0.09	0.07	0.04	0.05	0.06	0.07	0.09	0.09	0.07	0.12						0.12	0.04	0.07
Sablefish S. of 36°	0.18	0.10	0.01	0.01	0.03	0.04	0.07	0.13	0.12	0.10	0.06	0.43	0.58	0.59	0.38	0.59	0.18	0.01	0.08



Top Line = OY
Boxes = Landings by All Sectors
Bottom Line = Trawl Landings

Figure 1. Southern sablefish OYs, landings by all sectors and trawl landings (1995 -2010).

Table2. LE trawl sablefish landings in the Conception area by port and year, 1996-2010: POUNDS

	MRO	AVL	SB	SP	Totals
1995	306,205	154,827	0	0	461,032
1996	304,523	166,251	0	0	470,774
1997	294,885	92,729	0	0	387,614
1998	136,457	125,063	0	0	261,520
1999	98,746	86,347	0	0	185,093
2000	19,144	59,548	0	0	78,692
2001	4,682	57,190	0	0	61,872
2002	11,983	95,878	0	0	107,861
2003	21,398	149,949	0	0	171,346
2004	66,355	107,316	262	0	173,933
2005	123,946	0	0	0	123,946
2006	25,497	0	0	0	25,497
2007	16,383	272			16,655
2008	38,706	0	0	0	38,706
2009	43,097	0	0	0	43,097
2010	0	0	0	0	0
Avg	80,387	62,703	29	0	143,107
%	0.56	0.44	0.00	0.00	1.00

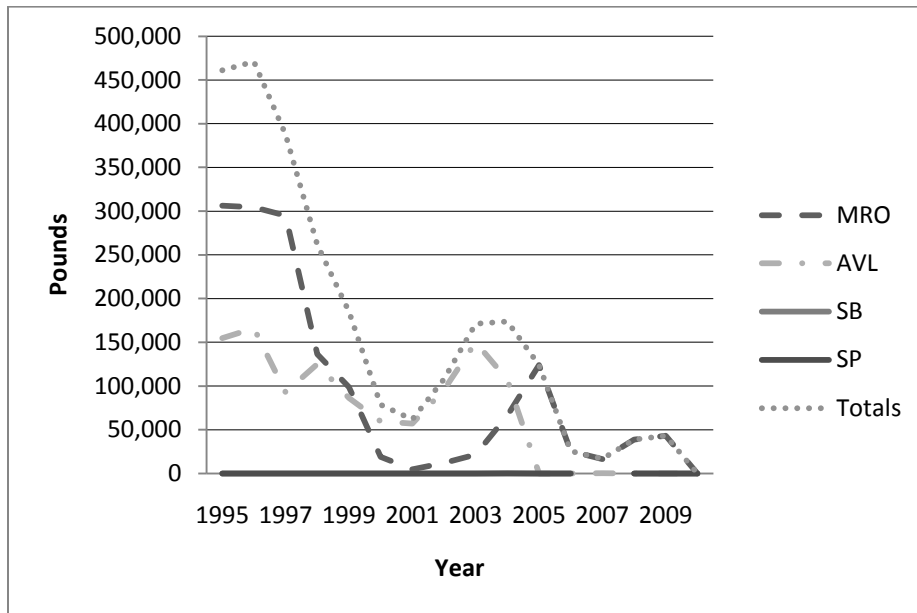


Figure. 2: LE trawl fishery pounds landed by port, total and year, 1995-2010: CONCEPTION AREA SABLEFISH

Table 3. LE trawl sablefish landings in the Conception area by port and year, 1996-2010: CONTROL LIMITS

	MRO	AVL	SB	SP	Totals
1995	2.62	1.32			3.94
1996	2.60	1.42			4.02
1997	2.52	0.79			3.31
1998	1.17	1.07			2.23
1999	0.84	0.74			1.58
2000	0.16	0.51			0.67
2001	0.04	0.49			0.53
2002	0.10	0.82			0.92
2003	0.18	1.28			1.46
2004	0.57	0.92	0.00		1.49
2005	1.06	0.00			1.06
2006	0.22	0.00			0.22
2007	0.14	0.00			0.14
2008	0.33	0.00			0.33
2009	0.37	0.00			0.37
2010	0.00	0.00			0.00
Avg	0.69	0.54	0.00	0.00	1.22
%	0.56	0.44	0.00	0.00	1.00

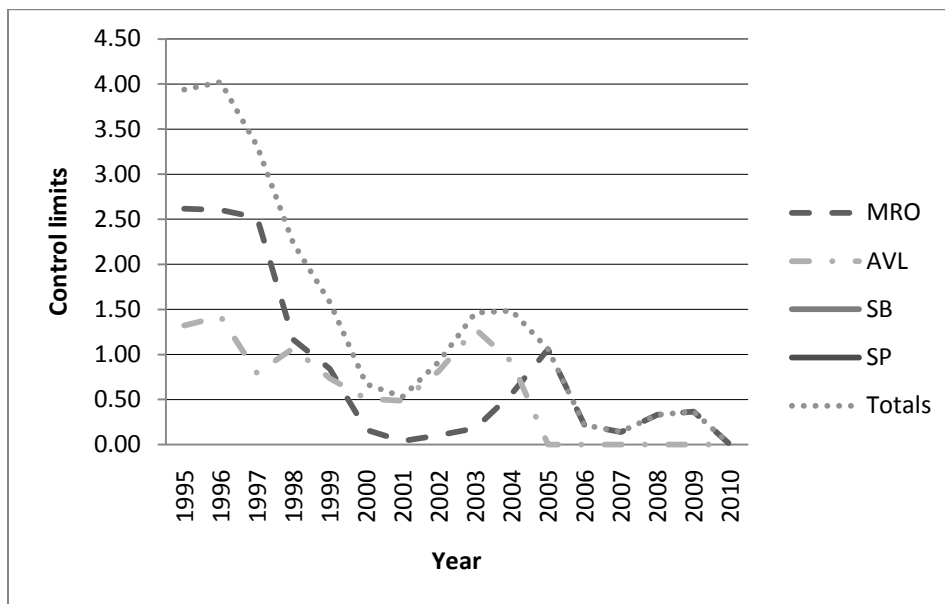


Figure. 3 Numbers of LE trawl fishery control limits landed by port, total and year, 1995-2010: CONCEPTION AREA SABLEFISH

Coastal/Marine County Municipalities And Port Districts

Some questions about community fishing associations are whether there will be limitations on the number of CFAs in a particular geographic area and whether endorsements from a local governing entity will be required. The attached figures have been produced to inform the discussion on these issues.

The attached figure provides a

- ports with PacFIN port identifiers, ports with at least one vessel for which the port is the primary port of delivery, and other ports receiving trawl groundfish landings.
- all municipal governments in coastal and estuarine counties on the west coast and all special governing districts associated with ports (port or harbor districts) as identified in the U.S. Census data website (the ports with special districts needs further review and validation).

Some things to note:

1. There are some port districts for which there are no municipalities (e.g. East Sound WA, Moss Landing CA).
2. There are some known ports which do not have special port districts (e.g. San Francisco). In these cases, the port activities are generally handled by the local municipal governments.
3. There are some location(s) which are PacFIN port codes (e.g. Neah Bay) which have associated with them neither recognized municipalities (town or city governments) nor port districts (likely because of tribal jurisdiction?). These ports do show up as census districts.
4. There are some PacFIN port areas for where there are subdivisions when codes are examined at the state level (e.g. Coos Bay/Charleston and Princeton/Half Moon Bay).

- ★ Primary trawl ports
- ☆ Secondary trawl ports
- Nontrawl ports

☐ Census Coastal

NOAA Shoreline

■ NOAA Student
■ Non-student

Non coastal



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Based on PacFIN port codes



Port Districts and Municipalities

★ Port Districts

Census Bureau Municipalities (2005 pop.)

● 165 - 9,999

● 10,000 - 99,999

○ 100,000+

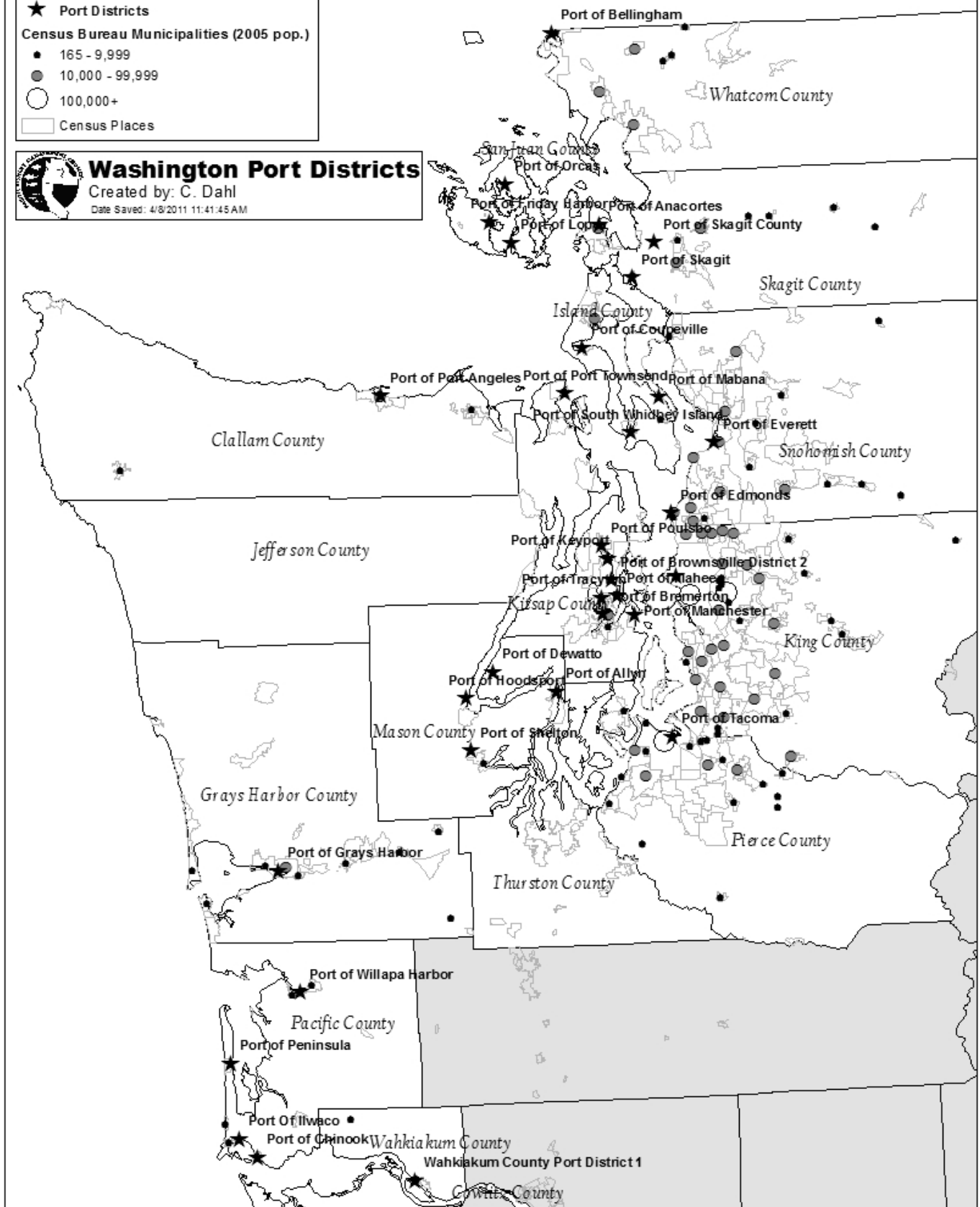
□ Census Places

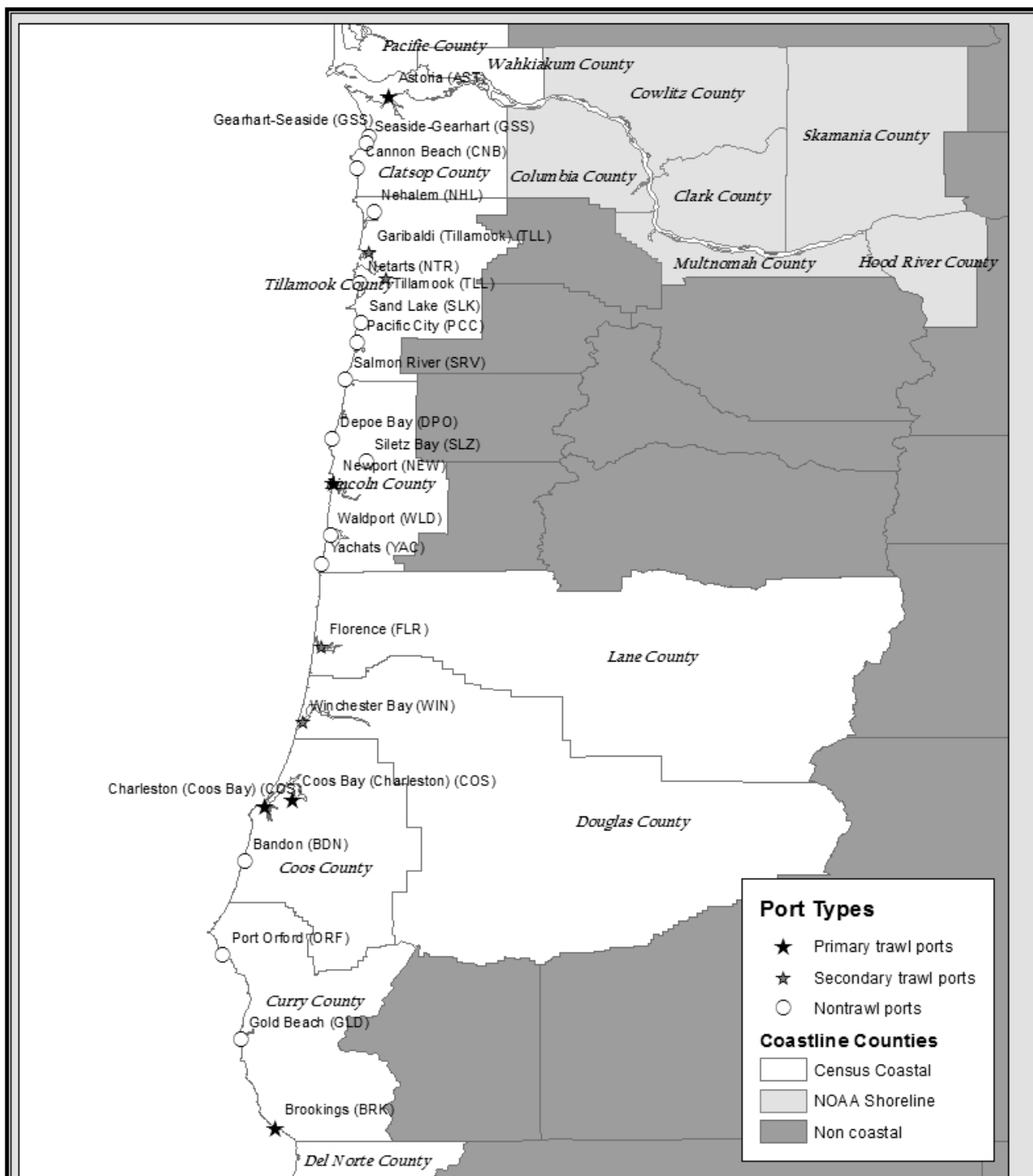


Washington Port Districts

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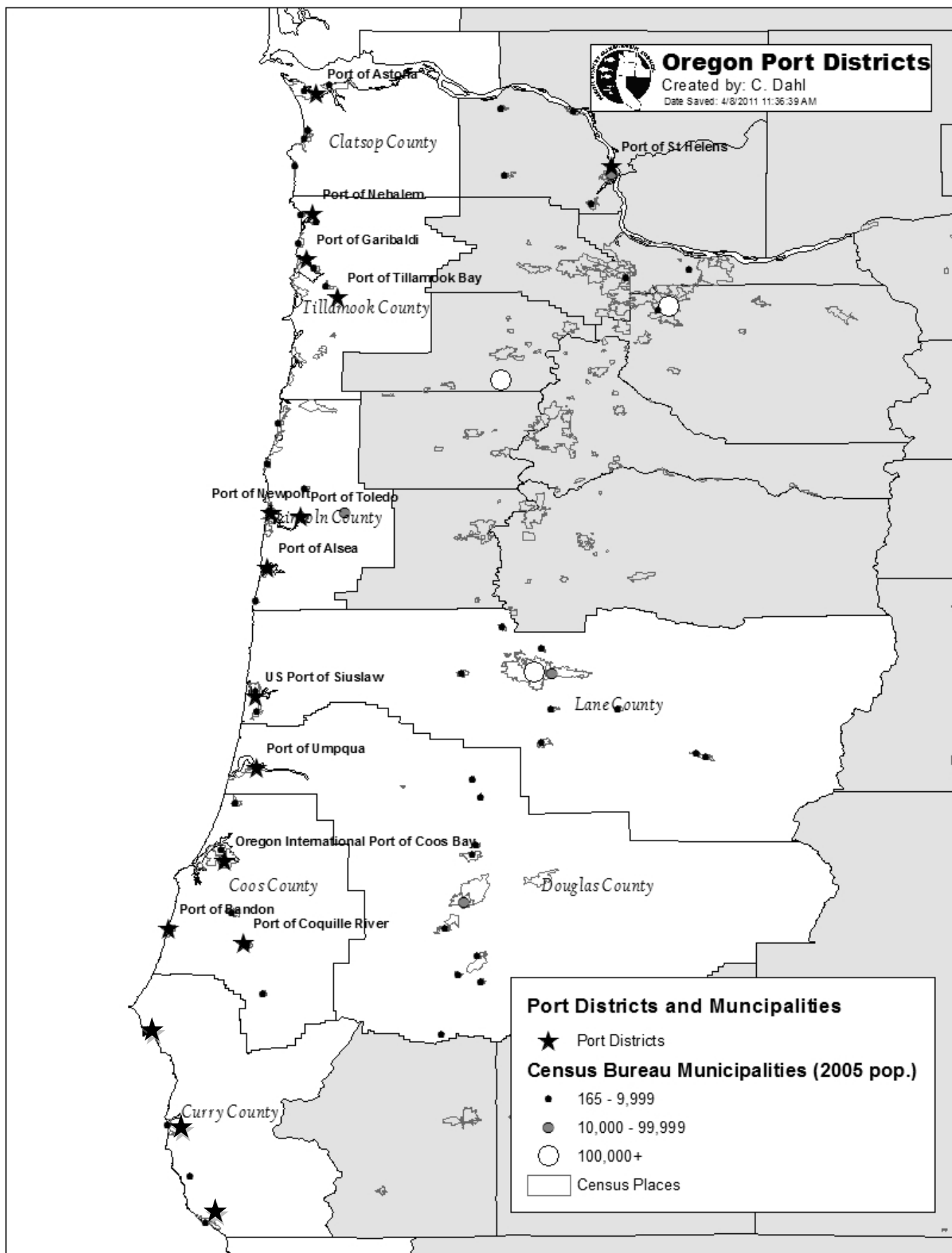
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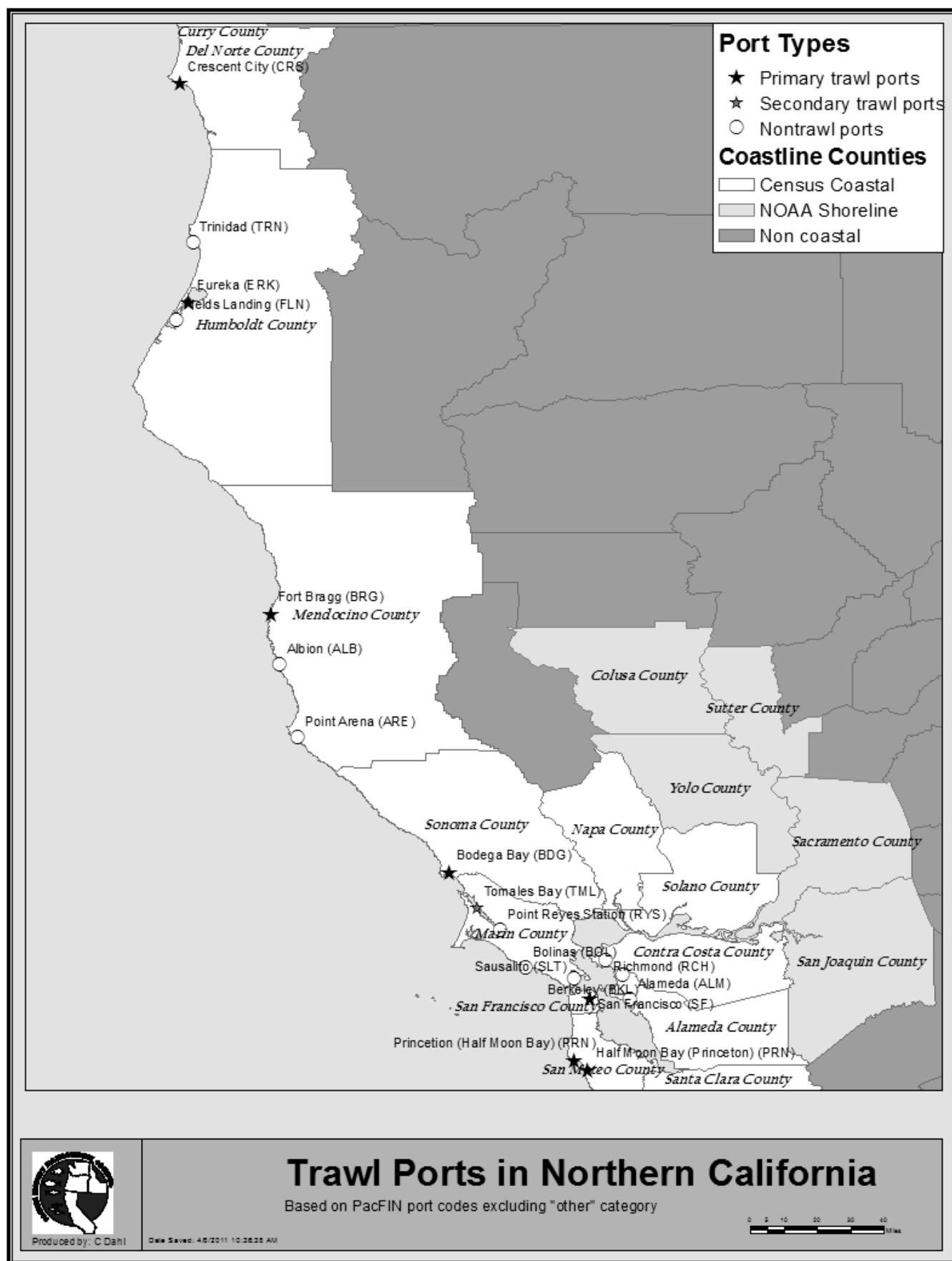
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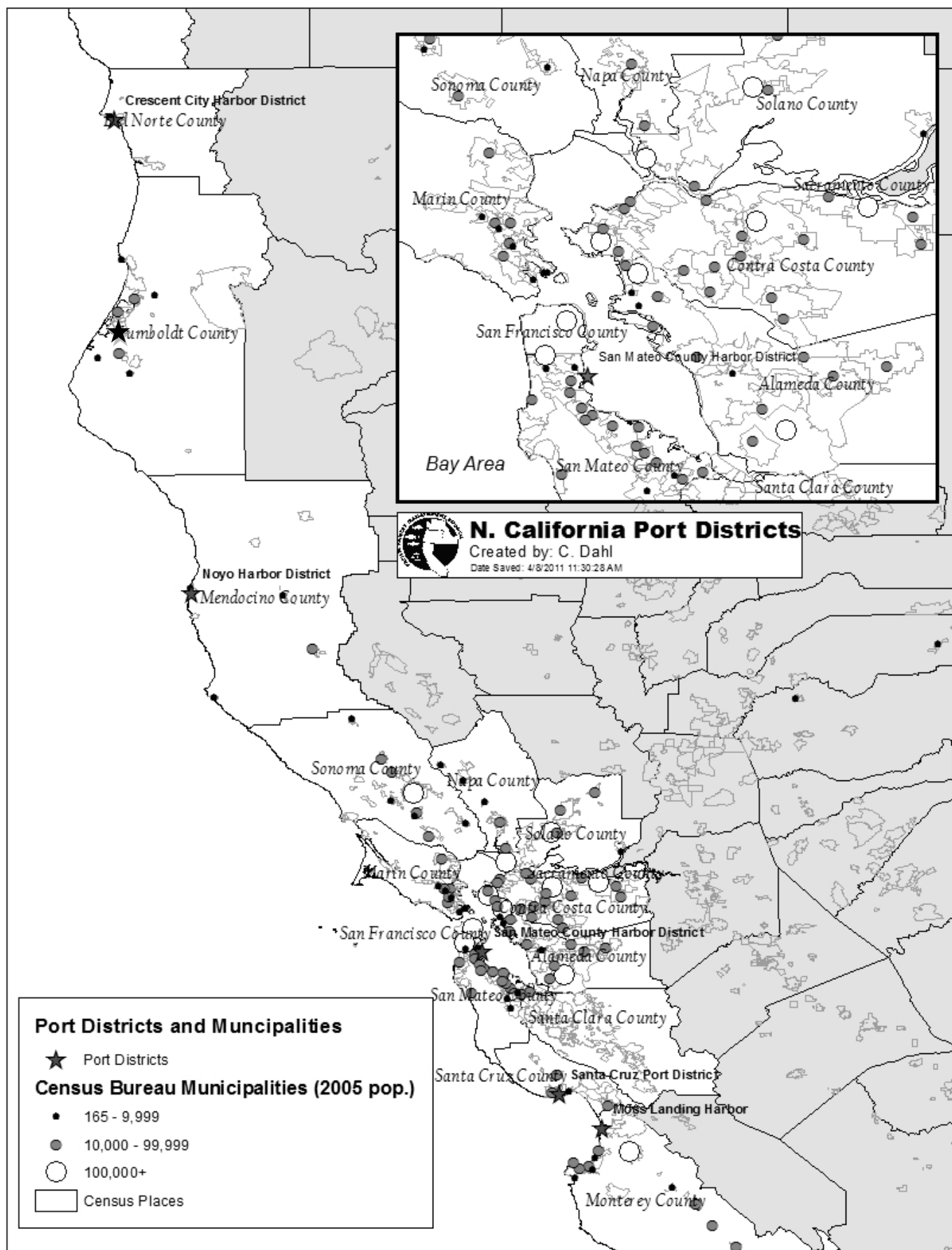
Trawl Ports in Oregon

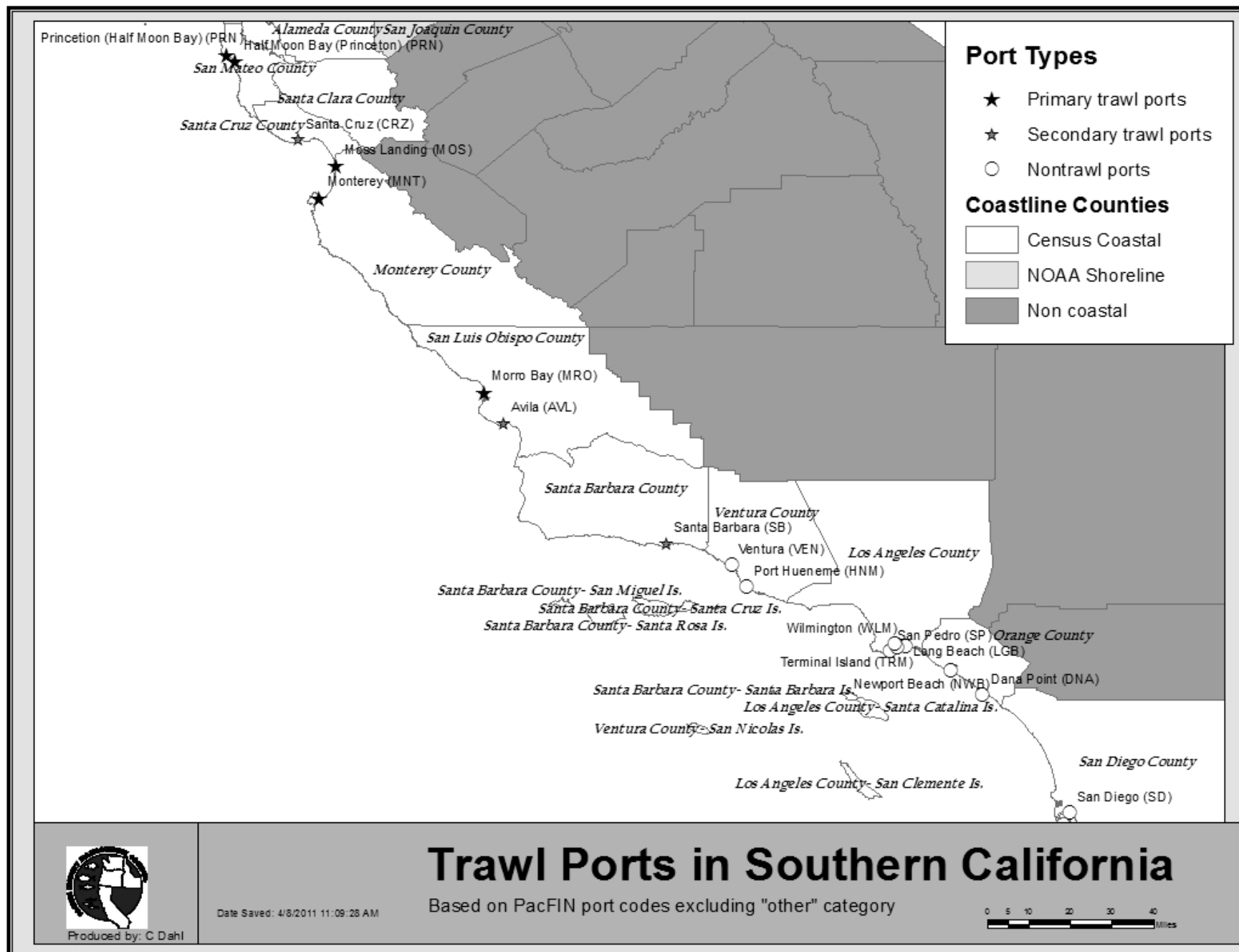
Based on PacFIN port codes

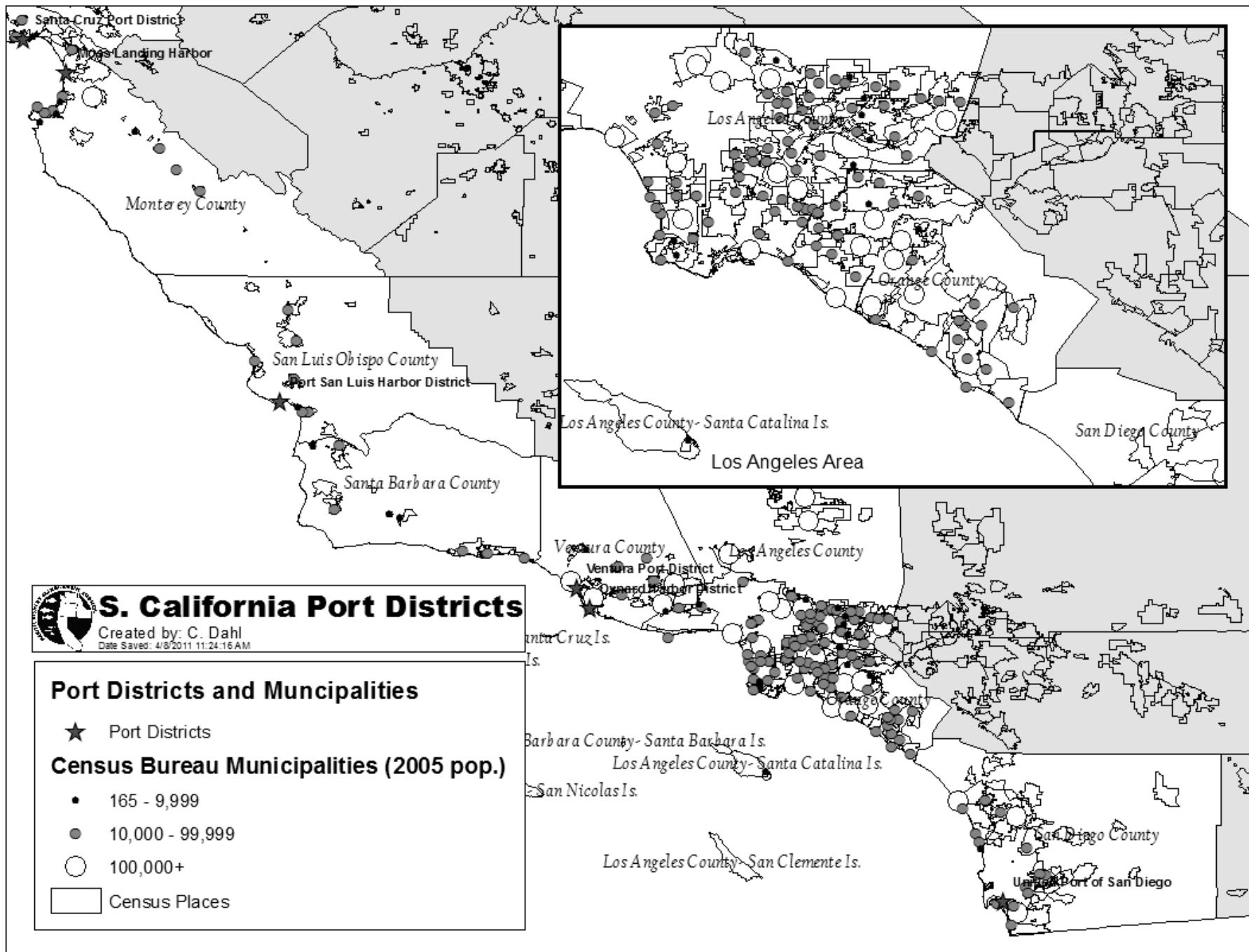
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Agenda Item I.6.a

Priority Trailing Actions Under Trawl
Rationalization and Intersector Allocation

Topics

- Cost Recovery
- Safe Harbors from Quota Share (QS) Control Rules
 - Community Fishing Associations (CFAs)
 - Risk Pools
 - Lenders
- Adaptive Management Program (AMP) Quota Pounds (QP) Pass-Through
- Amendment-21 (trawl/nontrawl) v. Amendment-6 (LE/OA) & set-asides

Council Action

Provide guidance as needed on:

- 1. Cost recovery**
- 2. Safe harbor from control rule for Community Fishing Associations**
- 3. Safe harbor from control rule for Risk Pools**
- 4. Safe harbor from control rule for Lenders**
- 5. Adaptive Management Program Quota Pounds Pass-Through**
- 6. Amendment 21 v. Amendment 6 and Set-Asides**

Presentations

- Cost Recovery - NMFS Presentation Under Agenda Item I.6.b
- Safe Harbors for CFAs
 - Presentation of analysis
- Other Issues
 - Briefly review alternatives and identify some issues

Community Fishing Associations

(Agenda Item I.6.a, Attachment 1)

- Alternative developed last Sept/Nov based on a framework provided in public comment and additional Council guidance.
- Now, Council is being asked to provide guidance on
 - Further development of options
 - Analysis that would be helpful for selection of PPA in June.
- Focus of the presentation on CFAs
 - Some initial analysis of the alternatives

WHY CFAs?

- Under trawl rationalization the LE trawl fleet is expected to consolidate and there is potential for a substantial redistribution of landings.
- Some ports will likely gain landings others likely lose.
- The CFA alternative is intended to allow “designated CFAs” to acquire QS in excess of control limits so that a greater portion of the local fishery and infrastructure can be sustained through direct control by community based organizations.

CFA Types (Definition)

- **General CFAs:** community organizations that participate in common with other program participants with no need for safe harbor from control limits.
- **Designated CFAs:** community organizations that meet certain criteria, thus qualify for safe harbor from control limits. The safe harbor exception may also come with special responsibilities.

Parts of the Analysis

(in Agenda Item I.6.a, Attachment 1)

- What are the **levels of control limits** that will apply to designated CFAs (analyzed in **Appendix A**)?
- What are the **criteria** an organization must meet to qualify as a Designated CFA and to sustain that status (discussed in **Appendix B** and below)?
 - Also includes program performance monitoring and review.

APPENDIX A: CFA Component Analysis, Special Privilege Exception

What level of control limits
should apply to CFAs?

Options for Level of Exception

Option 1a: increase control limit for CFAs 1.5 times (50%).

Option 1b: increase control limit for CFAs 2.0 times (100%).

Option 1c: increase control limit based on size of CFA.

Terms

- **QS control limit equivalent (control limit)** *means* the maximum pounds of groundfish by species or species group that may be controlled by a single entity under expected 2011 fishery OYs.
- **Fishery** *means* the shoreside LE non-whiting trawl groundfish fishery. This excludes shoreside landings by vessels using trawl gear that targeted species other than non-whiting groundfish; i.e., whiting and non-groundfish species (e.g., pink shrimp).

What We Did

In order to assess the level of QS exception needed to accommodate historical landings, we expressed landings for target species at primary ports during selected time periods in terms of “numbers of control limits.”

- Target species: Sablefish (northern and Conception area stocks), Dover sole, shortspine and longspine thornyheads, English sole and other flatfish.
- Aggregate groundfish: All groundfish FMP species except overfished rockfish species and “other groundfish.”
- Primary ports: Ports where at least one LE trawler landed most of its groundfish pounds in any year during **2008-2010**.
This excludes 13 ports that had fishery landings, but those landings were generally <100K lbs on average during 2004-2010.
- Landing periods used in the analysis:
 - (1) 1996-98 average landings (pre-RCA period), and
 - (2) all years during 2004-2010 (post-RCA implementation years).

Expected 2011 Control Limits

Species/Species Group/Area	mt	control limit	cap in mt and pounds	
			mts	lbs
Lingcod	1,858	0.025	46	102,404
Pacific Cod	1,134	0.12	136	300,002
Sablefish N of 36° N lat.	2,501	0.03	75	165,411
Sablefish S of 36° N lat.	531	0.1	53	117,064
Dover sole	22,235	0.026	578	1,274,501
English sole	18,654	0.05	933	2,056,230
PETRALE SOLE	871	0.03	26	57,606
Arrowtooth flounder	12,431	0.1	1,243	2,740,538
Starry Flounder	668	0.1	67	147,267
Other flatfish	4,193	0.1	419	924,389
PACIFIC OCEAN PERCH	107	0.04	4	9,436
WIDOW	235	0.051	12	26,422
Chilipepper S of 40°10' N lat.	1,475	0.1	148	325,179
Splitnose S of 40°10' N lat.	1,381	0.1	138	304,455
Yellowtail N of 40°10' N lat.	2,801	0.05	140	308,754
Shortspine thornyhead N of 34 27' N lat.	1,430	0.06	86	189,155
Shortspine Thornyhead S of 34 27' N lat.	50	0.06	3	6,614
Longspine thornyhead N of 34 27' N lat.	1,966	0.06	118	260,055
DARKBLOTCHED	240	0.045	11	23,810
Minor Shelf Rockfish N of 40°10' N lat.	431	0.05	22	47,509
Minor Shelf Rockfish S of 40°10' N lat.	86	0.09	8	17,064
Minor Slope Rockfish N of 40°10' N lat.	818	0.05	41	90,168
Minor Slope Rockfish S of 40°10' N lat.	377	0.06	23	49,868
Nonwhiting Groundfish Species (w/o overfished rockfish and POP)	75,891	0.027	2,049	4,517,351

Results

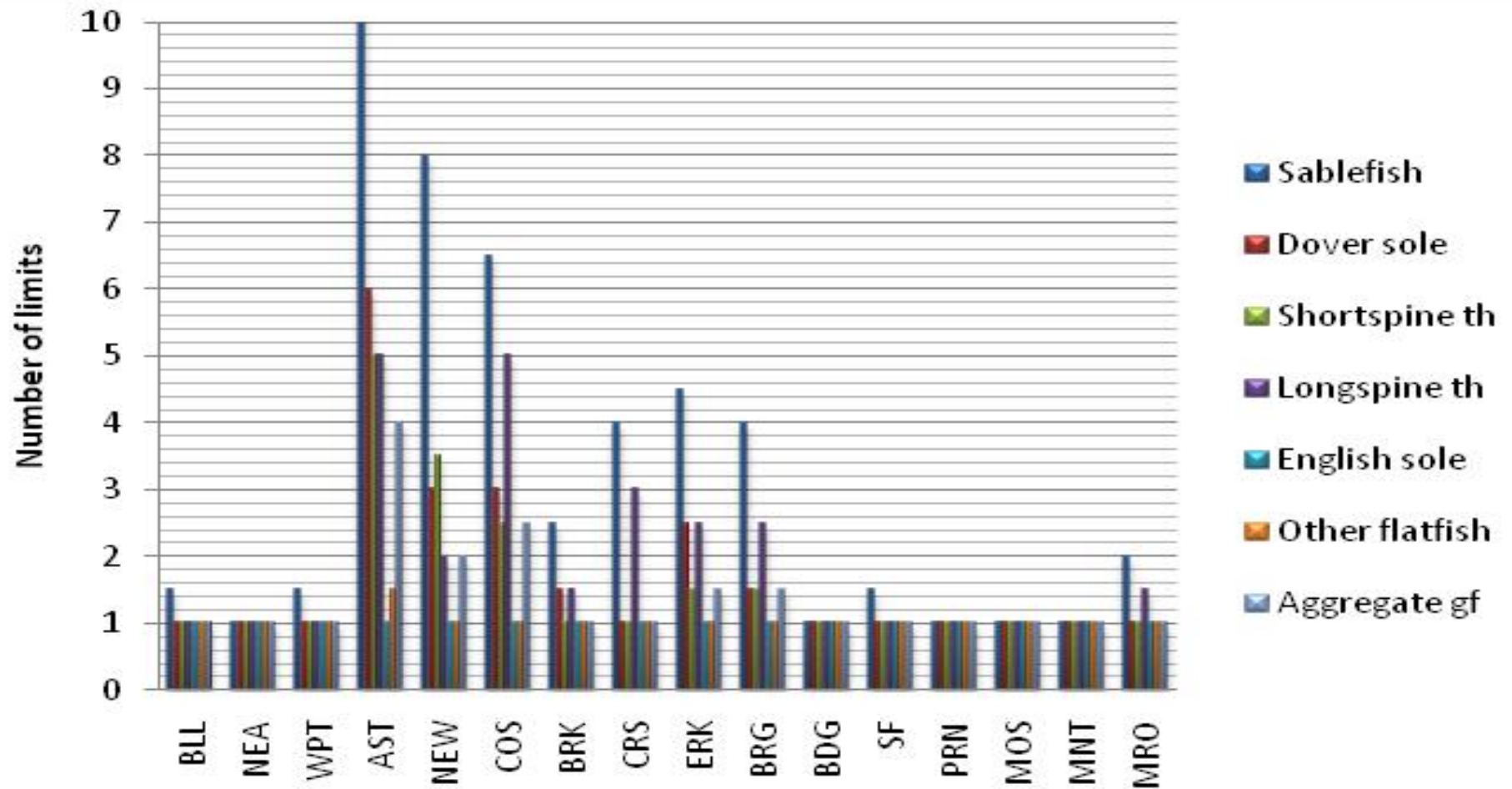


Fig. A-12. Maximum number of 2011 control limits landed in any year during 2004-2010 or an average during 1996-98 by species or species group and port, rounded to the nearest 0.5 limits but not less than 1 limit.

Conclusions

1. Several ports did not have landings for any of the species or species groups in the periods analyzed that exceeded one control limit, thus no exception to the control limit rules may be appropriate. These ports included Neah Bay, Bodega Bay, Princeton, Moss Landing and Monterey.
2. The ports of Astoria, Newport, Coos Bay and Fort Bragg had historic landings that exceeded the aggregate non-whiting control limit.
3. The ports of Bellingham, Westport, Astoria, Newport, Coos Bay, Brookings, Crescent City, Eureka, Fort Bragg, San Francisco, and Morro Bay had landings that exceeded one control limit depending on the species or species group. Sablefish landings at these other ports were in the range of 1.5-10.0 control limits (northern stock except Morro Bay).
4. Table 4-69 from Amendment 20 shows that most of the ports that might potentially benefit from a higher control limit tend to be those that are expected to have a comparative advantage in the trawl rationalization program (and may have no need for higher limits). These ports include **Astoria**, Newport, **Coos Bay**, Brookings, **Eureka** and Fort Bragg. The ones at a disadvantage include **Neah Bay**, Princeton, Moss Landing, and Morro Bay. **(Table A-14, page A-34 of Attachment 1)**

Questions asked by the Council Last November (1)

- Historic Participation and Dependence
 - Historic participation provided above
 - Dependence to be developed
- Ability to Support Captain and Crew
 - Existing limits designed to support two vessels full time.
 - Typical vessel operates with a captain and 2 crew
- Ability to Support Necessary Infrastructure
 - Very difficult to assess.
 - It appears that some ports may have viability at level of current control limits.

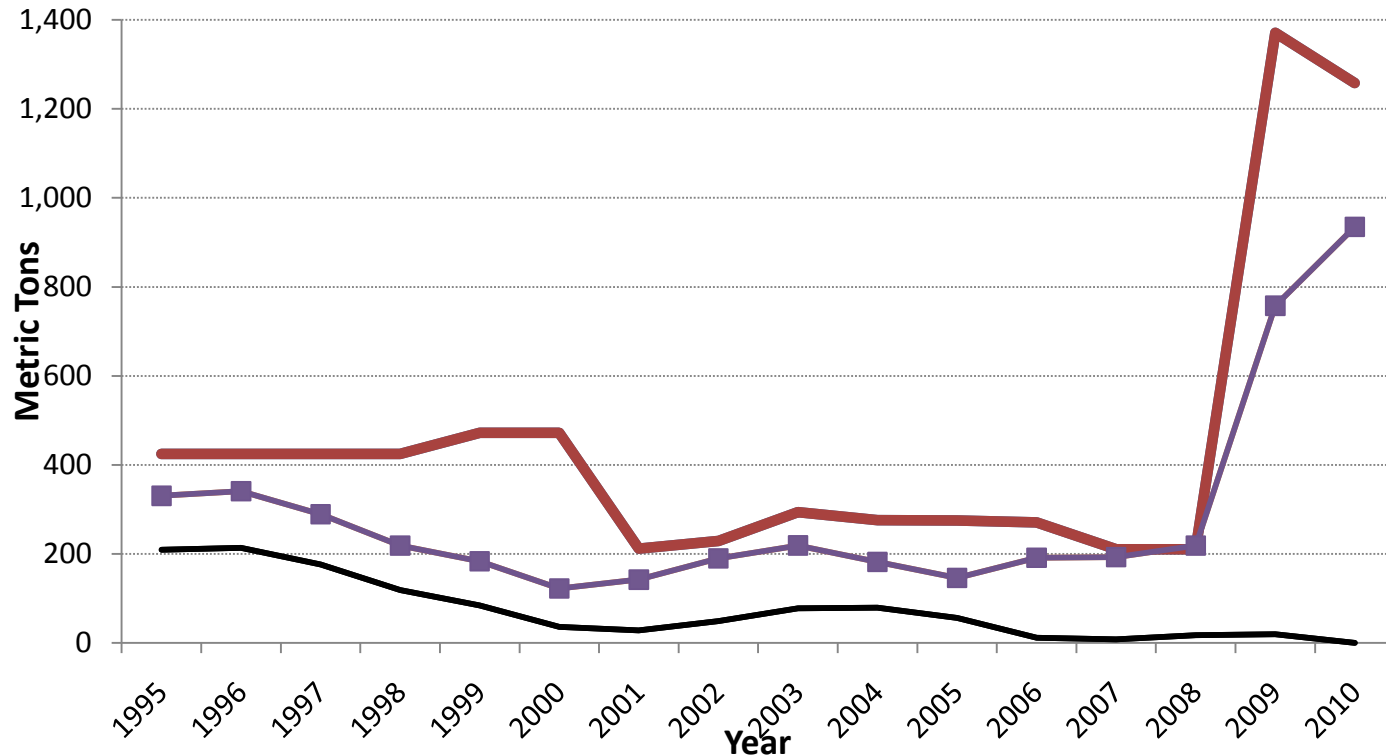
Questions asked by the Council Last November (2)

- Potential to Lose or Gain Based on Market Forces
 - From EIS. Clearly advantaged ports appear to be Astoria, Coos Bay, Eureka

(pg A-34 of Agenda Item I.6.a, Attachment 1)
- Ability to Use Community Based Quota to Attract Landings
 - Smaller port level of participation accommodated by existing aggregate nonwhiting limits.
 - Raising aggregate nonwhiting levels would accommodate larger port participation levels.

Southern Sablefish

(Agenda Item I.6.a. Supplemental Attachment 6)

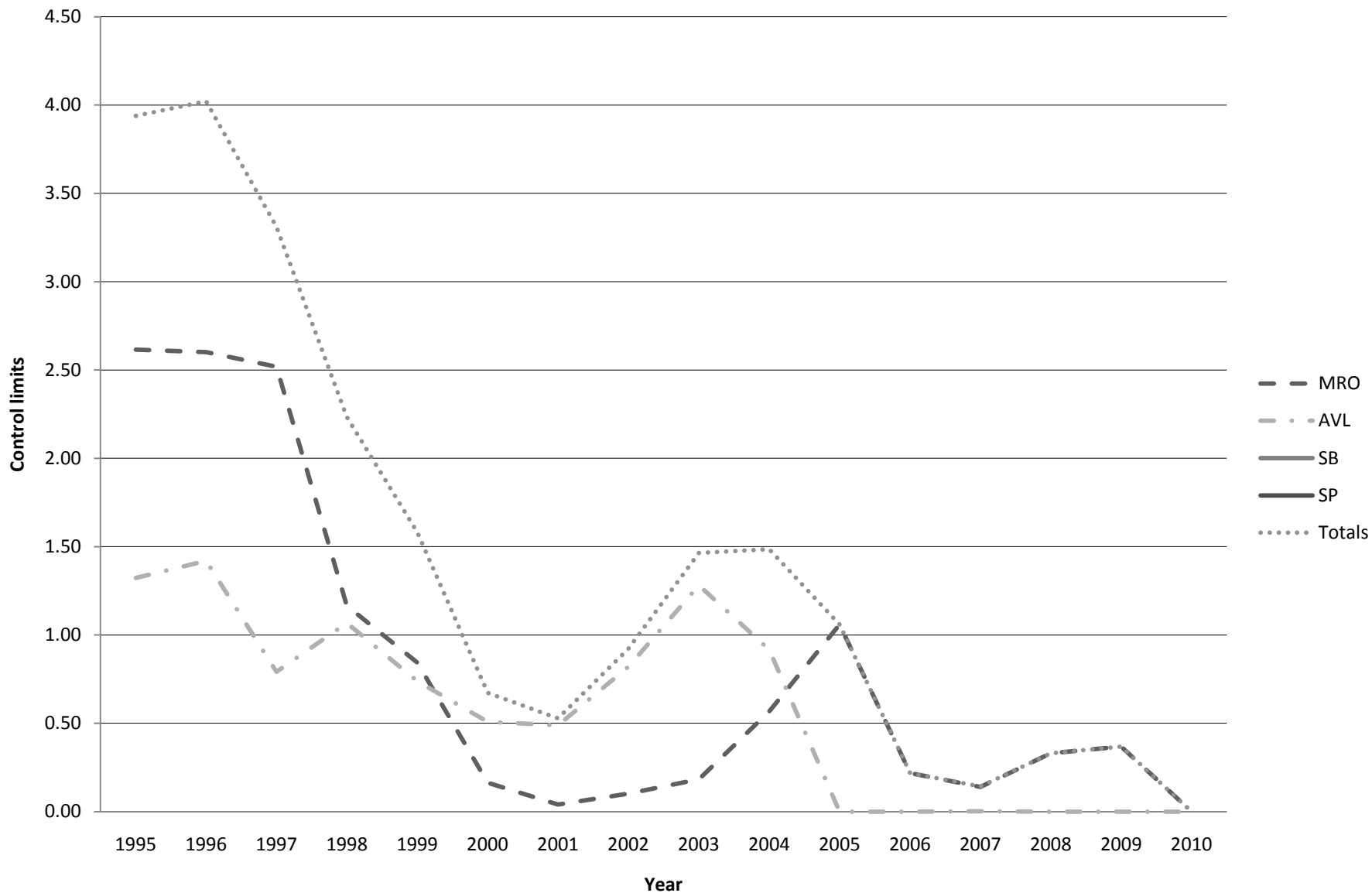


Top Line = OY

Boxed Line = Landings of all sectors

Bottom Line = trawl landings

Number of Southern Sablefish Control Limits, by Port



Work to be Done

1. Add back in non-whiting groundfish landings from shoreside directed whiting trips. This will slightly increase numbers of control limits required to accommodate past landings at a port, depending on species (e.g., northern sablefish about 2%).
2. Increase the precision level in the hypothetical aggregate groundfish calculations so port poundage accounts are in closer agreement.
3. Produce a table and figure showing jurisdictional boundaries for coastal ports.
4. Other analyses the Council would like to see.

Questions?

APPENDIX B: CFA Component Analysis, Special Privilege Exception

- Criteria for Qualification, Approval and Renewal of CFA
 - Also includes provisions for ongoing program monitoring

Organization of the Alternative – Table 2-2 (Agenda Item I.6.a, Attachment 1, Page 9)

1.0 CFA Special Privileges

2.0 Agreements and Activities

2.1 Organizational Agreements

2.2 Harvesting Agreements

3.0 CFA Reporting Requirements

4.0 CFA Approval and Renewal

Risk Pools Alternatives

(Agenda Item 1.6.a, Attachment 2)

- Amendment 20 – Council intent that control limits should be interpreted to allow risk pools to function so long as they do not become control.
- November 2010 – Decided to proceed with considering safe harbors for risk pools.
 - Council provided very general guidance on topics to be covered in options.
 - Anticipated that dialog about developing risk pools might clarify situation.

CFA/Risk Pool Safe Harbor Differences

CFAs	Risk Pools
Exception for all species	Exception for overfished species & halibut
A cap would still apply	Proposal is for no cap
A central entity (CFA) would hold the QS (hence the need for an exception)	No central entity would hold the QS. Multiyear agreement committing the annually issued QP from particular QS triggers concern about need for an exception.

Risk Pool Alternative Development

- Staff used detailed alternative provided in public comment to develop alternative.
- Added a definition of risk pools
 - Correction: strike “entity” and replace with “agreement”
- Added options under enforcement and monitoring
 - Option a (“existing”). No need for review and acceptance of agreements. Agreements provided on request.
 - Option b. Agency review and acceptance required. Explore possibility of partial confidentiality waiver as a condition for forming risk pool (to facilitate reporting and monitoring of activity in Council arena)
 - Option c. Council approval of risk pools on a case by case basis.

Lender Safe Harbor

(Agenda Item I.6.a, Attachment 3)

- Proposed initial allocation rule included control rule that had no exception for lenders using QS as collateral.
- In response to public comment, NMFS added exceptions in final rule (underlining in Attachment 3)
- Concerns:
 - Who is eligible for exceptions?
 - “banks and other financial institutions” recognized as such under state and Federal laws.
 - Scope of activities to which exception applies
 - Including some uncertainty about interpreting overlap between excepted and nonexcepted activities.
 - C and G; D and E

Straw Dog Option

(Attachment 3, pg 2)

- Approach
 - Identify the specific activities for which exception is to be applied.
 - Ask that the definition of control be reorganized so that exception is clearly provided for those activities and no others.
- Specific activities excepted in straw dog option
 - QS transfers (not QP)
- Need for a broader exception should be explored:
 - e.g. banks and financial institutions may want to be able to have direct control over QP if they take control of a business in default and desire to maintain operations until a new owner is found.

Adaptive Management Program QP Pass-Through (Agenda Item I.6.a, Attachment 4)

- Automatic pass through will end after 2012
- Alternatives
 - Continue pass-through for 2013
 - Continue pass-through for 2013 and until other criteria are developed
 - In either case, the exception only applies if other criteria are not developed
- Preliminary indications from NMFS are that
 - Minimal analysis may be required for the change
 - It may qualify for a “categorical exclusion” from NEPA
 - The issue might be covered in the same rule making with the other PIE issues (Agenda Item I.7).

A6 v. A21 and Set-Asides (Agenda Item I.6.a, Attachment 5)

- PPA Selected in March
- FMP and regulatory language presented for review in Attachment 5
- FPA scheduled for June

Council Action

Provide guidance as needed on:

- 5. Adaptive Management Program Quota Pounds Pass-Through**
- 6. Amendment 21 v. Amendment 6 and Set-Asides**
 - 1. Cost recovery**
 - 4. Safe harbor from control rule for Lenders**
 - 2. Safe harbor from control rule for Community Fishing Associations**
 - 3. Safe harbor from control rule for Risk Pools**

Developing the Trawl Rationalization Cost Recovery Program (TRat CRP)



Ariel Jacobs
Sustainable Fisheries Division
National Marine Fisheries Service, Northwest Region
NOAA, DOC

Cost Recovery in the Magnuson-Stevens Fishery Conservation and Management Act (MSA)

- 16 U.S.C. 1853a MSA § 303A

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

Develop a methodology and the means to identify and assess the management, data collection and analysis, and enforcement programs that are directly related to and in support of the program; and
provide, under section 304(d)(2), for a program of fees paid by limited access privilege holders that will cover the costs of management, data collection and analysis, and enforcement activities:

- 304(d)(2):

- Secretary of Commerce is authorized to collect a fee to recover the actual costs directly related to the management, data collection, and enforcement of any limited access privilege program (LAPP).
- Such fees may not exceed 3% of the ex-vessel value of the fish harvested under the LAPP.
- Shall be collected:
 - At time of landing
 - Filing of landing report
 - Sale of fish during the fishing season; or
 - In the last quarter of the calendar year in which the fish is harvested
- Fees collected are
 - in addition to any other fees charged under the MSA; and
 - deposited in the Limited Access System Administration Fund (LASAF)
 - Available, without appropriation or fiscal year limitation, only to the Secretary for the purpose of administering and implementing the MSA in the fishery in which the fees were collected

The MSA provides a framework for developing the CRP, and we have identified several key questions that must be discussed:

- 1. Could one CRP applicable to both the trawl and sablefish fisheries be created for implementation in 2012?**
- 2. How should fee collection be structured? For each sector:**
 - a. Who is responsible for paying the fee?**
 - b. Who is responsible for collecting the fee?**
 - c. How often is the fee assessed and collected?**
 - d. How is the fee assessed?**
 - e. How is fee collection enforced?**
- 3. How are costs associated with running the catch share program identified and calculated?**
- 4. How is the value of the fishery calculated?**
- 5. Where do the collected fees go, how are they reallocated, and to whom are they reallocated?**
- 6. Can collection/ reallocation of fees be done in coordination with the states?**

Other regions' CRPs provide us with examples or options for how we may proceed.

1) Could one CRP applicable to both the trawl and sablefish fisheries be created for implementation in 2012?

AKRO's CRP	SERO's CRP	NWRO Initial Thoughts
N/A: Each CRP was created for a specific fishery.	N/A: Each CRP was created for a specific fishery.	<p>NO, focus on creating TRat CRP.</p> <p>Keeping the two programs separate makes sense because the two programs are quite different. In addition, combining the two could create a notice and comment issue because the CRP is an agenda item under trailing amendments.</p> <p>Plan sablefish CRP for 2013.</p>

2.1) How should fee collection be structured for the Shorebased IFQ sector?

- | | |
|---|---|
| a. Who is responsible for paying the fee? | c. How often is the fee assessed and collected? |
| b. Who is responsible for collecting the fee? | d. How is the fee assessed? |
| | e. How is fee collection enforced? |

AKRO's CRP	SERO's CRP	NWRO Initial Thoughts
<p>a/b. Halibut and sablefish: harvesters are responsible for paying and submitting fees directly to NMFS. Harvesters (crab and rockfish) pay fees to the processors, who are then responsible for submission to NMFS.</p> <p>c. Annually, at end of year.</p> <p>c/d. Crab: Registered Crab Receiver (RCR) permit holder collects fee from allocation holder who lands the crab, and all who deliver crab to RCR permit holder. RCR permit holder submits payment to NMFS by July 31 in year following crab fishing in which landings were made.</p> <p>e. If fee is not paid, quota for coming year are not issued.</p>	<p>a/b. IFQ account holder is responsible for paying the fees to the dealer/processor and the dealer is responsible for submitting fees to NMFS.</p> <p>c. Quarterly.</p> <p>d. Fees are calculated at time of sale to registered IFQ dealer/ processor.</p> <p>e. 30 days after failure to pay, IFQ account is suspended, and after 90 days, RA sends account to collections.</p>	<p>a/b. To charge 1st receivers on behalf of QS holders.</p> <p>c. Annually, (bill at end of year, the MSA requires collecting the fee in the last quarter of the calendar year in which the fish is harvested. There is also an option to collect at the time of landing, filing of a report, or sale.)</p> <p>d. option 1: Collect fees based on vessel landings associated with QS, based on initial transfers of QP to vessel accounts (QS holders should be held responsible for QS fee even if unused, to incentivize use of QS). At end of year, collect fee from dealers. Ex-vessel value is the value of landings as reported on fish tickets, record what % of total ex-vessel value is sable, canary, etc.</p> <p>*d. option 2: Vessel account holder is responsible for paying the fees to the dealer/processor and the dealer is responsible for submitting fees to NMFS.</p> <p>e. Link fee collection to permitting/ online vessel/ QS accounts, embed permit fees in the CRP.</p> <p>Is freezing accounts an option, withholding quota issuance for upcoming year? Do we need to address suspension of accounts in regs?</p>

* There is not an easy or obvious way of assessing the fee such that the privilege holder is held directly accountable for paying the fee without creating excessive administrative costs. There is a tradeoff between ease of use for industry and cost for NMFS, although increased NMFS costs could result in an increased fee for industry. (i.e. It is potentially less work for NMFS to collect annually from the 1st receiver because it streamlines payment, and improves ease of collection of fees. This method may not be easier for 1st receivers.)*

2.2) How should fee collection be structured for catcher-processor and mothership sectors?

- | | |
|---|---|
| a. Who is responsible for paying the fee? | c. How often is the fee assessed and collected? |
| b. Who is responsible for collecting the fee? | d. How is the fee assessed? |
| | e. How is fee collection enforced? |

AKRO's CRP	SERO's CRP	NWRO Initial Thoughts
<p>a/b. Halibut and sablefish: harvesters are responsible for paying and submitting fees directly to NMFS. Harvesters (crab and rockfish) pay fees to the processors, who are then responsible for submission to NMFS.</p> <p>c. Annually, at end of year.</p> <p>c/d. Crab: Registered Crab Receiver (RCR) permit holder collects fee from allocation holder who lands the crab, and all who deliver crab to RCR permit holder. RCR permit holder submits payment to NMFS by July 31 in year following crab fishing in which landings were made.</p> <p>e. If fee is not paid, quota for coming year are not issued.</p>	<p>a/b. IFQ account holder is responsible for paying the fees to the dealer/processor and the dealer is responsible for submitting fees to NMFS.</p> <p>c. Quarterly.</p> <p>d. Fees are calculated at time of sale to registered IFQ dealer/ processor.</p> <p>e. 30 days after failure to pay, IFQ account is suspended, and after 90 days, RA sends account to collections.</p>	<p>a/b. For both sectors the Coop is responsible for paying the fee directly to NMFS.</p> <p>c. Annually.</p> <p>d. For the whiting coop, exvessel landings for harvest by coop would be based on shorebased IFQ whiting value.</p> <p>e. Link fee collection to permitting.</p>

3) How are costs associated with running the catch share program identified and calculated?

AKRO's CRP	SERO's CRP	NWRO Initial Thoughts
<p>All employee time sheets are coded (in not less than 15 minute increments) to identify any time spent on halibut/sablefish IFQ program or Bering Sea/Aleutian Islands (BSAI) crab rationalization program management. Alaska Region OMI uses this data to determine recoverable management costs for the Alaska region.</p>	<p>SE uses a similar (but less complicated) invoice system of "task codes" for tracking time spent on IFQ-related work.</p>	<p>The council is responsible for working with NMFS to identify costs directly related to the management and enforcement associated with the program.</p> <p>The main recoverable costs associated with the program are due to changes in staffing.</p> <p>The FEIS states that changes in staffing related to the program will result in a cost of \$8 million annually, during the early years of the program.</p> <p>NMFS will brief the council on updated numbers.</p> <p>We must address how we treat the 3 sectors (Shorebased IFQ, MS coop, and CP coop) when calculating the fee- Is this 1, 2, or 3 LAPPs?</p>

4) How is the value of the fishery calculated?

AKRO's CRP	SERO's CRP	NWRO Initial Thoughts
Based on value of ex-vessel landings	Based on value of ex-vessel landings SERO moved away from standardized pricing because of different local markets in the gulf.	Ex-vessel landings or standardized pricing? Base on efish tickets, make associated field for posting price at time of sale mandatory.

5) Where do the collected fees go, how are they reallocated, and to whom are they reallocated?

AKRO's CRP

SERO's CRP

NWRO Initial Thoughts

The MSA [section 304(d)(2)(A)(i)] is clear in how it addresses these questions and leaves no flexibility:

a. Fees are deposited in the Limited Access System Administration Fund (LASAF)

b/c. Fees are available, without appropriation or fiscal year limitation, only to the Secretary for the purpose of administering and implementing the MSA in the fishery in which the fees were collected

6) Can collection/ reallocation of fees be done in coordination with the states?

AKRO's CRP	SERO's CRP	NWRO Initial Thoughts
Yes, currently a portion of cost recovery fees from the BSAI crab rationalization program are collected and reallocated to the State of Alaska to account for the states' actual costs directly related to the program.	No, currently no cost recovery funds are reallocated to the states in the Southeast region.	NMFS is still evaluating the appropriate mechanism(s) for addressing state costs.

ENFORCEMENT CONSULTANTS REPORT ON
PRIORITY TRAILING ACTIONS UNDER TRAWL RATIONALIZATION AND
INTERSECTOR ALLOCATION

The Enforcement Consultants (EC) has reviewed Agenda Item I.6.a, Safe Harbor from Control Rule: Risk Pool Options, Attachment 2, April 2011, and has the following comments.

Based on the options presented for Enforcement and Monitoring, to ensure accountability, transparency and the effective enforcement of control limits, the EC supports 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. 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 quota shares (QS) and quota pounds (QP) controlled and harvested under the terms of risk pool agreement (but not the ex-vessel value of such product), regardless of confidentiality protections that might otherwise restrict the release of such information.*

The EC recognizes that the compliance standards applicable to risk pools, safe harbors, and community fishing associations require considerable more discussion between the Council and industry. In developing compliance standards, it is important to outline requirements for compliance with the underlying control rules, as it is easier to enforce applicable standards than to enforce the exemptions from that standard(s). Clear standards on the definition of control and on control limits would improve enforceability of these requirements. The EC is concerned that a focus on the development of exemptions from compliance standards, which may exempt entities from applicable control limit standards, will be more difficult to enforce than applicable control limit standards themselves.

PFCM
04/12/11

GROUND FISH ADVISORY SUBPANEL REPORT ON
PRIORITY TRAILING ACTIONS UNDER TRAWL RATIONALIZATION
AND INTERSECTOR ALLOCATION

The Groundfish Advisory Subpanel (GAP) considered the priority trailing actions under trawl rationalization: cost recovery; safe harbors from control rules for community fishing associations (CFAs), risk pools and lenders; adaptive management program quota pass-through; and the Amendment 21/Amendment 6 fix.

Cost recovery

Ariel Jacobs provided the GAP with the first look at the proposed cost recovery program (CRP). Under this item, the GAP understands that no fees will be collected for 2011 since the program was not in place when the Amendment 20 (was implemented).

The GAP has provided several recommendations in past reports. In summary:

- The Council should play a strong and active role in the development of the cost recovery program.
- Cost recovery should be limited to the additional incremental costs of administering the trawl rationalization program. The costs to be recovered are only those incremental costs that would not have been incurred “but for” the new program. Further, the comparison is between the costs of managing the status quo regime vs. the new program. Therefore, “planning and development costs of [the new program] are not cost recoverable.” (NOAA Technical Document: The Design and Use of Limited Access Privilege Programs, edited by Lee G. Anderson and Mark C. Holliday).
- One existing cost that needs to be taken into account is the amount required to provide for current observer coverage rates in the fleet. Costs should be reduced from each sector’s incremental costs accordingly.
- NMFS should provide a sector-by-sector breakdown of the costs of current management as well as the costs for each sector under Amendment 20. This will make cost recovery calculations and program development more transparent.
- Finally, the GAP believes each sector should pay for only that portion of the increased costs attributable to that sector.

The Council has recognized the need for a cost recovery analysis of incremental increases in cost on a sector-by-sector basis and announced after its November 2010 meeting: “One of the Council’s primary concerns is that the cost accounting method be fully transparent to industry members that will be asked to pay the fees. The Council intends to move towards a fee for each trawl sector based on the catch share management costs of that sector.”

Accordingly, to assist the Council in development of its cost recovery program, the GAP recommends the Council request NMFS identify specific activities and the actual costs directly related to (a) management, (b) data collection and analysis, and (c) enforcement. This should be done on a “with and without” basis in order to allow identification of the incremental change in such costs under the pre-existing management regime compared to the new regime post-implementation. Anticipated changes in such activities should be quantitatively described where possible. Examples of specific activities might include observer coverage, administrative systems to manage quota catch accounting, permit issuance, transfers of quota (both permanent and annual), and new data collection and analysis requirements. Finally, the analysis should be done for each sector separately, i.e. mothership (MS), catcher-processor (CP) and shoreside.

During discussion about fee collection structure, the GAP identified a modified Alternative D, option 2, from Page 2 of Agenda Item I.6.b, “Supplemental NMFS Report on cost Recovery.” Processors would collect the fee based on the ex-vessel values as reported in amended e-tickets, similar to what is already done with buyback fees, and submit those fees to NMFS. However, instead of doing this on an annual basis, it would be done monthly – again, as is done with buyback fees.

To facilitate the transition, it would be advantageous for NMFS and processors to get together to discuss further development of the fee collection and remittal.

The GAP also dismissed the idea of quota share holders being held responsible for paying fees even if the quota was left unused. GAP members felt this is unfair and potentially unlawful. The law is clear on this issue: Section 304(d)(2)(B) of the Magnuson-Stevens Act specifically says fees will be established based on ex-vessel value:

*“(B) Such fee shall not exceed 3 percent of the **ex-vessel value of fish harvested under any such program**, and shall be collected at either the time of the landing, filing of a landing report, or sale of such fish during a fishing season or in the last quarter of the calendar year in which the fish is harvested (emphasis added).”*

Limited market availability as well as constraining species would suggest that quota pounds (QPs) will be left unharvested and it would be punitive to levy a tax that has not achieved any revenue.

Safe harbors for CFAs

The GAP has stated in September and November 2010 and in March 2011, that it feels Community Fishing Associations can form under existing rules and no exceptions to the control rules are necessary. There is no need for further Council, GAP and staff time on this. CFAs already exist and are working within the confines of the control rules.

One of the advantages of the existing CFAs is the sharing of knowledge: where bycatch hotspots exist, gear modifications that avoid bycatch, etc. This obviously does not require control rule exceptions.

GAP members also realize that exceptions to the control rule will create an inequity: If a CFA has access to more fish through an exception, that fish will have to come from somewhere else. This runs contrary to what the GAP and Council carefully constructed when they worked on the control rules in the first place.

Safe harbors for risk pools

The GAP heard a presentation from Merrick Burden, Joe Sullivan and others about a specific example of three fishermen's collective marketing associations forming a risk pool (the same presentation was made to the Council). GAP members also consulted Agenda Item I.6.a Attachment 2, "Safe Harbor from Control Rule: Risk Pool Options," in forming our comments.

In prefacing this item, the GAP would like to note that modifying the control rule is controversial. Some GAP members don't see the need. Others see the need for further investigation. The GAP spent considerable time on this issue.

An overarching belief of the GAP was that costs attributed to managing these risk pools should be borne by the risk pools themselves.

One option suggested could be an exemption from the control rule for a multi-year risk pool agreement. That would require NMFS and the Council to modify the control rule definition.

Another option would be to use the model similar to the approvals granted for catch monitoring plans, as suggested by Dayna Matthews from NMFS Enforcement. Using that model, a risk pool would identify the agreements with its members, its structure and related policies, then bring that information to NMFS Enforcement and NOAA general counsel for approval. This model would ensure transparency and obtain consent prior to implementation.

Furthermore, with respect to one-year timeline for the expiration of QP, as has been brought up in Burden and Sullivan's presentation, the GAP requests explicit clarification from NOAA general counsel about what "control" is. It's our understanding NOAA general counsel policy has been to restrict control to a calendar year period. As outlined explicitly in the control rules:

1. Does this longer-than-one-year QP deficit implicate the control rule? and;
2. If it doesn't, what does that mean for the control rule in a broader sense?

With respect to the options identified in Attachment 2, the GAP went through the document section by section:

Risk pool definition

- The definition is fine as corrected by Council staff.

Accumulation limits

- These could be similar to what is defined in Attachment 3 under Safe Harbors for financial institutions and banks
- The GAP recognizes that accumulation limits are always a stumbling block; this really is the heart of the matter and this section requires additional analysis by Council staff and NMFS.
- The first bullet point in the Agenda Item I.6, attachment 3 should be revised to read, "Risk pool agreements *and Fishermen's Collective Marketing Associations*

party to that agreement which govern use of quota ...,” to accommodate risk pools such as the one Sullivan and Burden have proposed.

- The GAP suggests including analysis of the narrowly-defined exceptions as well, instead of leaving the exception open-ended, as it is in the first bullet point on the attachment.

Eligible members

- GAP members were concerned that membership in risk pool may inadvertently leave out vessel operators because membership is dependent on quota share ownership. Similarly, if there is a contract between the risk pool and the QS owner, is the vessel operator considered a representative? What if the QS owner leases his QS to another person? Who would qualify as a member?
- Some members of the GAP and the audience also were concerned the language is not specific enough: A member must have quota to belong and that it is tied to a trawl vessel. This might help retain trawl fishing on trawl vessels.

Agents

- The concepts in both bullet points in the attachment are appropriate. It should be left up to risk pools how they choose to be internally managed.

Duration

- Like the Accumulation Limits, this is part of the heart of the matter when it comes to addressing issues such as the ones raised by Sullivan and Burden. The one-year mark for the expiration of risk pools is arbitrary and only matches the quota pound expiration date, whereas there is no expiration of quota shares. Burden and Sullivan indicated there may be a control question arise should the risk pool as a whole fish into deficit and be unable to cure that deficit in the open market. The pool would then have to require individual pool members to satisfy the deficit in the following year from their individual QP accounts. This requirement may violate the control rules.
- However, since quota pounds expire on Dec. 31, the fisherman would have to use quota share – because it would reach beyond one year – and the associated quota pounds to cover the deficit. General interpretations of current regulations seem to be that this would be a violation of the control rules. Consideration of multi-year agreements should be analyzed.
- Some members of the GAP saw no reason to extend the QP agreements beyond one year since no problem has been identified at this point.
- Another option that could be analyzed is a 13-month duration. This would allow fishermen to cover any deficit in the first month of the following year. This may be an interim solution, the analysis of which may lead to further discussion and ideas as a solution to the duration issue.

Enforcement and monitoring

- The goals and objectives of a risk pool are the same as the council's; an approval process is not necessary. At the same time, transparency needs to be provided so the agency can take action if needed. This only applies to risk pools operating in excess of the control rules.
- The GAP believes consideration should be given to control caps within pools and maximum caps for pools. The GAP also believes transparency and oversight will be critical if this moves forward.
- As a compromise, Option A and B could be combined. Use Option A and add the following section from Option B: "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 ex-vessel value of such product), regardless of confidentiality protections that might otherwise restrict the release of such information."
- Option C would be too restrictive and take up too much council time.
- All of these recommendations only apply to pools potentially formed in the future under these proposed options. This is not intended to modify what is currently allowed.

Limited Scope of Agreement

- If risk pools move forward, they should be as narrowly tailored as possible, specifically for OFS and halibut, as is outlined in this section of the attachment.

Risk Pool Agreement

- This bullet point in the attachment is fine.

In addition to these sections outlined in the Council document for this agenda item, a request to analyze the use of a holding account – similar to a vessel account – was requested. A holding account for risk pools would combine the total of members' overfished species and halibut IBQ. Individual members could draw from that account to cover deficits as fishing occurred.

Safe harbors for lenders

The GAP stated in prior meetings that this is a primary concern and needs to be fixed. The major issue is that exceptions to the control rule for lenders are used so banks and financial institutions are comfortable with lending money to the fishing industry using quota share as collateral but that the exceptions do not lead to abuse of the system.

With reference to Agenda item I.6.a, Attachment 2, "Safe Harbor from Control Rule: Lender Options," the GAP recognized that NMFS has been relatively silent on this issue but that Council staff has put together options that would appear to take care of the problem at this point. Adding language to the regulations as suggested in this attachment and the Straw Dog Alternative would be sufficient until the Council and NMFS can provide additional direction.

The essence of the Straw Dog alternative is that lending institutions can *only* transfer QS it holds as collateral in excess of control limits and that all associated QP will be distributed to the borrower except under certain circumstances. This kind of option is necessary to afford some protection for banks and lending institutions.

Further GAP discussion suggested that NMFS work with lenders to develop a system that works. NMFS needs to find a way to register the lender and their records with the quota share that is being used as collateral.

One short-term fix would be to have site within NMFS that would alert a lender if quota share is going to be transferred. This already has been established in Alaska through the Restricted Access Management (RAM) program. According to its website:

“... (RAM) is responsible for managing Alaska Region permit programs, including those that limit access to the Federally-managed fisheries of the North Pacific. RAM responsibilities include: providing program information to the public, determining eligibility and issuing permits, processing transfers, collecting landing fees and related activities. RAM also prepares and distributes reports on landings in the Pacific halibut and sablefish Individual Fishing Quota (IFQ) program and halibut landings in the Community Development Quota (CDQ) program; and on the BSAI Crab Rationalization Program.”

A long-term fix – one that would cut across all catch shares programs across the country – that would also work with the West Coast program may be a central registry, as was mandated in section 305(h) of the Magnuson-Stevens Act. Though the MSA was reauthorized and there was a lot of work done early on to establish the central registry, it was never completed. This would facilitate loans and commerce and increase the efficiency of rationalization programs across all councils.

Adaptive Management Program quota pounds pass-through

The GAP identified Alternative 2 of Agenda Item i.6.a Attachment 4, “Adaptive Management Program quota pounds pass-through” as the preferred alternative.

This would allow for continued pass-through of QP through 2013 if no other procedures for AMP QP are developed. The GAP felt 2011 and 2012 would be “learning years” and provide the opportunity to develop programs to use those pounds in subsequent years if a need is evident. There is no current need demonstrated for which the council or GAP should spend their time on development of a program when more urgent trailing actions should be considered to ensure the TIQ program works effectively.

Amendment 21/Amendment 6 fix

The GAP supports the Amendment 21 vs. Amendment 6 preliminary preferred alternative specified at the March 2011 meeting. In addition to our previous comments about the importance of implementing the Amendment 21 allocations, we urge the Council and NMFS to remedy the inadvertent removal of regulatory authority to re-apportion tribal whiting set-aside amounts to the non-tribal whiting fishery sectors. Without this fix, there is a high likelihood that whiting harvest will be foregone, causing harm to the non-tribal whiting fishery sectors and contravening National Standard 1.

The GAP also reiterates its March 2011 request that the Council retain some flexibility in redistributing set-asides through inseason management. At the March 2011 meeting, following a GMT recommendation (Agenda Item H.5.b, Supplemental GMT Report, March 2011), the Council requested analysis of including “flexibility in off the top deductions, specifically the research estimates, tribal, groundfish catch in non-groundfish fisheries (incidental open access), and EFPs, in their preliminary preferred alternative.” The Council explicitly did not include at-sea whiting sector set asides in the analysis. However, the GAP recommends these set asides also be included, but only in the event that the two at-sea whiting sectors have clearly indicated to NMFS that the sectors have ceased fishing for the remainder of the year.

PFMC
04/12/11

GROUND FISH MANAGEMENT TEAM REPORT ON TRAWL RATIONALIZATION TRAILING AMENDMENTS

The Groundfish Management Team (GMT) reviewed and discussed priorities for trailing actions on trawl rationalization and intersector allocation. In particular, the GMT provides the following considerations regarding set-asides from Agenda Item I.6.a, Attachment 5, April 2011.

Set-Asides

At the March 2011 meeting, the Council recommended flexibility for the redistribution of unused set-asides for “planned research activities, fishing activities under approved exempted fishing permits, tribal fishing activities, or projected bycatch in non-groundfish fisheries”. Currently there is no identified mechanism to make such adjustments. It is our understanding that under some scenarios, inseason adjustments would not be necessary as long as the species-specific annual catch limit (ACL) is not exceeded; however, it is possible that there may be instances where specifically changing allocations inseason is desired. For example if a non-trawl sector was projected to exceed their allocation and enough tonnage remained in a set-aside to prevent the ACL being exceeded, then there would be no need to adjust inseason. On the other hand, if the Council wished to provide additional opportunity to the trawl fleet to fill deficits in quota pounds, then an explicit change in those allocations would be needed. It is unclear what process is required to adjust allocations and the quota pounds associated with shares within the biennial management cycle. The GMT suggests that it would be beneficial to Council planning to know well in advance the process or requirement to release unused fish from a set-aside to other sectors.

As mentioned in the situation summary, release of fish from a set-aside would require that the sector to which the set-aside is ascribed be finished fishing for the season prior to the release in cases in which there is no direct Council management of those impacts. In some situations where the set-aside is designed to accommodate a fishery in a risk averse fashion (e.g. yelloweye in the International Pacific Halibut Commission survey) the Council may wish to update the amount of that set-aside based on new information inseason while still accommodating impacts in a risk-averse manner.

The GMT suggests that it would also be prudent to consider similar flexibility for annual set-asides for the at-sea Pacific whiting fishery. This flexibility may improve the likelihood of better achieving optimum yield (OY) for target stocks. As described above, the GMT recommends that if redistribution of unused set-asides from the at-sea Pacific whiting fishery were allowed, that such redistributions should only (a) occur after the conclusion of all at-sea Pacific whiting fisheries and (b) only be redistributed to the individual fishing quota (IFQ)-trawl fishery. If the at-sea Pacific whiting fishery persists through the end of the year, then redistribution to the shoreside IFQ fisheries would not be possible. The justification for allowing the release of this set-aside only to the IFQ-trawl fishery is because the at-sea Pacific whiting set-asides are deducted from the limited entry trawl fishery allocation.

SUPPLEMENTAL NMFS REPORT ON COST RECOVERY:
IDENTIFYING QUESTIONS AND POTENTIAL ANSWERS FOR
THE DEVELOPMENT OF THE TRAWL RATIONALIZATION COST RECOVERY PROGRAM

The MSA provides a framework for developing the Cost Recovery Program (CRP). Other regions' CRPs provide us with examples or options for how we may proceed:

CRP Question	AKRO's CRP	SERO's CRP	NWRO Initial Thoughts
1. Could one CRP applicable to both the trawl and sablefish fisheries be created for implementation in 2012?	N/A: Each CRP was created for a specific fishery.	N/A: Each CRP was created for a specific fishery.	NO, focus on creating TRat CRP. Keeping the two programs separate makes sense because the two programs are quite different. In addition, combining the two could create a notice and comment issue because the CRP is an agenda item under trailing amendments. Plan sablefish CRP for 2013.

CRP Question	AKRO's CRP	SERO's CRP	NWRO Initial Thoughts
<p>2.1 How should fee collection be structured?</p> <p>For shorebased IFQ,</p> <p>a. Who is responsible for paying the fee?</p> <p>b. Who is responsible for collecting the fee?</p> <p>c. How often is the fee assessed and collected?</p> <p>d. How is the fee assessed?</p> <p>e. How is fee collection enforced?</p>	<p>a/b. Halibut and sablefish: harvesters are responsible for paying and submitting fees directly to NMFS. Harvesters (crab and rockfish) pay fees to the processors, who are then responsible for submission to NMFS.</p> <p>c. Annually, at end of year.</p> <p>c/d. Crab: Registered Crab Receiver (RCR) permit holder collects fee from allocation holder who lands the crab, and all who deliver crab to RCR permit holder. RCR permit holder submits payment to NMFS by July 31 in year following crab fishing in which landings were made.</p> <p>e. If fee is not paid, quota for coming year are not issued.</p>	<p>a/b. IFQ account holder is responsible for paying the fees to the dealer/processor and the dealer is responsible for submitting fees to NMFS.</p> <p>c. Quarterly.</p> <p>d. Fees are calculated at time of sale to registered IFQ dealer/ processor.</p> <p>e. 30 days after failure to pay, IFQ account is suspended, and after 90 days, RA sends account to collections.</p>	<p>a/b. To charge 1st receivers on behalf of QS holders.</p> <p>c. Annually, (bill at end of year, the MSA requires collecting the fee in the last quarter of the calendar year in which the fish is harvested. There is also an option to collect at the time of landing, filing of a report, or sale.)</p> <p>d. option 1: Collect fees based on vessel landings associated with QS, based on initial transfers of QP to vessel accounts (QS holders should be held responsible for QS fee even if unused, to incentivize use of QS). At end of year, collect fee from dealers. Ex-vessel value is the value of landings as reported on fish tickets, record what % of total ex-vessel value is sable, canary, etc.</p> <p>*d. option 2: Vessel account holder is responsible for paying the fees to the dealer/processor and the dealer is responsible for submitting fees to NMFS.</p> <p>e. Link fee collection to permitting/ online vessel/ QS accounts, embed permit fees in the CRP. Is freezing accounts an option, withholding quota issuance for upcoming year? Do we need to address suspension of accounts in regs?</p> <p><small>* There is not an easy or obvious way of assessing the fee such that the privilege holder is held directly accountable for paying the fee without creating excessive administrative costs. There is a tradeoff between ease of use for industry and cost for NMFS, although increased NMFS costs could result in an increased fee for industry. (i.e. It is potentially less work for NMFS to collect annually from the 1st receiver because it streamlines payment, and improves ease of collection of fees. This method may not be easier for 1st receivers.)*</small></p>

CRP Question	AKRO's CRP	SERO's CRP	NWRO Initial Thoughts
<p>2.2 For catcher-processor and mothership sectors,</p> <p>a. Who is responsible for paying the fee? b. Who is responsible for collecting the fee? c. How often is the fee assessed and collected? d. How is the fee assessed? e. How is fee collection enforced?</p>	Same as above.	Same as above.	<p>a/b. For both sectors the Coop is responsible for paying the fee directly to NMFS. c. Annually. d. For the whiting coop, exvessel landings for harvest by coop would be based on shorebased IFQ whiting value. e. Link fee collection to permitting.</p>
<p>3. How are costs associated with running the catch share program identified and calculated?</p>	<p>All employee time sheets are coded (in not less than 15 minute increments) to identify any time spent on halibut/sablefish IFQ program or Bering Sea/Aleutian Islands (BSAI) crab rationalization program management. Alaska Region OMI use this data to determine recoverable management costs for the Alaska region.</p>	<p>SE uses a similar (but less complicated) invoice system of "task codes" for tracking time spent on IFQ-related work.</p>	<p>The council is responsible for working with NMFS to identify costs directly related to the management and enforcement associated with the program.</p> <p>The main recoverable costs associated with the program are due to changes in staffing.</p> <p>The FEIS states that changes in staffing related to the program will result in a cost of \$8 million annually, during the early years of the program.</p> <p>NMFS will brief the council on updated numbers.</p> <p>We must address how we treat the 3 sectors (Shorebased IFQ, MS coop, and CP coop) when calculating the fee- Is this 1, 2, or 3 LAPPs?</p>

CRP Question	AKRO's CRP	SERO's CRP	NWRO Initial Thoughts
4. How is the value of the fishery calculated?	Based on value of ex-vessel landings	Based on value of ex-vessel landings SERO moved away from standardized pricing because of different local markets in the gulf.	Ex-vessel landings or standardized pricing? Base on efish tickets, make associated field for posting price at time of sale mandatory.
5a. Where do the collected fees go, b. how are they reallocated, c. and to whom are they reallocated?	The MSA [section 304(d)(2)(A)(i)] is clear in how it addresses these questions and leaves no flexibility: a. Fees are deposited in the Limited Access System Administration Fund (LASAF) b/c. Fees are available, without appropriation or fiscal year limitation, only to the Secretary for the purpose of administering and implementing the MSA in the fishery in which the fees were collected		
6. Can collection/reallocation of fees be done in coordination with the states?	Yes, currently a portion of cost recovery fees from the BSAI crab rationalization program are collected and reallocated to the State of Alaska to account for the states' actual costs directly related to the program.	No, currently no cost recovery funds are reallocated to the states in the Southeast region.	NMFS is still evaluating the appropriate mechanism(s) for addressing state costs.

NOAA Fisheries West Coast Groundfish Trawl Rationalization Program Implementation costs

		TIQ Development				TIQ Implementation			
		FY2007	FY2008	FY2009	FY2010	FY2011	FY2012	FY2013	FY2014
NMFS Northwest Region	Base Groundfish Management Program	\$1,400,000	\$1,400,000	\$1,400,000	\$1,400,000	\$1,400,000	\$1,400,000	\$1,400,000	\$1,400,000
	NEW TIQ Regional Management (permitting, catch monitor administration)	\$0	\$200,000	\$200,000	\$900,000	\$1,040,000	\$1,040,000	\$1,040,000	\$1,040,000
	NEW Quota Share/Vessel Account System	\$0	\$0	\$600,000	\$500,000	\$470,000	\$400,000	\$400,000	\$400,000
	TIQ Management Increase	\$0	\$200,000	\$800,000	\$1,400,000	\$1,510,000	\$1,440,000	\$1,440,000	\$1,440,000
	TIQ Mangement Total	\$0	\$200,000	\$800,000	\$1,400,000	\$1,960,000	\$1,890,000	\$1,890,000	\$1,890,000
	Groundfish Management Total	\$1,400,000	\$1,600,000	\$2,200,000	\$2,800,000	\$2,910,000	\$2,840,000	\$2,840,000	\$2,840,000
NMFS Office of Law Enforcement	Base OLE funded GF Enforcement (NOAA & States)	\$1,500,000	\$1,660,000	\$2,070,000	\$2,200,000	\$2,200,000	\$2,200,000	\$2,300,000	\$2,400,000
	NEW TIQ Enforcement	\$0	\$0	\$0	\$694,926	\$800,000	\$1,300,000	\$1,300,000	\$1,300,000
	TIQ Enforcement Increase	\$0	\$0	\$0	\$694,926	\$800,000	\$1,300,000	\$1,300,000	\$1,300,000
	TIQ Enforcement Total	\$0	\$0	\$0	\$694,926	\$800,000	\$1,300,000	\$1,300,000	\$1,300,000
	Groundfish Enforcement Total	\$1,500,000	\$1,660,000	\$2,070,000	\$2,894,926	\$3,000,000	\$3,500,000	\$3,600,000	\$3,700,000
Northwest Fisheries Science Center	Base West Coast Groundfish Surveys/Assessments	\$5,400,000	\$5,400,000	\$5,400,000	\$5,400,000	\$5,400,000	\$5,500,000	\$5,600,000	\$5,700,000
	Base West Coast Groundfish Observer Program	\$5,050,000	\$5,050,000	\$5,050,000	\$5,050,000	\$5,050,000	\$5,050,000	\$5,050,000	\$5,050,000
	NEW Expanded TIQ Observer Program	\$0	\$0	\$0	\$520,000	\$1,490,000	\$1,020,000	\$1,180,000	\$910,000
	NEW Economic Data Collection Program	\$0	\$0	\$0	\$0	\$380,000	\$390,000	\$400,000	\$420,000
	TIQ Science Increase	\$0	\$0	\$0	\$520,000	\$1,870,000	\$1,410,000	\$1,580,000	\$1,330,000
	TIQ Science Total	\$0	\$0	\$0	\$520,000	\$3,120,000	\$2,660,000	\$2,830,000	\$2,580,000
	Groundfish Science Total	\$10,450,000	\$10,450,000	\$10,450,000	\$10,970,000	\$12,320,000	\$11,960,000	\$12,230,000	\$12,080,000
Observer and Catch Monitor Salary Reimbursement	Reimbursement for Observer and Catch Monitors	\$0	\$0	\$0	\$600,000	\$3,920,000	\$2,520,000	\$1,250,000	\$0
State Funding	Funds for state reporting improvements and TIQ costs	\$0	\$0	\$0	\$600,000	\$500,000	\$0	\$0	\$0
	TIQ Increase	\$0	\$200,000	\$800,000	\$3,814,926	\$8,600,000	\$6,670,000	\$5,570,000	\$4,070,000
	TIQ Total	\$0	\$200,000	\$800,000	\$3,814,926	\$10,300,000	\$8,370,000	\$7,270,000	\$5,770,000
	Groundfish Program Total	\$13,350,000	\$13,710,000	\$14,720,000	\$17,864,926	\$22,650,000	\$20,820,000	\$19,920,000	\$18,620,000



City of Morro Bay

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March 22, 2011

Pacific Fishery Management Council
7700 NE Ambassador Place Suite 101
Portland, Oregon 97220

RE: Agenda Item I-6 Priority Trailing Actions on Trawl Rationalization, Request for Continued Development of Safe Harbor Provisions for Community Fishing Associations

OVERVIEW

We are providing these comments to update you on the formation of a Community Fishing Association (CFA) called the Central Coast Community Quota Bank or CQB in Morro Bay, and provide information on how this bank will work to achieve the community objectives established in the Magnuson Stevens Act. We strongly request that you continue development of safe harbor provisions for CFA's to hold quota in excess of individual accumulation limits.

BACKGROUND AND NEED FOR CFA

Morro Bay harbor has traditionally been one of the largest groundfish landing ports in California, with groundfish historically making up 60-70% of all landings. The City of Morro Bay operates and manages our harbor facilities and, due to the importance of fisheries to our local culture and economy the City has invested millions of public dollars in harbor infrastructure and commercial fishing support facilities over the years. Without groundfish landings it is unlikely that the City can sustain this investment or provide a basic level of marine dependent services, as we do not have major recreational boating facilities.

As a relatively remote area, Morro Bay saw a magnified effect of groundfish landing reductions in the last twenty years as certain species in the groundfish complex were declared overfished, trawl operations were constricted and markets consolidated. We have testified previously to the Council on the impacts of these reductions on local businesses and on our community. We are resolved to preserve, at a minimum, the remaining commercial fishing businesses and harbor infrastructure.

FINANCE
595 Harbor Street

ADMINISTRATION
595 Harbor Street

FIRE DEPT.
715 Harbor Street

PUBLIC SERVICES
955 Shasta Avenue

HARBOR DEPT.
1275 Embarcadero Road

CITY ATTORNEY
595 Harbor Street

POLICE DEPT.
870 Morro Bay Boulevard

RECREATION & PARKS
1001 Kennedy Way

As you know we have been working with the PFMC, NMFS, local fishermen and NGO's to track the trawl sector conversion to Individual Transferable Quota (ITQ) and attempt to support the adjustments that will be necessary to anchor historical trawl groundfish landings in smaller coastal communities such as ours, while working to improve sustainability of the fishery as a whole. Consolidation of Quota Share (QS) in an ITQ program is well documented and we feel that absent action by fishermen and the community in a collective way this historical trawl IQ will eventually be forced by market conditions into areas with the strongest markets, greatest access to capital and largest vessels. This will have a severe negative economic and cultural impact on our community and is not the optimum environmental or management outcome.

DEVELOPMENT OF CENTRAL COAST COMMUNITY QUOTA BANK

The City of Morro Bay is currently leading an effort to create a non-profit public benefit corporation which will serve as a Community Fishing Association (CFA). We have chosen to call this CFA the Central Coast Community Quota Bank (CQB) in the hope that this model may be expanded to other areas of California or replicated in other similar communities. The outcome the City seeks is to be a catalyst in tying these landings to our area and long term stabilization of local smaller scale fisheries.

After significant investment of time and effort, we have reached alignment among community stakeholder, including City management, fishermen, and conservationists on a structure that will meet our shared interests. Attached is a chart indicating the structures and relationships for this proposed Community Fishing Association including our adopted mission statement and key objectives. Our group is moving ahead with formation of this CQB with the intent to acquire the quota shares which were historically harvested and landed in our area to be held for the long term economic and environmental stability of the community.

Without formation of a Community Quota Bank some local fishermen may be able to purchase some of that species QS, but the majority of QS related to historical local landings will be sold to fishermen outside of our area. Even for some geographically-restricted species such as Conception Area (CA) Sablefish, these QS will most likely be consolidated on the largest vessels possible, and may not even be landed in Morro Bay. If this happens, it is highly unlikely that we can reach the economic, conservation and social goals that have been identified.

BENEFITS OF THE CQB

By forming the CQB, we believe it is possible to avoid these problems, and instead achieve the following:

1. Attract the necessary financing to purchase historically important Morro Bay quota shares and anchor them in the community
2. Use this QS to stabilize local fishing businesses and help maintain Morro Bay harbor infrastructure so that the community can effectively participate and compete in the fishery for the long term

3. Work together to reach a sufficient scale in the fishery to reduce costs to individual smaller scale fishermen (through leases to the FCMA's), support efficiency programs, information sharing strategies to avoid overfished species, and reduce monitoring costs by actively managing as a group.
4. Create opportunities for new entrants to fishery which will ensure long term stability.
5. Build the capacity to have representation at necessary meetings, support infrastructure enhancement, participate actively in research/stock assessments and ultimately support regional co-management.

THRESHOLD LANDINGS NEEDED TO SUPPORT HARBOR SERVICES EXCEEDS INDIVIDUAL SPECIES ACCUMULATION CAPS.

The Council has been wrestling with the question of what is the minimum threshold of landings necessary to maintain infrastructure and economic viability in a smaller traditional groundfish port. This is a difficult question, with an answer that is most likely different in every location, but we have attempted to do our own assessment of that question in Morro Bay for our planning process and to assist the PFMC. Also attached is a short report from Lisa Wise Consulting estimating necessary groundfish landings thresholds needed both to support existing marine-dependent infrastructure, as well the landings needed to enhance existing infrastructure by restoring small scale processing in our community. This report indicates that total groundfish landing in excess of 2 million pounds annually will be required to maintain a minimum level of services in the harbor and landings in excess of 3.7 million pounds annually would be required to re-establish processing in Morro Bay Harbor.

Although landings have increased in Morro Bay in the last three years, this trend is not assured: the landings have primarily been Conception Area (CA) sablefish, some caught under an EFP to use The Nature Conservancy's trawl fishing privileges in other gear types, but the majority of which was caught under Open Access. These Open Access landings are likely to be significantly lower in the future, as the limits for Open Access fishermen are reduced. Therefore, to assure annual landings in the 2-5 million pound range, it has become even more critical to anchor trawl sector QS in the community. We also recognize that trawl operations must be re-established here to achieve this threshold and we see that the ITQ program may help in this regard.

To achieve long term stability, small scale processing and trawl markets must be re-established in Morro Bay. We have to increase non-Sablefish landings. We have designed the CQB proposal with sufficient flexibility that it can ensure that trawl QP is utilized every year while anchoring privileges here to facilitate those longer term objectives. All of these issues come into play when trying to decide what level of total accumulation cap may be appropriate to CFA's, but it would appear that the CQB in Morro bay, at least initially could operate under the existing total accumulation caps.

Species accumulation limits are much more problematic for the CQB, as an example, Morro Bay has historically landed approximately 50% of the total landings of CA sablefish. CA Sablefish has been a key species in our landing mix and any banking proposal must build in sufficient CA sablefish QS to leverage a broad range of fishing operations participation. Currently the accumulation cap on CA sablefish is 10% of the total, or approx. 113,000 pounds this year. This amount is about what one full time sablefish fisherman (or two who have alternate fisheries such as Dungeness crab) needs in order to maintain a viable business model with trawl IQ costs. As previously stated we hope to re-establish trawl operations with the QCB which will require CA sablefish support. With existing species accumulation limits on CA sablefish, a CFA would be limited to supporting very few fishermen. **This would not merit the effort and cost of forming that CFA and even if it did, we would not achieve the established objectives of the CQB under the existing CA sablefish accumulation cap.** CA sablefish is a unique management issue and species accumulation limit need to be looked at based on historic landings and specific port reliance on that species for its landings mix when thinking about CFA's.

Morro Bay has also had a disproportional reliance on certain other species such as thorny heads, some flat fish and slope rockfish. We suspect that other historic smaller scale ports have similar situations and ask that the PFMC create exceptions to non-overfished species accumulation limits for CFA's

CONCLUSION

The CFA / CQB structure that we see as necessary would currently not be permitted under the Trawl ITQ program, due to the control limits/accumulation caps in certain species. While we support the purpose of the control limits when applied to for profit entities or individuals, we strongly believe that exceptions need to be made for CFAs.

Qualified CFA's should be exempted from accumulation limits on species, or perhaps exempted up to historical limits of landings in an area. This would allow these qualified CFAs to reach the necessary scale in cooperative action, while ensuring through derivative agreements & conditions that individuals or for profit entities are subject to control limits. Without such amendments to the Trawl Rationalization program, the incentives for collective action by small scale fisheries are severely limited.

Total accumulation caps may also be an issue for CFAs. They are set at 2.7% of coast wide trawl QS, which could be projected out to approximately 4.5 million pounds this year. The value of this number is distorted due to high variation in weight and EVV coast wide, but given our estimates on the minimum level of stable landing necessary to support re-establishing small scale processing and preserve existing infrastructure in Morro Bay, it may be possible for the CQB to work under this total accumulation cap. However this cannot be said with great confidence here, or in other situations. The existing total accumulation limit would leave no room for any necessary adaptation, no room for any growth of the CQB or for the reality of a reduction in the overall groundfish trawl sector pool. We therefore recommend that you continue to consider exceptions for total accumulations caps for CFA's on the order 1.5 or 2 times until more information on this issue is available.

Preserving smaller scale fishing operations will be a great challenge in the Trawl ITQ program and we think CFA's can be a critical tool to allow cooperative work to create capital acquisition capacity, economies of scale and cost savings that would not be achievable by individuals. We are proceeding with our plans, and request that the PFMC alternatives analysis on this agenda item continue with development of Safe Harbor Provisions for CFA's on the current schedule that results in a final decision at the September 2011 PFMC meeting. We are investing significant time and money on our CQB development as time is critical to success in this endeavor. Many Trawl IQ market and divestiture decisions will be made in the near future; therefore, we need to know if the PFMC is going to support the necessary exceptions for control limits as soon as possible.

We are confident that safe harbor provisions for CFA's can be constructed in a manner that ensures that they will fulfill legitimate public purposes consistent with MSA and provide appropriate reporting and oversight to monitor performance. We look forward to working with you and the PFMC staff to develop practical and effective means to accomplish these results.

Thank you very much for your consideration.



Andrea Lueker, City Manager
City of Morro Bay



Jeremiah O'Brien, President
Morro Bay Commercial Fishermen's Organization



Chris Kubiak, Chief Executive Officer
Central Coast Sustainable Groundfish Association

PROPOSED COMMUNITY FISHING ASSOCIATION STRUCTURE

MISSION: The Community Quota Bank (CQB) is formed through cooperative work of community leaders, fishing businesses & science/conservation interests to create the needed economies of scale and access to capital to participate and compete in the new Groundfish IFQ under a strategy that will support community stability and stewardship in the fisheries sector.

OBJECTIVES:

Social

- Create mechanism for new entrants & inter-generation fishing access
- Ensure that existing permit holders can reach viable scale

Economic

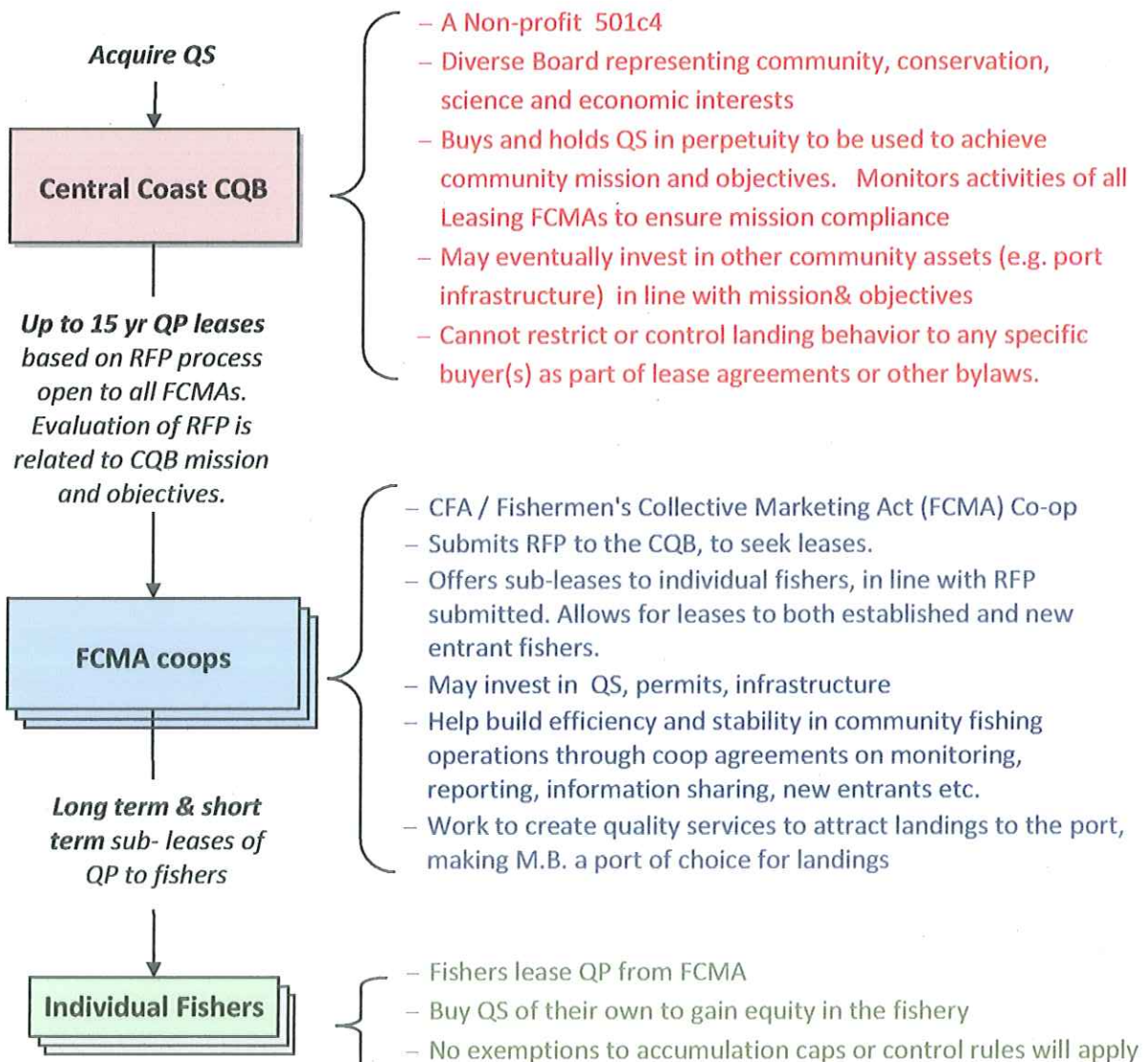
- Help the Port to participate effectively in the fishery
- Improve economic viability of fishery

Environmental

- Improve conservation and efficient use of constraining overfished species QS

STRUCTURE AND RELATIONSHIPS OF THE CQB AND FCMA(s)

For the proposed structure below to function and reach the above objectives, the CQB will require exemptions to both the species and the overall accumulation control limits.



Assessment of the Threshold(s) of Groundfish Landings to Sustain Commercial Fishing Infrastructure and Enable Cooperative Behavior under ITQ in Morro Bay

The City of Morro Bay and the commercial fishing industry share a close partnership. The City acknowledges the cultural and economic contributions of commercial fishing and the fishermen have benefited from the support of the City. The partnership has enabled the commercial fishing industry to prepare for the ITQ regulatory protocol that began in January of 2011. As the ITQ program advances, the City and the commercial fishing community seek information that will prepare them for long term persistence and success.

This report is a comment on the level of landings by weight necessary to preserve remaining commercial fishery related infrastructure, attract new participants and re-establish local processing. It is thought that such a level of economic activity will meet or exceed the threshold at which a small community will have sufficient resources to work in a collective to achieve the economies of scale to compete and profit in the ITQ regulatory climate.

The focus of this report is an anecdotal or qualitative estimate of the threshold of landings and earnings that will support the commercial fishery in Morro Bay. The methodology involves identifying significant events that mark change in the industry and the levels of landings/earnings leading up to and following those events. Representative events include: the establishment of Limited Entry in the groundfish fishery, the establishment of the Rockfish Conservation Area and the federal trawl buy back program. Impacts include: the relocation or closure of processing facilities, closure of fuel, chandlery or ice facilities, and the closure of a shipyard or related facility. Establishing a statistically valid estimate of the amount of landings that the commercial fishing industry requires to remain viable, such as a regression discontinuity analysis or tipping point analysis or an event study with sufficient and rigorous time series and sample size or propensity scoring using a set of statistically similar ports, is outside the scope of this effort.

Data sources for this analysis include: 2008, LWC, *Morro Bay / Port San Luis Commercial Fisheries Business Plan*; 2004, LWC, *Feasibility Study of Commercial Fishing Infrastructure*; 2008, LWC, *Economic Impact Analysis of the Central Coast Groundfish Project*; 2011, Kimberly Lai, *Fishing for Solutions: A Socioeconomic Impact Analysis of Collective Fishing Arrangements in Morro Bay*; CDF&G and PacFIN databases; personal interviews and other empirical studies.

While price per pound and EVV are telling indicators for the performance of a fishing operation, and price per pound in Morro Bay has risen over time, landings by pound are used here as they relate directly to the number of trips, and subsequently, amount of fuel, ice and supplies purchased, as well as the quantity of fish available to a processor. Price per pound and landings by weight share a close positive relationship in Morro Bay. Also, regulators cannot directly influence or "regulate" price per pound as they can landings limits.

Morro Bay has traditionally relied heavily on the federal groundfish fishery. From 1990 to 2010, groundfish landings made up approximately 60% of total landings in Morro Bay. As such, when estimating the threshold of groundfish needed to support the industry, landings totals are reduced to 60%.

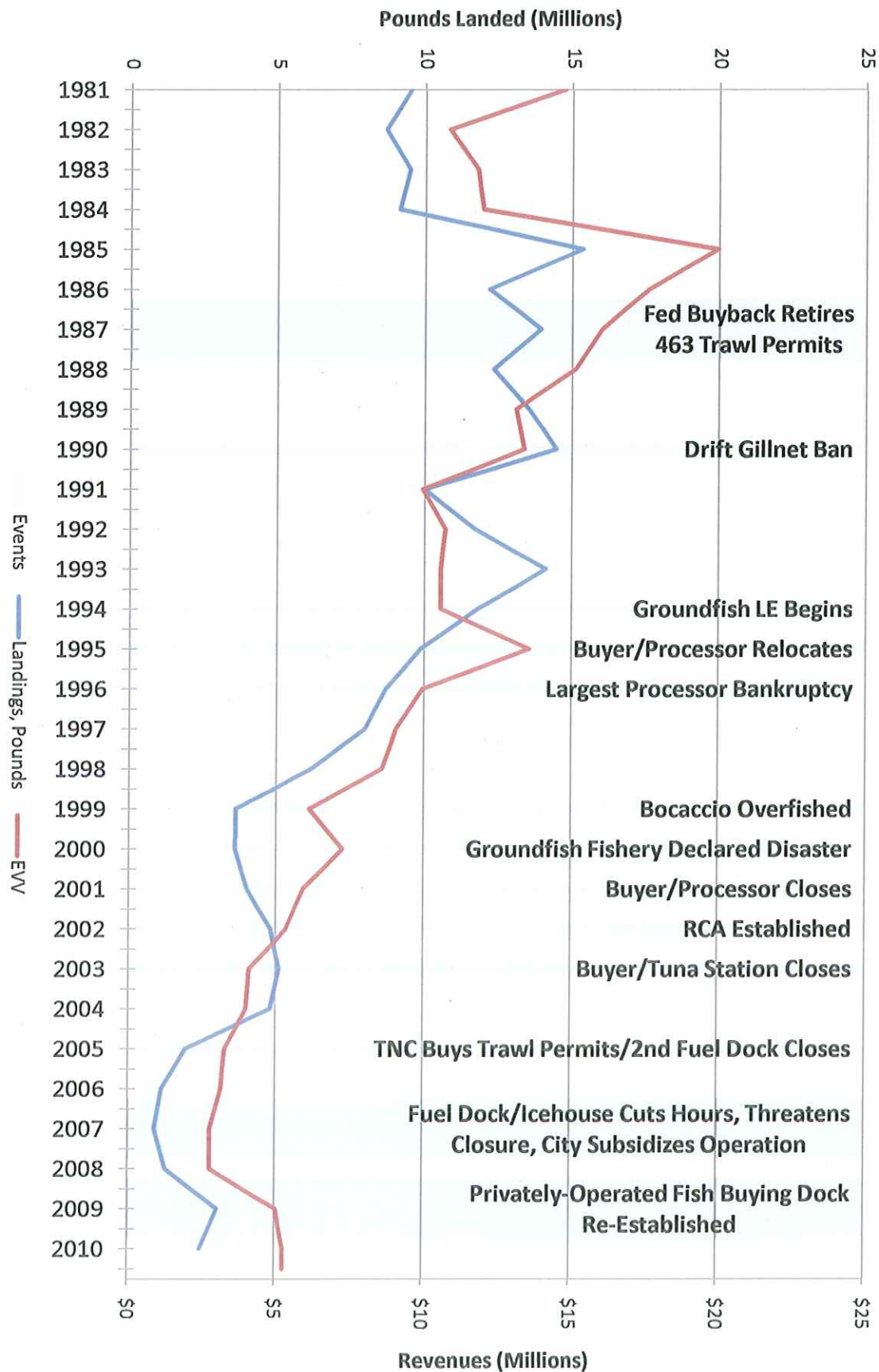
While the markets, costs, and environmental factors that existed in the 1970s and 1980s during the height of the trawl industry have changed drastically, an optimal level of landings lies somewhere between a San Luis Obispo County high of 15 million pounds when there were up to 6 processors and 15-20 trawlers in Morro Bay to the uptick in landings between 2007 and 2010 to over 2.6 million pounds. Several commercial fishing related businesses have emerged in Morro Bay as landings rose from a 20-year low in 2007 (669,000 pounds) to 2.9 million pounds in 2009 and over 2.6 million pounds in 2010. These include the establishment of a small chandler in 2008, offloader/buyer Morro Bay Fish Company's rapid expansion and relocation to the larger city dock/offloading facility at 1215 Embarcadero, Bayshore, a new offloader/buyer moving in and making infrastructure improvements at the 715 Embarcadero facility, the establishment of a new hoist and 4th offloading facility at 1235 Embarcadero and the formation of the Central Coast Sustainable Groundfish Association (CCSGA). Several fishermen have taken loans to buy new boats or expand their businesses during this period as well. Four local businesses have also developed Catch Monitoring Plans (CMP) with the assistance of a local commercial fishery consultant in anticipation of opportunities in the catch share program. While 2.6 million pounds is likely not a sufficient threshold, the increase to this level indicates that opportunities are expanding and the local industry considers it a worthwhile time to invest.

In 2000, a seafood buying, offloading and restaurant facility made significant investment in the 1215 Embarcadero facility when landings were at almost 2.5 million pounds and closed its doors in 2003 when total landings dropped to approximately 2.2 million pounds. While the facility was focused on salmon (2.6% of landings between 1990 - 2009) and albacore (4.4% of total landings between 1990 - 2009), the loss of such investment was significant for the community. In 2006, the sole ship chandler, a business that was established in the 1960s, closed its doors. This business also served the recreational and CPFV fisheries but nonetheless found it impossible to operate when commercial fish landings had dipped to 870,000 pounds, the second lowest landings in 20 years. A year later, during the lowest point (670,000 pounds), the city was forced to renegotiate the lease with the sole fuel dock operator who had cut hours of operation and threatened closure. The fuel dock facility also provides ice and offloading service, and claims to need the level of activity in 1998, or 3.5 million pounds, to remain viable. The near quadrupling of total landings between 2007 and 2010 has reduced the pressure on the fuel provider, and a small chandlery service has reopened but current levels are not likely sufficient to support the industry. Total landings of 3.5 million pounds are more likely to support such businesses. As groundfish has traditionally represented approximately 60% of total landings in Morro Bay, groundfish landings of slightly over 2 million pounds are likely a minimum to support commercial fishing infrastructure and related businesses in Morro Bay.

Viable local processing capacity is a strong indicator of sufficient landings and earnings, and one that helps keep spending and earnings in the community. Between 1983 and 1986, three commercial fish processors opened their doors in Morro Bay. Total landings in San Luis Obispo County during this period ranged from approximately 9 million pounds to over 15 million pounds. Between 1995 and 2001, two processors had closed and one relocated 15 miles east. During this same period total landings in Morro Bay dropped from 6.2 million pounds to approximately 2.6 million pounds. It was noted that the costs of fresh water, high rents on the waterfront, falling salmon prices, competition from cheap imports, and stringent trip limits played a role in the demise of these businesses. However, it is likely that landings were insufficient to sustain these businesses when, around 1995, they dropped to 6.2 million pounds and showed a weakening trend dipping further to 5.3 million in 1996 and the largest processor declared bankruptcy. Based on this evidence, and the fact that trawl has represented approximately 60% of landings in Morro Bay, 3.7 million pounds of groundfish are more likely to represent a viable threshold for landings in Morro Bay and a minimum needed to attract local processing.

Based on this analysis, it is likely that federal groundfish landings between 3.7 million pounds and just over 2 million pounds would be sufficient to preserve remaining commercial fishery-related infrastructure in Morro Bay, and attract new participants to the local commercial fishery. Landings above 3.7 million pounds are likely necessary to attract the re-establishment of local processing. In light of the collective experience gained in the 2008-2010 Morro Bay based EFP that mirrored the requirements of the catch share program, it is likely that at these levels, the local fishing community will have sufficient resources to work in a collective to achieve the economies of scale needed to participate in the federal catch share program.

Landings by Weight and EV, SLO County 1981-2010 (2010 Dollars)





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March 22, 2011
Mr. Mark Cedergreen
Chairman
Pacific Fishery Management Council
7700 NE Ambassador Place, Suite 101
Portland, Oregon 97220-1384

Dear Mr. Cedergreen

The Ocean Companies, including the independent business units of Ocean Gold Seafoods; Ocean Protein; Ocean Cold; and, Ocean Express, want to reiterate again our support for changing the season start-date for shoreside whiting to align with the offshore start date in May.

As has been mentioned in the past three council meetings, and discussed as an item for consideration under the new PIE process for handling trailing amendment action, we believe there is wide support for changing this date across all sectors.

This should be a relatively simple fix to make within the scheme of all other issues in front of the council for trailing amendments. Given the added evidence we are seeing in this first year of implementation with a number of permit and quota holders who traditionally fish both non-whiting and whiting holding off fishing until the start of the whiting season because of concerns surrounding bycatch, we believe this issue is growing in priority. By providing shoreside vessels an earlier start, it may not only provide earlier economic relief to their families but encourage non-whiting groundfishing.

We look forward to continued discussion on this and other trailing amendment issues and trust that the council will be able to make the necessary changes to the regulations to allow for a May shoreside start date in 2012. It will not only provide more flexibility to the catch share program, as it was intended, but will help alleviate some of the financial stress facing fishers who have historically engaged in the non-whiting fishery in late winter/early spring but now feel the need to exercise more conservative fishing practices to meet with the constraining by-catch allocations.

Thank you in advance for your consideration and for the council's continued support for an expedient and thoughtful process for addressing trailing amendment issues such as this.

Sincerely,

Heidi Happonen
Ocean Companies



March 22, 2011

Pacific Fishery Management Council
7700 NE Ambassador Place, Suite 101
Portland, Oregon 97220-1384

Sent via email to pfmc.comments@noaa.gov

National Panel Report on the Community Dimensions of Fisheries Catch Share Programs

Dear Chairman Cedergreen and Members of the Pacific Fishery Management Council:

Ecotrust respectfully submits the attached report, “Community Dimensions of Fisheries Catch Share Programs: Integrating Economy, Equity, and Environment” to the Pacific Fishery Management Council for its consideration. The report was developed by the National Panel on the Community Dimensions of Fisheries Catch Share Programs, which is the first national, bi-partisan panel to address the important issue of how communities can participate and benefit under a catch share model of fisheries management.

Comprised of 11 diverse experts in academia, rural economic development, social/conservation finance, and fishing community leaders, the Panel met three times in 2010 to review existing and emerging catch share programs and to learn about three specific programs in the U.S., including the New England Groundfish Sector Program, the Gulf of Mexico Reef Fish Individual Fishing Quota Program, and the Pacific Groundfish Trawl Individual Fishing Quota Program. The Panel was convened by Ecotrust with the purpose of advancing the understanding, development, and implementation of catch share programs such that they benefit communities whose economic, cultural and social fabric may depend upon fisheries.

As NOAA and councils move forward with implementing NOAA’s Catch Share Policy, both agency and councils have an important opportunity to emphasize and support fishing communities and jobs in the development of catch share programs. The Panel’s report, released on March 15, 2011, contains a set of forward-looking recommendations for making catch share programs work for fishing communities.

We look forward to discussing this report and its recommendations with you.

Sincerely,

Edward Backus, VP – Fisheries ebackus@ecotrust.org
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Megan Mackey, Fisheries Policy Associate mmackey@ecotrust.org
Ecotrust Portland, Oregon office: 503-227-6225

Community Dimensions of Fisheries Catch Share Programs

INTEGRATING ECONOMY, EQUITY,
AND ENVIRONMENT



NATIONAL PANEL ON THE COMMUNITY DIMENSIONS
OF FISHERIES CATCH SHARE PROGRAMS

MARCH 15, 2011
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**NATIONAL PANEL ON THE COMMUNITY
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I. EXECUTIVE SUMMARY



The income from the Bristol Bay Economic Development Corporation's small boat Community Development Quota halibut fishery is important to coastal residents.

As the National Oceanic and Atmospheric Administration (NOAA) begins implementing its recently released Catch Share Policy, the agency has an important opportunity to emphasize and support fishing communities in the development of catch share programs. The eight regional fisheries management councils (New England, North Pacific, Pacific, Mid-Atlantic, South Atlantic, Gulf of Mexico, Caribbean and Western Pacific)¹, all of which are responsible for developing fisheries management measures subject to approval by NOAA, should be guided by clear principles and develop programs that ensure thriving fishing communities and sustainable fisheries.

The National Panel on the Community Dimensions of Catch Shares (the Panel)—comprised of 11 diverse experts from around North America—reviewed existing and emerging catch share programs around the country and abroad. The Panel developed this summary report to encourage NOAA and the fisheries councils to strongly consider community dimensions in fisheries catch share programs. Catch shares are a means of managing fisheries by allocating a specific portion of the total allowable catch of a fish stock to individuals, cooperatives, communities or other entities. While existing policies should be sufficient to manage our fisheries resources to meet economic, social, and ecological obligations, application of these policies is deficient, with the consequence that fishing communities on every coast are bearing the brunt of the transition to catch shares.

For this reason, the Panel developed strategic recommendations on catch share design and implementation, including the following:

General Programmatic Recommendations

- Fishery management councils developing catch share programs must incorporate the goals and objectives as set forth in the Magnuson Stevens Act (MSA) and its National Standards, including National Standard 8 on Fishing Communities, with a clear strategy for revising programs if performance goals are not met.
- Councils should include ecosystem-based management (EBM, as defined in the National Ocean Policy) as a central, guiding element of any fisheries management program, including catch share programs.

Community-Based Governance Recommendations

- NOAA should seek approaches to support fishing communities in the development, expansion, and diversification of community-based initiatives.
- NOAA should require the development of Community Fishing Associations (CFAs), Regional Fishing Associations (RFAs) and other community structures now authorized in the MSA (Section 303a) within any catch share program.
- NOAA budgetary resources should be applied to further define and develop guidelines for implementation of the community provisions of the MSA to be applied by all fishery management councils.

Programmatic and Financial Innovation Recommendations

- NOAA should develop a dedicated loan program to assist communities and new entrants in the purchase of catch shares, and to act as a reserve for existing or future programs that have excluded communities from the initial quota allocation.
- NOAA should require a significant and appropriate baseline percentage of fisheries quota be anchored in communities in each council region through entities like Community Trusts, such as the Community Quota Entity program in Alaska.
- Councils should design catch share programs to include predictable, performance-based renewals as an alternative to allocations in perpetuity.
- Catch share program design should include mechanisms such as quota auctions with revenue recycling into coastal communities, and other strategies to improve the effects of quota programs on long-term sustainability and community stability.
- NOAA and councils should ensure that standards and costs for monitoring are appropriately scaled to the size and income capacity of boats.
- NOAA should convene a working group of representatives from key federal and state financing programs (USDA, EDA, Treasury, SBA and HUD) to formulate a funding initiative for CFAs, and to engage financial intermediaries in support of capacity building technical assistance and investment.
- NOAA should invest in the research and development of business models for new private financing mechanisms that promote its program goals, as well as the capacity of fishermen and communities to utilize these mechanisms.

One example of an innovative program:

The Community Development Quota program of the North Pacific Fishery Management Council sparked new investment and infrastructure by allocating a portion of annual fish harvest directly to coalitions of villages. The results include more than \$110 million in wages, education and training benefits for more than 25,000 residents, as well as new docks, harbors and seafood processing centers.²

Capacity Recommendations

- Councils should establish baseline data and a system for socioeconomic monitoring of catch share programs so that a comprehensive understanding of how programs are working can be developed rather than relying on piecemeal evidence to date.
- Councils should require the effective participation of the fishing industry and communities in catch share program development from the beginning.
- NOAA should work within fisheries and look to other industries, such as pollution trading, to learn from other transparent trading and reporting mechanisms and apply those to catch share transactions using best available technology and expertise.
- NOAA should invest in new or additional capacity in catch share design expertise at the council staff level.

The Panel's recommendations focus on fishing communities as hubs of economic development and as the foundation for jobs, infrastructure and services.

With these recommended shifts in the approach to implementing the national Catch Share Policy, the dozen or so community entities that currently exist will bloom and multiply, maintaining local access to fisheries and leading to more resilient fishing communities. As NOAA actively redesigns the institutions that manage our nation's fisheries through the implementation of the new Catch Share Policy, this report encourages a significant realignment of priorities to incorporate the full range of community impacts and opportunities.

The Community Dimensions of Fisheries Catch Share Programs

was developed by a national, bipartisan panel of 11 experts in academia, practitioners in rural economic development and social/conservation finance, and fishing community leaders. The panel was convened by Ecotrust with the purpose of advancing the understanding, design and implementation of catch share programs such that they benefit communities whose economic, cultural and social fabric may depend upon fisheries. Generous support for this report was provided by the Walton Family Foundation.



Splitting cod at Port Clyde, Maine , circa 1900

II. INTRODUCTION

The United States has a long tradition of marine fishing.³ Fishermen and coastal fishing communities form a vital element of our national heritage, and it is time to bolster emerging opportunities for communities to lead the reinvigoration of fisheries and the coastal economies that depend on them.

Unfortunately, as recognized in national reports released by the Pew Oceans Commission in 2003 and the U.S. Commission on Ocean Policy in 2004, the economic, social and ecological capital of our nation's fisheries have been steadily eroding. Nationwide, many ecologically and commercially important fish species have been overfished,⁴ while destructive fishing practices damage critical habitat upon which fish and numerous other marine species depend.⁵ Although a great deal has been achieved in reducing overfishing and restoring fish stocks in recent years,⁶ many of our nation's fisheries remain overcapitalized, inefficient, and ineffective at achieving the social, economic and ecological goals of the law governing them, the Magnuson Stevens Act (MSA).

While these problems persist, the tools exist to address them in current policy. President Obama signed an Executive Order establishing a new National Ocean Policy in July 2010 that recognizes the challenges to our oceans and fisheries, and calls for a national management framework that applies

“...the principles of ecosystem-based management (which integrates ecological, social, economic, commerce, health, and security goals, and which recognizes both that humans are key components of ecosystems and also that healthy ecosystems are essential to human welfare) and of adaptive management (which calls for routine reassessment of management actions to allow for better informed and improved future decisions) in a coordinated and collaborative approach...”⁷

As part of this new ecosystem-based management framework, in November 2010 the National Oceanic and Atmospheric Administration (NOAA) released its Catch Share Policy with a focus on one type of fisheries management tool — catch share programs. “Catch share” is a general term for fishery management strategies that allocate a specific portion of the total allowable fishery catch to individuals, cooperatives, communities, or other entities.⁸ The term includes specific programs defined in law such as “limited access privilege” (LAP) and “individual fishing quota” (IFQ) programs, and other exclusive allocative measures such as Territorial Use Rights Fisheries (TURFs) that grant an exclusive privilege to fish in a geographically designated fishing ground.⁹ The new policy encourages:

“well-designed catch share programs to help maintain or rebuild fisheries, and sustain fishermen, communities and vibrant working waterfronts, including the cultural and resource access traditions that have been part of this country since its founding.”¹⁰

Fishing community sustainability is a critical element within this new policy, and NOAA encourages regional fisheries management councils to “develop policies to promote the sustained participation of fishing communities and take advantage of the special community provisions in the MSA.”¹¹

National Standard Eight of the MSA requires management authorities to take into account the importance of fishery resources to fishing communities, and to develop policies to promote the sustained participation of fishing communities

“well-designed catch share programs to help maintain or rebuild fisheries, and sustain fishermen, communities and vibrant working waterfronts, including the cultural and resource access traditions that have been part of this country since its founding.”¹⁰

— NOAA Catch Share Policy

while minimizing adverse impacts on such communities. Similarly, the National Environmental Policy Act requires federal agencies to take into account the social and economic impacts, as well as the environmental impacts, of their management actions.

Community-oriented fisheries management is closely linked with ecosystem-based fisheries management. On a regional scale, a new draft work plan from the West Coast Governor's Agreement on Ocean Health's Sustainable Coastal Communities Action Coordination Team recognizes that:

"[t]aking an ecosystem-based approach to coastal and marine resource management is central to sustaining the economic and environmental health of coastal communities,"

and states that:

"[r]egional fishing associations, as mentioned in the MSA, and other mechanisms for community-based fisheries management coordinate well with principles and scientific needs of ecosystem-based management."¹²

Thus, existing policies should be sufficient to manage our fisheries resources to meet economic, social, and ecological obligations. It is the application of these policies, however, that is deficient. The tendency thus far has been for catch share programs to default to individual quota systems with little or no consideration of community-related alternatives in how quota shares are assigned and to what entities. The *de facto* property right characteristics of many catch share systems to date can be construed as privatization of national resources. To the extent that is so, it would be a significant departure from the approach taken in other natural resource based industries, where the prevailing approaches — whether auctioning the use of the electromagnetic spectrum or leasing public lands for mining, grazing, and logging — employ a range of options that maintain the control and benefits from the resource in public hands.

What is needed now is clear guidance to fishery management councils on how to achieve the social and economic obligations of existing policy as they consider catch shares as management tools for the fisheries of their regions. In the absence of such guidance, many fisheries management councils have fallen short in adequately analyzing and addressing the effects of existing and planned catch share programs on communities where livelihoods and economic viability depend on fisheries. Further, the councils engaged in creating catch share programs to date have rarely considered — much less implemented — direct allocations to communities or community-related organizations, nor have they developed effective ways for communities to participate in the design of programs.

Fishing communities on every coast are bearing the brunt of the transition to catch shares. Communities that lost access to fisheries prior to the conversion to catch share management, or that have lost or will lose access as a consequence of catch share management, thus see little hope of reclaiming this component of their heritage and economy. To remedy this situation, it is important to match the intent of the law and policy with willingness to implement the provisions that exist for sustainable community participation in fisheries, and to make the investments in financial, scientific and management capacity required in order to effect this transition in a comprehensive manner.

The goal of this report is to inform and advance the understanding, design and implementation of catch share programs such that they benefit communities whose economic, cultural and social fabric may depend upon fisheries. To that end, a National Panel on the Community Dimensions of Catch Shares was convened



Port Clyde, Maine, circa 1900

...existing policies should be sufficient to manage our fisheries resources to meet economic, social, and ecological obligations. It is the application of these policies, however, that is deficient...

As this report details, investments should be made in the following areas:

Governance

NOAA Fisheries should seek methods to support fishing communities in the development, expansion, and diversification of community-based initiatives, including the development of Community Fishing Associations (CFAs), Regional Fishing Associations (RFAs) and other community structures now authorized in the MSA (Section 303a) within any catch share program.

Programmatic and Financial Innovation

NOAA Fisheries should leverage public and private finance mechanisms for community participation in the transition to catch shares, and invest in capacity building efforts to enhance the ability of fishing communities to effectively participate in catch share programs from the design stage on.

Capacity

Regional fisheries management councils need investments in staff and resources to help them build capacity and expertise to ensure proper design and implementation of catch share management tools, which otherwise can have far-reaching and unintended negative impacts on fisheries-dependent communities. In addition, NOAA needs to set guidelines to establish science-based socioeconomic goals for catch share programs. This also requires additional investment in science at relevant scales, including robust finer scale ecological data that can inform community-based catch share management solutions and baseline socioeconomic information to understand potential impacts of catch share programs on communities — so that appropriate transition strategies can be designed.

by Ecotrust¹³ in the spring of 2010 to develop a set of recommendations on how to improve the design and implementation of catch share systems to better accommodate the needs and concerns of communities. The Panel, comprised of experts and practitioners of community-based fisheries, economic development, social anthropology and community planning, spent a year reviewing the performance of existing, including international, catch share programs and related community impacts. The group met three times in 2010 to learn about three emerging catch share programs in the U.S. (including New England, the Gulf of Mexico and the Pacific), and to work toward developing a set of forward-looking recommendations for use by U.S. policy makers.

General Programmatic Recommendations

- Fishery management councils developing catch share programs must incorporate the goals and objectives as set forth in the Magnuson Stevens Act and its National Standards, including National Standard 8 on Fishing Communities, with a clear strategy for revising programs if performance goals are not met.
- Councils should include ecosystem-based management (EBM, as defined in the National Ocean Policy) as a central, guiding element of any fisheries management program, including catch share programs. In keeping with an EBM perspective, catch share programs should adopt a community-oriented, portfolio-based management perspective. EBM applies to the social sphere as well as to the ecological sphere, and thus catch share programs must consider the full range of communities that may be impacted rather than narrowly designing programs around one subset of a fishery, such as singling out one gear type in a multi-gear fishery.

III. FISHERIES AS HUBS OF ECONOMIC DEVELOPMENT

In recent years, as many of the once abundant fisheries have declined in the U.S. and around the world, attention has been drawn to the historic importance the fishing industry has played in the social, economic and cultural fabric and health of a community,¹⁴ often referred to as the “Hub of Community Economy.” One need only to visit one of the many fishing ports in the U.S. to get a sense of the importance the industry has played in the social, economic and cultural fabric of a community. For example, the multiplier effect of the ex-vessel value, or value before processing, can run three to five times that value, creating more shore jobs and benefits to families as the product moves from vessel to market. Overall, the industry as a whole continues to support fishing communities to the tune of nearly \$163 billion annually and 1.9 million jobs — shrimp, lobsters, crab, swordfish, tuna, rock fish, herring, mackerel, recreational fishing, and even aquaculture products have a significant place in the U.S. economy.¹⁵

In addition to being the locus of economically and culturally important fishing activities, communities are a place where knowledge can be created, shared and communicated for more effective management. Knowledge is scarce and expensive to acquire in fisheries management, and communities can bolster knowledge for better management.

We recognize the existence of communities of mutual interest, experience, and interaction that may involve people living in and working from very different places who share fishing grounds and other fishery interests. This includes occupational communities which may also be recognized as participants in a catch share program through a Regional Fishing Association or other entities. For the purposes of these recommendations, we use the MSA’s place-based definition.

The Alaska Experience

As a basis for seeing fisheries as hubs of economic development for coastal communities, we can look to Alaska’s experience with its Community Development Quota (CDQ) program. The program, established in 1992 by the North Pacific Fishery Management Council (NPFMC), was meant to bring social and economic development opportunities to coastal, mostly indigenous, villages in rural western Alaska by allocating a portion of the annual fish harvest directly to coalitions of villages.¹⁷ The goal was to help geographically isolated rural communities build the infrastructure needed to support their long-term participation in the fishing industry, thereby creating a stronger economic base for communities.¹⁸ With regard to the success of the program, the Alaska Department of Commerce’s website states:¹⁹

Since 1992, over \$110 million in wages, education, and training benefits have been generated for over 25,000 residents. As of 2003, the asset value of the six CDQ groups exceeded \$260 million. Since 1992, over \$500 million in revenues have been generated. The CDQ program has been successfully contributing to fisheries infrastructure in western Alaska by funding docks, harbors, and the construction of seafood processing facilities. The CDQ

What are fishing communities?

“Community” is a very general concept, perceived and experienced differently. In the fisheries context, it signifies a group of people who share some purpose and set of values and see virtue in working together to benefit their fishery-based livelihoods and fishery-dependent communities. In focusing on fishing communities, we are primarily concerned with geographic communities — those that are adjacent to the coastal and marine resources from which their inhabitants derive an economically, socially and/or culturally significant fraction of their livelihood. This is in line with NOAA’s guidance, which interprets the Magnuson Stevens Act (MSA) definition of a fishing community as one that substantially depends on, or is engaged in, harvesting or processing fishery resources to meet social and economic needs in geographic terms as well.

The MSA also more broadly recognizes “coastal communities, including those that have not historically had the resources to participate in the fishery” ((303(A)(c)(3)(A)(IV))), as potential participants in limited access privilege or catch share programs. The community concept should be left broadly defined, in ways that encourage people to create community oriented structures to compensate for decades of management interventions that have ignored, diminished or demolished localized, place-based institutions.

Examples of such community diversity range from municipalities and other formally designated settlements to groups of likeminded fishers or fishing firms, associated with particular ports or regions and/or a particular style or place of fishing. To effectively develop communities or administer fisheries management programs, community representation is best done by a formal entity. This could be:

- A true government
- A voluntary association (with or without non-profit tax status)
- A cooperative (a for-profit business that reaches across individual self-interest to gain benefits of collaboration, cooperation)
- Community Quota Entity (as defined by the North Pacific Fishery Management Council)
- Regional Fishing Association (as defined by the Magnuson-Stevens Act)
- Community Fishing Association (as being considered and developed by some regional fisheries councils)

Catch share lessons from Alaska

Initial allocation to community entities has a positive track record

In 1992 six Community Development Quota (CDQ) entities were given initial allocations of groundfish and subsequently halibut and crab quota in Western Alaska. By 2008, these six entities had turned their initial allocations into \$190 million in annual revenue and had acquired net assets worth \$427.6 million.

Community entities without initial allocations face steep hurdles for success

Community Quota Entities (CQE), established by the state of Alaska in 2004, were not given allocations. They must purchase or lease quota. Facing capacity constraints and difficulties accessing capital markets, they have struggled to acquire quota due to the financial risks and high costs of quota. As of 2010, only one CQE on Kodiak Island had acquired quota, which amounted to 30,000 pounds of halibut.

Catch shares work well in relatively simple fisheries

The billion dollar, Marine Stewardship Council certified Alaska Pollock fleet is an example of how effectively catch shares can work in fisheries with a single target species, pursued by a single gear sector, and with relatively well understood ecosystem interactions. The Pollock fleet has formed a cooperative, and invested in technology and techniques for minimizing bycatch of non-target species.

(cont. in opposite page sidebar)

program has allowed CDQ groups to acquire equity ownership interests in the pollock, Pacific cod, and crab sectors which provide additional revenues to fund local in-region economic development projects, and education and training programs.

This example illustrates the fact that fishermen and coastal fishing communities, a critical element of our national heritage, are also an integral part of the solution to fisheries management challenges. By investing in communities with forward-looking programs, the industry may be reinvigorated.

New Forms of Community Participation in Fisheries

One area of significant innovation is the emergence of a new class of community-based fishing entities, Community Fishing Associations (CFAs) — a concept currently being developed by some regional fishery management councils as a potential mechanism to support fishing communities as part of catch share programs. The MSA indicates that fishing communities can be recipients of catch shares (as limited access privileges, LAPs),²⁴ and CFAs are being developed for this purpose.

The allocation of quota share to CFAs can enhance the ability of catch share programs to meet economic, social and ecological requirements of current law and policy by:

- Anchoring economic development in communities, with quota being a key asset in their portfolios of assets,
- Maintaining employment and fishing heritage in coastal communities, and
- Incorporating community sustainability plans with clear stewardship requirements.

Guidelines for CFAs do not yet exist within NOAA, although discussions have begun.²⁵ The following is an effort to outline elements of potential guidelines for interested communities, NOAA, and the fisheries management councils.

CFAs can be thought of as organizations of various corporate forms that are allowed to hold permits and quota on behalf of a defined community. Nationwide, about a dozen examples are already incorporated or undergoing formation, including the Cape Cod Fisheries Trust and the Port Orford Ocean Resource Team, discussed in more detail below. These groups may be formed around a common homeport or landing port and can include fishermen or other members of the community. A Community Fishing Association may be a partnership, a voluntary association or a non-profit entity established under the laws of the U.S. that is eligible to hold limited access privileges and distribute said privileges to permitted fishermen within the geographic community that the CFA represents. These entities should be beholden to the eligibility requirements and participation criteria for catch shares outlined in the Magnuson-Stevens Act, perhaps similar to the Regional Fishing Associations mentioned in the Act.

Following the practice of new CFAs, they would recognize a suite of explicit community-related goals in their charters, including, but not limited to:

1. Mitigating the negative economic and social impacts of current transitions to catch shares in fishery management.
2. Providing affordable local industry access to fisheries resources.
3. Providing opportunities for qualified new entrants to the fishery.
4. Preserving traditional fishing communities and necessary onshore infrastructure.

...fishermen and coastal fishing communities — a critical element of our national heritage — are also an integral part of the solution to fisheries management challenges. By investing in communities with forward-looking programs, the industry may be reinvigorated.

5. Anchoring economic development, jobs, etc. in coastal communities. Catch shares are part of a larger portfolio of assets managed by CFAs, which may include processing infrastructure, retail, and related on-shore businesses.

To be recognized as a CFA, an entity could be required to:

1. Meet community designation and membership requirements, such as local residency and percentage of time employed in fishing.
2. Have the support of local governing entities (municipality, county, port district, etc.).
3. Develop an adequate community sustainability plan as required by the MSA for fishing communities that participate in limited access privilege programs.
4. Meet organizational and operational standards, such as demonstrating a viable business plan, metrics for assessing impacts to the resource, and capacity for transparency of this data.

Emerging CFAs contemplate a variety of operational standards that position them to become responsible stewards of fisheries resources. Notable among these are open and transparent application and qualification criteria for the distribution of permits/quota to community fishermen. With regard to catch shares, CFAs would comply with existing and relevant leasing and transfer regulations that currently apply to individual permit-holders including lease reporting protocols, size-class or baseline restrictions, and other reporting requirements.

In accordance with the MSA's provisions for fishing communities, CFAs should develop a community sustainability plan that "demonstrates how the plan will address the social and economic development needs of coastal communities...."²⁶ Such a plan should include the following:

1. Specification of the organization's goals and objectives and the means by which it intends to meet those goals and objectives.
2. Description of how the CFA will contribute to the social, economic development, and conservation needs of the local fishery, including the needs of entry-level and small vessel owner-operators, captains, and crew. The description shall include anticipated efforts to address issues including the following as necessary to maintain the characteristic of the community or support its economic development:
 - a) Sustaining regional fisheries;
 - b) Crew, processing and seasonal employment opportunities;
 - c) Local processing and ancillary business activity;
 - d) Material and cultural fishing heritage;
 - e) Entry of new participants in fisheries;
 - f) Local infrastructure; and
 - g) Other local community and municipality needs.

Community-based fishing organizations such as CFAs provide new avenues for effective co-management, that is, cooperation between local groups engaged in the fisheries with government agencies in the management of public trust assets.

Towards Effective Co-Management

Citizen participation in governance of fishing operations in the United States has largely been conducted by individual fishermen acting as sole business operators

(cont.) Catch share lessons from Alaska

Ignoring the contributions of crew leads to significant socioeconomic problems

According to a recent news article, "The five-year review of the crab rationalization program presented to the North Pacific Fishery Management Council Dec. 8 revealed that crew have seen a consistent decline in wages as a percent of the ex-vessel gross [revenue] since 2005, particularly in the Bristol Bay red king crab fishery." A stark illustration of how catch share programs change the compensation structure in the fishing industry, the review revealed that "crew and captains in the highest harvesting quartile of Bristol Bay red king crab received 14.7 percent of the ex-vessel gross in 2009 compared to a fleet-wide average of about 35 percent in the years before the crab fishery was rationalized."

The transition to catch shares takes a lot of work and creativity

The North Pacific Fishery Management Council in June 2010 undertook a major structural overhaul of the Gulf of Alaska rockfish fishery catch share program which was implemented in 2007. In response to emerging data, it took steps to curtail transfer and leasing of catch allocations; reduce the amount of quota directly controlled by processors; emphasize cooperative fishing over individual fishing quotas, particularly regarding concerns about bycatch of non-target species; keep costs of entry into primary fisheries low and predictable for new entrants; and shorten the time between program reviews.



Community of Nilolksi, member of the Aleutian Pribilof Island Community Development Association (APICDA).

The allocation of quota share to CFAs can enhance the ability of catch share programs to meet economic, social and ecological requirements of current law and policy by:

- Anchoring economic development in communities, with quota being a key asset in their portfolios of assets,
- Maintaining employment and fishing heritage in coastal communities, and
- Incorporating community sustainability plans with clear stewardship requirements.

and decision-makers, as well as by family or corporate business structures. With the advent of new community-based structures such as Alaska's Community Development Quota corporations and Community Quota Entities, and the recent emergence of CFAs being created in response to new opportunities in the revised Magnuson-Stevens Act (2007), a new set of more cooperative governance experiences has been gained and demands for new governance arrangements have been created.

In part, these new governance approaches have been fostered by communities of place reminding the federal government and the fishery management councils of the public nature of fisheries assets and assertion of the rights of these communities to maintain their relationship with adjacent fisheries resources.

Community-based allocations to or purchases by Regional Fishery or Community Fishing Associations of catch shares (quota) require governance processes, much of which is provided by the 501(c)(3) structures in the US IRS tax code — an excellent template for basic organizational standards for accounting rules, board oversight, fiduciary responsibility and transparent reporting. Such standards are required to ensure that public benefit is derived and maintained, and that fairness and transparency are upheld.

This report does not mean to suggest community-based management as a panacea; however, as a recent study of the international experience with co-management suggests,²⁷ the benefits of community-based governance include:

- Management and transparency of community-based assets,
- Creation of incentives for involvement in community organizations,
- Creation of incentives for building community capacity, and
- Development of community sustainability plans including performance evaluation and metrics in the fisheries and fleets utilizing quota held by community entities.

Multiple opportunities for communities and government agencies are embedded in the development of community-based governance of catch share programs. These include learning from other communities' experiences (some of which are discussed below), building new capacity, avenues for agency support, and interactions between non-profit and municipal organizations involved in governance and economic development.

Examples of Community-Based Governance²⁸

In North America, there is a general history of cooperation in the community-based management of fisheries, including groundfish quota management in maritime Canada, lobster co-management in Maine, and other cases, including the Bering Sea Community Development Quota corporations in Alaska, as previously noted.

Three recent experiences, germane to community-based governance, demonstrate the pathways being developed by communities themselves to address the challenges and opportunities of catch share programs. Each organization uses IRS non-profit tax-exempt structures and establishes clear governance processes within bylaws and program procedures.

Cape Cod Fisheries Trust, Massachusetts²⁹

The Cape Cod Commercial Hook Fishermen's Association established a distinct entity to hold and lease community-based quota within the sector program established by the New England Fishery Management Council for the groundfish fishery. This is an example of community-based leadership, cooperative

Community-based fishing organizations such as CFAs provide new avenues for effective co-management, that is, cooperation between local groups engaged in the fisheries with government agencies in the management of public trust assets.

organization building, and the development of finance and management capacity within a local organization structured as a 501(c)(3) non-profit. The Trust has the right and capacity to purchase quota shares for groundfish (as well as sea scallop) and lease them to community-based fishermen who meet a set of qualifications including local residency, having fishing as a sole source of employment, and a willingness to use only non-harmful and non-wasteful commercial fishing gears. The Trust works with a local non-profit community development organization to establish an open and transparent process for the distribution of leased quota among participating fishermen in order to meet the program's social, economic and environmental objectives. By providing an avenue to access fishing quota at an affordable cost and providing space for a larger number of diverse fishing businesses, the Trust helps support and strengthen coastal communities.

Cape Barnabas Incorporated, Alaska

Within the Community Quota Entity Program (CQE) established in 2006 by the North Pacific Fishery Management Council, the community of Old Harbor on Kodiak Island, Alaska, established a CQE to purchase, hold and lease halibut fisheries quota. Cape Barnabas Inc. is a non-profit 501(c)(3) organization which is supported by the Old Harbor Native Corporation. The organization functions in the open processes of the community with a public board, a well managed leasing process, and a public meeting process that maintains transparency in the small community.

Port Orford Ocean Resource Team, Oregon³⁰

The small community of Port Orford on the southern coast of Oregon established a non-profit 501(c)(3) organization, the Port Orford Ocean Resources Team (POORT), to further the sustainable community-based management of fisheries in their region. The organization conducts cooperative research with the state agencies and universities, has led the development of local marine reserve and community stewardship area, and runs a community-supported seafood business. In addition, POORT has facilitated access for local member fishermen to alternative financing for the individual purchase of sablefish catch share permits. POORT is positioning itself to establish a Community Fishing Association to acquire, hold and lease catch share quota of groundfish to Port Orford-based fishermen in perpetuity.

Community-Based Governance Recommendations

- Pursuant to the implementation of the recent 2010 policy on catch shares — NOAA Fisheries should seek methods to support fishing communities in the development, expansion, and diversification of community-based initiatives. This would support the growing recognition that many successful methods of community adaptation in fisheries management are community driven.
- NOAA should require the development of Community Fishing Associations (CFAs), Regional Fishing Associations (RFAs) and other community structures now authorized in the MSA (Section 303a) within any catch share program. While some catch share programs may be developed for fisheries in which no community entity is initially envisioned, space should be made for potential participation of communities within programs.
- NOAA budgetary resources should be applied to further define and develop guidelines for implementation of the community provisions of the MSA to be applied by all fishery management councils. The guidance should include, but not be limited to, clear parameters for establishment of



Chatham fleet, Massachusetts



Cape Barnabas, Alaska



Fishing fleet at Port Orford, Oregon

Benefits of community-based governance:

- Management and transparency of community-based assets
- Creation of incentives for involvement in community organizations
- Creation of incentives for building community capacity
- Development of community sustainability plans including performance evaluation and metrics in the fisheries and fleets utilizing quota held by community entities

CFAs and RFAs, and guidance on how to develop community sustainability plans, including the establishment of socioeconomic and biological goals and performance measures to track progress over time. This would require working in clear collaboration and cooperation with communities, fishery management councils, and other support organizations including economic development and municipal entities.



Port Orford, Oregon community members have shown leadership in governance by working to establish a local marine stewardship area. Here community members review draft maps for the Port Orford Ocean Resource Team's Local Knowledge Interview GIS mapping project.

IV. OPPORTUNITIES FOR PROGRAMMATIC AND FINANCIAL INNOVATION

The transition to catch shares affords the opportunity for significant innovation, both programmatic and financial, in how NOAA manages the nation's fisheries. To facilitate the involvement of communities through this transition and to enhance community participation in catch share management, the agency should look to public and private finance mechanisms. In addition to (i) modifying its own policies to facilitate community participation in catch share programs, (ii) NOAA should convene a working group of representatives from key federal and state financing programs (U.S. Department of Agriculture (USDA), U.S. Economic Development Administration (EDA), the Treasury Department's Community Development Financial Institutions (CDFI) Fund, Small Business Administration (SBA) and U.S. Department of Housing and Urban Development (HUD)) to formulate a funding initiative for CFAs, and to engage financial intermediaries in support of capacity building technical assistance and investment, and (iii) leverage this enhanced agency collaboration to develop new opportunities at the intersection of public and private finance.

Modifying Existing NOAA Programs

There are several NOAA programs and practices that could be modified to provide financing solutions and related opportunities for fishing communities and other fishery participants interested in catch shares.

One the most effective interventions would be for NOAA to ensure that the regional fishery management councils, entrusted with the implementation of catch share programs, take to heart the Government Accountability Office finding that "[a]llowing communities to hold quota is the easiest and most direct way under a catch share program to help protect fishing communities."³¹

The GAO makes an important distinction when noting that "[c]ommunities allowed to hold quota can obtain it through allocation when the program begins or at any time thereafter."³² Since much of the economic benefits from catch share systems arise from the initial allocation, NOAA should direct councils to ensure that catch share programs are designed with explicit alternatives for making initial allocations of quota to communities, and for using existing or new community-based entities for that purpose. Community allocations of fisheries quota should be of a significant and appropriate percentage so as to meet the needs of communities and the needs and status of regional fisheries.

For existing or future programs that have excluded communities from the initial quota allocation, NOAA should put part of its catch share program funding in reserve for loan guarantees and/or loan leveraged private funding. NOAA should develop a dedicated loan program to assist communities in the purchase of catch shares. This could be done by expanding the Fisheries Finance Program to include new and future catch share programs such as those in New England and on the West Coast, with a special focus on community entities that seek to purchase quota, or by creating a new program modeled on the EDA Revolving Loan Fund described below. Such a loan program could also help to provide access for new entrants, and should be in place at the beginning of catch share program



Fish-buying barge in Mountain Village, Alaska, a member of the Yukon Delta Fisheries Development Association, one of Alaska's Community Development Quota Entities.



Standards and costs for monitoring should be appropriately scaled to the size and income capacity of boats. Here, the F/V *Goldeneye*, part of the small boat fleet of Port Orford, OR is hoisted up from the Pacific.

implementation. By making loan programs available at the beginning rather than years into implementation, NOAA could avoid problems that arise when entry costs become prohibitively expensive, as happened in the Bering Sea and Aleutian Islands Crab Rationalization Program.

Councils should also include mechanisms in catch share design that both allow flexibility to modify programs when necessary while creating and maintaining security for fishermen. Such mechanisms include predictable performance-based renewals of quota share, which would be a beneficial alternative to allocations in perpetuity because it would allow for modification of the program while still preserving the benefits of long-term security.³³ A similar system was considered by New South Wales, Australia, with the idea that regular, periodic reviews with performance-based renewals may provide a more finely-tuned mechanism to reward cleaner fishing behavior, versus a permanent exclusive privilege.³⁴ Performance requirements could include using fishing gear known to have less ecological impact and requiring quota holders to be active participants in the fishery. With each periodic review, those in compliance with performance requirements receive an automatic renewal of quota shares, while those not in compliance may have to forfeit a percentage of their shares, which could then go into a pool for new entrants, for example. Therefore, depending upon the design, this adaptive management approach could help to provide a means of protecting the resilience of the resource and of the communities that depend upon it. Decisions and alterations made with each periodic review are made with the knowledge that the system can be improved, and managers are able to learn from their actions.³⁵

Catch share program design should also include mechanisms such as quota auctions with revenue recycling into coastal communities, creation of small quota blocks that can be purchased as a vehicle for entry into the fishery, triple bottom line (economic, social, ecological) performance based allocations, and other strategies to improve the effects of quota programs on long-term sustainability and community stability.

Finally, NOAA and the councils should ensure that standards and costs for monitoring are appropriately scaled to the size and income capacity of boats. Similar to the new FDA Food Safety Modernization Act's allowance of flexibility for small farms with regard to certain safety standards,³⁶ monitoring requirements should be tailored to each boat's relative size and capacity for environmental impact rather than one-size-fits-all requirements that may unfairly burden small-boat fishermen.

Convening a working group of representatives from key federal and state financing programs

In addition to modifying its own policies to facilitate community participation in catch share programs, NOAA should spur private finance mechanisms to invest in CFAs and related value-added fish processing, marketing and distribution enterprises by convening a working group of representatives from key federal and state financing programs (USDA, EDA, CDFI Fund of the U.S. Treasury, SBA and HUD). This working group could be directed to formulate a funding initiative for CFAs, and to engage local, state and national private or public financial and technical assistance intermediary entities to leverage this enhanced agency collaboration to develop these new opportunities at the intersection of public and private finance. This would be right in line with the National Ocean Policy's call for coordinating federal and state governmental efforts to secure the health and prosperity of our coasts.³⁷

Leveraging existing federal investment and capacity-building grant programs with other public programs

NOAA's capacity-building Fisheries Innovation Fund and public finance programs, such as the EDA's Revolving Loan Fund, the USDA loan guarantee program, and the Treasury Department's CDFI Fund and New Markets Tax Credit Program (NMTC), further detailed below, should be leveraged to provide opportunities for quota purchase and development of CFAs by community entities using traditional bank and private capital financing, along with private foundation support. Existing cross-cutting initiatives like the Healthy Food Financing Initiative described below should be expanded to include seafood and community fishing associations.

The Revolving Loan Fund (RLF)³⁸

program of the Economic Development Administration of the Department of Commerce provides small businesses and entrepreneurs with critical gap financing. Regional EDA offices award competitive grants to local or tribal governments, and public or private non-profit organizations, who in turn administer currently 578 revolving loan funds with a combined capital base of \$852 million. NOAA should work with its sister agency to educate the EDA and its regional offices on catch shares and the fishing industry, with the idea of developing loan programs tailored to the needs of fishing communities and community-based entities in the transition to catch shares, notably the acquisition of quota.

The New Markets Tax Credit (NMTC)³⁹

program was created in December 2000 to provide tax incentives to induce private-sector, market-driven investment and create jobs in low-income urban and rural communities across the nation. It stimulates private sector investment in distressed communities by providing a tax credit for qualified equity investments. According to a survey of the NMTC Coalition, between 2003–2009, this innovative program is estimated to have turned \$15.5 billion in tax credits into more than \$50 billion in private investments in over 3,000 projects in distressed communities.⁴⁰ Many West Coast fishing communities in need of capital for start-up or expansion of facilities and business operations are located in census tracts that meet the criteria of the NMTC program, making this instrument potentially available for economic development anchored by Community Fishing Associations. With respect to the use of the NMTC for acquisition of fishing permits, a potential complication arises from the accounting characteristic of fishing quota as an intangible asset, since the NMTC program excludes, per Internal Revenue Code Sec. 1397C(d)(4), “any trade or business consisting predominantly of the development or holding of intangibles for sale or license.” NOAA should work with the Treasury Department to ensure that quota purchases by community fishing associations are eligible investments under the NMTC program.

The USDA Loan Guarantee Program⁴¹

is designed to “improve, develop, or finance business, industry, and employment and improve the economic and environmental climate in rural communities. This purpose is achieved by bolstering the existing private credit structure through the guarantee of quality loans which will provide lasting community benefits.” Many fishing communities also meet the definition of rural communities, and NOAA should work with USDA to expand the Loan Guarantee Program to include the acquisition of quota share and related investments by community fishing associations. NOAA should also promote other USDA loan and grant programs to



NOAA should work with the Treasury Department to ensure that quota purchases by CFAs are eligible investments under the NMTC program.



Based in Port Orford, Oregon, the three boat cooperative, Port Orford Sustainable Seafood, was launched in June of 2009 to help meet seafood demands of conscious consumers concerned with both personal health and the health of ocean ecosystems. The cooperative is an investment in the future of Port Orford fisheries and the community dependent on them.

be used for the purchase of catch shares by CFAs, such as the **Rural Cooperative Development Grant** (RCDG) Program,⁴² the **Rural Economic Development Loan and Grant** Program (REDLG),⁴³ the **Small Socially-Disadvantaged Producer Grant** Program (SSDPG),⁴⁴ and the **Conservation Loan** Program (CL).⁴⁵

The Healthy Food Financing Initiative,⁴⁶

which was included in the President's Budget for 2011, is a joint initiative of the Departments of the Treasury, Agriculture, and Health and Human Services. It makes available more than \$400 million in financial and technical assistance to community development financial institutions, other nonprofits, and businesses that address the healthy food needs of communities. Through a mix of federal tax credits, below-market rate loans, loan guarantees, and grants it is intended to attract private sector capital that will more than double the total investment. NOAA and the Department of Commerce should work with their sister agencies to include seafood in the Healthy Food Financing Initiative, and make its financing provisions available to community fishing associations.

New Opportunities for Private/Public Partnerships

The **Fisheries Innovation Fund** (FIF) administered by the National Fish and Wildlife Foundation (NFWF) is a grant program to foster innovation and support effective participation of fishermen and fishing communities in the design and implementation of catch-share fisheries. The first solicitation for proposals for funding resulted in \$12 million in proposals for an initial round of available funding of \$2.2 million. This demand stands to grow as more fisheries transition to catch shares and the capital needs of the transformation become more apparent. NOAA should work with the Administration and private partners to expand the Fisheries Innovation Fund to meet the emerging demand from community fishing associations. It should also work toward refocusing the FIF on social science and market design research — as defined by the assignment, trade and sale of catch shares and the conditions imposed on those transactions.

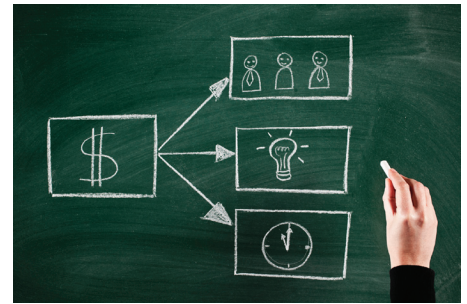
NOAA should also invest both directly and indirectly into the research and development of business models for new private financing mechanisms that promote its program goals, as well as the capacity of fishermen and communities to utilize these mechanisms. This would entail dedicating part of existing research and grant programs such as the **Saltonstall-Kennedy Grant Program**⁴⁷ toward developing innovative investment vehicles. It would also entail making available detailed fisheries information and data to allow researchers outside NOAA to analyze the economics of various catch share design and implementation options, including the viability of community-based businesses.

Finally, NOAA should reach out to the **Small Business Administration** and other agencies that provide technical assistance, and develop a series of information materials on fisheries business development in general and catch shares in particular for use by Small Business Development Centers to provide technical capacity and services to rural and coastal businesses, entrepreneurs, and potential investors.


Recommendations for Programmatic and Financial Innovation

- NOAA should develop a dedicated loan program to assist communities and new entrants in the purchase of catch shares, and to act as a reserve for existing or future programs that have excluded communities from the initial quota allocation.

- NOAA should require a significant and appropriate baseline percentage of fisheries quota be anchored in communities in each council region through entities like Community Trusts, such as the Community Quota Entity program in Alaska. While some fisheries will not have community entities to give an initial allocation to, catch share programs should be designed to set aside a percentage of quota for community participation. This percentage should adequately reflect the needs of communities and the needs and status of regional fisheries
- Councils should design catch share programs to include predictable, performance-based renewals as an alternative to allocations in perpetuity.
- Catch share program design should include mechanisms such as quota auctions with revenue recycling into coastal communities, and other strategies to improve the effects of quota programs on long-term sustainability and community stability.
- NOAA and councils should ensure that standards and costs for monitoring are appropriately scaled to the size and income capacity of boats.
- NOAA should convene a working group of representatives from key federal and state financing programs (USDA, EDA, Treasury, SBA and HUD) to formulate a funding initiative for CFAs, and to engage financial intermediaries in support of capacity building technical assistance and investment.
- NOAA should invest in the research and development of business models for new private financing mechanisms that promote its program goals, as well as the capacity of fishermen and communities to utilize these mechanisms.



To facilitate community participation in catch share management, the agency should look to public and private finance mechanisms.



Current and future catch share programs will need to recognize and evaluate impacts that go beyond the participants within one particular program in order to design programs that effectively address complex social, economic and ecologically connected factors.

V. INVESTING IN CAPACITY

The design of catch share programs in the U.S. to date indicates a need for additional capacity and investment in both the fisheries council system and the ability of fishing communities and businesses to function well in the resulting market-based management systems. Lack of expertise cannot be an excuse for failure to give full and fair consideration to the array of social, economic and ecological issues associated with catch share programs.

In particular, there is a need to raise the visibility and priority of social science within the fisheries council system and within NOAA. Although most catch shares programs require an evaluation after five years there is often no baseline established from which to conduct an effective evaluation. Such baseline data are also important for understanding the response of fishery participants, including influence-seeking behavior and political capture to protect endowments created by initial allocations, which may resist program revisions. Sufficient capacity is needed to establish baseline data and a system for socioeconomic monitoring of catch share programs so that a comprehensive understanding of how programs are working can be developed rather than relying on piecemeal evidence to date.

In addition, most evaluations conducted to fulfill regulatory requirements focus only on the participants of the current program, not those who were excluded and may also be affected. Current and future catch share programs will need to recognize and evaluate impacts that go beyond the participants within one particular program in order to design programs that effectively address complex social, economic and ecologically connected factors. When scoping initial catch share program design, fisheries management councils should actively engage not only anticipated program participants, but also more broadly affected fishing industry participants and members of the community. Further consideration of exogenous factors, such as gentrification and the loss of fishing infrastructure, should also be factored into the analyses of catch share programs.

To best understand how catch share programs have an impact beyond an immediate program, a dedicated socioeconomic research program needs to be pursued. Research is needed to address how permits, landings by species, vessels, dealers and communities may change over time with the implementation of the catch shares program, but also how they have changed prior to implementation and how they may be affected by such a program or exogenous factors, e.g. gentrification, climate change, hurricanes and oil spills. Other research to develop social indicators that measure vulnerability and resilience of fishing communities can also enhance the ability to understand the impacts of regulation and other disruptions, like hurricanes or oil spills. This research will provide critical baseline data that can be updated annually, providing long term analysis similar to stock assessment data.

Additional investment is also needed in market design expertise, given that catch share programs effectively are cap and trade systems. Without thoughtful market design, the profitability and stability of the industry, control of externalities such as by-catch, and better stewardship of the fishery are all in jeopardy. NOAA should work within fisheries and look to other industries, such as pollution trading or spectrum auctions,⁴⁸ to learn from other transparent trading and reporting mechanisms and apply those to catch share transactions using best available science, technology and expertise. For more on this issue see the “Market Design Principles” section of Appendix A.

To help councils be more effective in designing catch share programs to incorporate the concerns of the broader affected community, NOAA should invest in new or additional capacity in design expertise at the council staff level. This has been done to some degree; however, councils remain stretched and lacking in expertise in such areas as market design, applied economics, and institutional analysis (see discussion regarding market design in Appendix A below). In particular, NOAA should budget for and conduct design training for fishery managers, council members, and industry, and identify academic and professional experts in each region to conduct design experiments and modeling charrettes to help councils visualize the likely effects of program features.

Communities offer challenges and opportunities for effective fisheries management, particularly in the ways they intersect with catch share programs. Communities are not homogeneous entities of aligned interests, and engaging in successful collective action is costly in terms of time and resources. We see significant opportunity for effective community involvement in the design and implementation of catch share programs. But for communities to be effective in that role, some investment in their capacity to steward public resources is needed.

Capacity Recommendations

- Councils should establish baseline data and a system for socioeconomic monitoring of catch share programs so that a comprehensive understanding of how programs are working can be developed rather than relying on piecemeal evidence to date.
- Councils should require the effective participation of the fishing industry and communities in catch share program development from the beginning.
- NOAA should work within fisheries and look to other industries, such as pollution trading, to learn from other transparent trading and reporting mechanisms and apply those to catch share transactions using best available technology and expertise.
- NOAA should invest in new or additional capacity in catch share design expertise at the council staff level.



Dillingham, Alaska's small boat harbor is crowded with 32-foot gillnet vessels during the height of the summer salmon season. As an example of capacity-building for communities, the Bristol Bay Economic Development Corporation invests income from its Community Development Quota harvests in local infrastructure and programs that benefit local salmon, halibut and herring fishers and their communities

CONCLUSION



The Midcoast Fishermen's Association, founded in 2006 by a group of conservation-minded groundfishermen from the small midcoast-Maine village of Port Clyde. The group's mission is to identify and foster ways to restore their groundfish fishery and sustain fishing communities along Maine's coast for future generations.

The National Panel on the Community Dimensions of Catch Shares concludes that with national policies on catch shares and ocean management now in place, NOAA and the fishery management councils have the enabling framework for the design of catch share programs to enhance community-based economic development and regional resource management. This is a significant opportunity to bolster not only the sustainability of our nation's fisheries resources, but also the resilience of communities that form the backbone of our fishing heritage. NOAA and the fishery management councils should work closely together, seeking the advice of Congress and its committees, with agencies and other organizations on the themes of **governance, finance, and capacity**, as outlined in this report and its short companion summary document (www.ecotrust.org/fisheries). This opportunity to build durable community-based catch share systems that are workable and functional for fishermen, their communities, and local organizations should not be wasted.

VI. APPENDICES

A. Primer on Institutional Design

In encouraging the development of catch share programs NOAA is engaging in the active redesign of institutions for managing the nation's fisheries. There is extensive literature on institutional design for natural resource management that was reviewed by the National Research Council not long ago. The NRC found many examples of successful community-based or collective management of common-pool resources such as fisheries, and found that these are not only able to avoid the "tragedy of the commons", but can frequently achieve better economic, ecological and social results than under a strict individual property rights regime.

Such successful outcomes rely on robust design principles, in particular those that address issues around property rights and tenure security, the implications of group characteristics for collective action and the implications of resource characteristics for collective action.⁴⁹ In the context of fisheries management, the groups undertaking the design of catch share programs are the regional fisheries management councils. While the councils exhibit many of the desirable characteristics for successful institutional design, notably in terms of their size, composition, levels of wealth and income, and experience,⁵⁰ they are also at risk of falling into the trap of path dependency by relying on their limited experience, a limited set of "how to" guidance publications,⁵¹ and a limited set of external expertise.

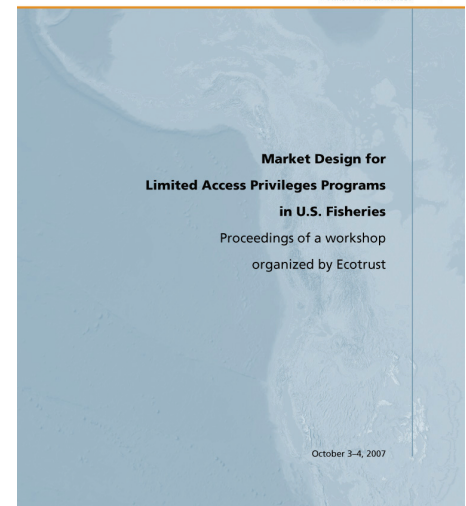
And indeed, we see in successive program developments around the country a pattern of defaulting to individual quota systems with little or no consideration of community or collective mechanisms. Such fully fledged privatization of national resources, as engendered by the *de facto* property right characteristics of many catch share systems to date, would be a significant departure from the approach taken in other natural resource based industries, where the preponderance of solutions — whether auctioning the use of the electromagnetic spectrum or leasing public lands for mining, grazing, and logging — exploits a fuller range of options that keep the control and benefits from the resource in public hands.⁵²

Given the importance of getting the institutional design right in order for catch share programs to achieve the mandate of the Magnuson Stevens Act and the goals of the National Ocean Policy, and given the complexities of fisheries ecosystems, it is useful for decision makers at the councils and for NOAA to consider the design challenges as such, and to draw on applied expertise in institutional and market design. The importance of these considerations is well understood in parts of the fisheries literature,⁵³ but not always applied by fisheries managers.


At a 2007 workshop at the Harvard Business School, a group of market design experts shared their thoughts for addressing the ecological, economic, and social objectives of fisheries management (as articulated in the MSA) in general, and for specific fisheries in particular.⁵⁴ In what follows we present two short summaries of key considerations for catch share design from the perspective of applied economists who specialize in market design. They are intended to provide additional background on the Panel's deliberations and recommendations.

Property Rights and Allocation Alternatives for Fisheries Management (T. Groves)⁵⁵

Catch shares, while considered Limited Access Privileges under the MSA, confer a *de facto* property right on their holders. Designing the right form of rights based management in the face of strong opposing interests is a daunting task, yet



The HBS report "Market Design for Limited Access Privileges Programs in U.S. Fisheries: Proceedings of a workshop organized by Ecotrust (Oct 3-4, 2007)" is available from: www.ecotrust.org/workingpapers



essential if the problems of overfishing and declining fishermen incomes are to be addressed. A key element in solving the design problem lies in delineating the rights or privileges that are to be created and how they are to be allocated. Many of the concerns over property rights for fisheries can be alleviated by a careful balancing of competing interests.

Concerning the specification of rights, it is useful and indeed necessary to distinguish among alternatives. A first distinction may be made between “**use or access rights**” to fishing and “**property or ownership rights**” to the fish. A fisherman, for example, may have only a “right to fish” under specified terms (time, location, catch limits, etc.) or he may have a right to catch a specific quantity of fish over a season. Both rights have value only if they are limited in numbers to whom they are granted. To limit harvests to sustainable limits, rights to fish or catch rights must be restricted. It is generally more convenient and more efficient to limit harvests under a system of catch rights (such as quotas) than under a limited right to fish system, since the latter frequently results in “fishing derbies” or a “race to fish” leading to “capital stuffing” and other inefficient (costly) application of resource inputs to fishing. But an optimal fishing rights system may involve ingredients of both types of rights — for example, a quota consisting of a given proportion of a total allowable catch coupled with use restrictions such as time and location closures, gear restrictions, and other provisions to account for, say, spawning periods and places or for control of by-catch (of endangered species or other non-target species).

Two other distinctions among alternative specifications of rights are those of **duration** and **transferability**. Whatever the form of rights defined, they may be granted for a single year, multiple years, or even permanently. If granted for a limited period, then the allocation and re-allocation procedures become all the more important. For example, a quota right may be granted on “use or lose” basis — that is, it may be automatically extended for another year (or period), if it has been used enough in the current year (period). This feature would, in effect, grant a fisherman a claim to his fishing livelihood until he retires. Or, a quota right may be granted for an extended period, but with the quota amount declining every year to allow for a pool of rights to be allocated to potential new applicants or entrants into the fishery.

Whatever the duration of the rights allocated, the efficiency of the system is crucially affected by whether or not the rights may be transferred — that is, sold or perhaps only leased for a limited time to others. Economists generally favor full transferability of rights on simple efficiency grounds. But markets only function efficiently under a large number of conditions. In the fisheries context, there are several ways in which inefficiencies could arise, for example when permits or quotas are excessively concentrated in the hands of a few participants. It may therefore be necessary, on efficiency grounds, to limit transferability. For example, rights may only be held for a limited term, or only leased for a single season; rights may be sold only to other similar type fishermen; quota rights may be subject to an upper limit (x% of the total); or transfer of rights may be subject to community approval.

Any kind of limitation on the right to transfer ownership will reduce the potential value of the right being transferred and thus there is a natural opposition of interests between the rights holder and the larger community concerned about the negative effects (“externalities”) of unlimited transferability. In particular, a fisherman who views his own quota rights as an ultimate retirement asset will naturally resist restrictions on his right to sell to the highest bidder, even though he may also be concerned for his fishing community about the consolidation of fishing in the hands of a few large firms. The inherent conflict exists not only across

individuals and between different interest groups but within the heart and mind of the fishermen themselves.

The other key design issue in devising a property-rights fishery management plan is how the **allocation of rights** is to be determined. Here also, there are many alternatives but without the criterion of efficiency to guide or inform a choice among them. Essentially allocation problems are resolved by consideration of fairness, equity, and entitlement, and one might expect there is little agreement on what these principles require in any specific problem.

Nonetheless, insofar as concerns about the effect of any property-rights fishery management scheme on small fishing communities are to be addressed (as they are required to be by the Magnuson-Stevens Fishery Conservation and Management Act), direct allocation of rights to communities — instead of only to individuals — can be considered. Even with full transferable rights, fishing communities themselves can protect their larger community interests if they can (collectively) decide how to exercise their fishing rights and to whom, if anyone, they would be willing to sell. More generally, allocations may be made to groups of fishermen (such as the New England “sectors” or other emerging examples of community fishing associations) rather than to individual fishermen to enable both more efficient deployment of fishing resources and to limit incentives to sell out to non-community industrial fishing firms. In this case, individual fishermen would not be able to pull out their quotas and any divestiture of the group’s shares would be a collective decision and hence would create quite different incentives. Under such a system of collective ownership, the group would likely be more concerned with spill-over effects on the community than would be individual fishermen.

Other considerations in addressing the allocation of rights are how current (and past and even future) fishermen are to be treated and if initial allocations are to be given away or sold at, say, auction. Distribution formulae based on, among other things, historical catch (over a several-season-qualifying period) are frequently used to make initial allocations of quota rights. New fishermen can be accommodated in a rights-based system by either requiring them to buy rights from existing rights holders, by directly allocating rights taxed, retired, or otherwise relinquished by current holders, or by retaining or creating new rights expressly for this purpose.

Through a judicious process of defining a property-rights system, including the rules for initial allocation, an efficient and fair system can be established that effectively considers the interests of fishing communities and the wider public, as well as those of fishermen and the industry generally. Such a process necessarily must begin with a clear articulation of the goals and objectives of the program, which are presumably responsive to the goals and objectives for fisheries management specified in the Magnuson Stevens Act. From there mechanism design principles can inform the choice and specifications of the policy.

Market Design Principles: Caps and Allocations (J. Ledyard)⁵⁶

A catch share system is an example of regulation through Cap-and-Trade — capping the allowable catch, assigning rights to portions of the catch, and allowing trade in them to take place. In the context of fisheries management, Cap-and-Trade is often viewed as a win-win solution for both the environment and fishermen. The Cap provides the mechanism for achieving sustainable fish populations through the choice of an annual Total Allowable Catch. The Trade provides the mechanism for increasing industry profits through the reallocation of resources into the hands of the more efficient fishers and the creation of incentives for finding lower cost harvesting methods. Other expected benefits of a cap-and-trade program are reductions in externalities such as by-catch, community stability, and better



environmental stewardship.

The usual manner in which Cap-and-Trade systems are implemented, however, leads to outcomes that are far below these promised results. This is due to the fact that the regional fisheries management councils rarely are careful enough in the design of the tradable asset (the catch shares), nor have reliable measurement of stocks, adequate monitoring of fishers, and serious enforcement of the rules. So while the Cap can theoretically serve as an efficient mechanism to regulate the catch and manage the fishery, in practice the infrastructure for such regulation is underfunded and left as an afterthought. With complete and competitive markets,⁵⁷ readily available capital, and sufficient transparency, the Trade can provide a mechanism for lowering costs, increasing profits, and stabilizing the industry that supports the fishery. But, as with the Caps, little effort or thought is given to providing the necessary infrastructure to nurture competitive markets.

A thoughtless, but standard implementation process for Cap and Trade systems might be summarized as “create a simple catch share for one species, grandfather that asset, and then let the asset trade”. This approach is politically expedient; because of the promised profits created by ending overfishing, it gives fishermen currently in the industry a sizeable incentive to accept the regulation. Because the Total Allowable Catch enables direct control over fish stocks, it seems to generate desirable environmental outcomes. But handing out quota and then saying “let there be trading” is not good enough. Without more thoughtful market design, increases in profits, stability of the industry, control of externalities such as by-catch, and better stewardship of the fishery are all in jeopardy. The keys to a profitable and stable industry and to a thriving and well-managed environment lie in the thoughtful design of the tradable asset and the provision for a transparent, fair marketplace. We consider these elements in turn, from the perspective of community ownership, which provides a diversified portfolio of fisheries and a shared interest in stewardship.

Sensible Asset Design

It is often overlooked that **catch shares can do more than just attempt to regulate the amount of species** that is caught. By defining the asset appropriately one can regulate the period of time during which the catch can be made and the area or location in which the catch can be made. Simultaneously controlling amount, time, and location can lead to a finer regulation of the ecosystem.

An over-reliance on one fishery makes fishermen vulnerable to fluctuations in that fishery. In order for fishermen to remain in business these days, they need to be able to access multiple fisheries. But it can be very expensive for a single fisherman to acquire the licenses and catch shares for many species. One way to have a diverse portfolio is to become part of a community fishing association. A community association that owns a variety of catch shares can help fishermen diversify their fishing “portfolios” by providing access to fisheries that they do not otherwise have permits or quota for. It offers a more regionally diverse and economically flexible fleet.

A nice by-product of community ownership of a diverse portfolio is the provision of a means to handle by-catch issues. Suppose a fisherman of one species happens to harvest a quantity of another through unintended by-catch. Current regulations often require that fisherman to stop fishing once a certain level of by-catch has been attained. This is inefficient management. An alternative is to require the fisherman to procure catch shares for the by-catch species. This has the advantages of (1) imposing the appropriate cost on the by-catcher—the value of the lost fish to the holders of the catch shares of that species—and compensating the fishermen who are damaged by the by-catch problem, and (2)

preventing the unintended by-catch from ending a potentially profitable season. With community ownership of a diverse portfolio, the by-catcher can buy the appropriate amount of catch shares, thereby compensating their fellow association members for the externality caused by the by-catch. This is a more graceful and efficient method of regulation than now exists. It benefits the individuals who do happen to catch species they were not targeting and it compensates those whose fishing is affected by by-catchers.

Community ownership also creates a community of interest. This is a key to reductions in externalities and improvements in environmental stewardship. The group will have a shared commitment to monitoring, gear choices, etc. It also allows one to replace licensing requirements with a provision for “due care for the environment.” This makes it easier for a responsible fisherman to have access to a diverse fishery through purchases of short-run licenses, helping them deal with personal risk. It also makes it easier for the association to encourage and enforce better long-term stewardship, helping them deal with environmental risks.

A Transparent and Fair Marketplace.

A transparent and fair marketplace requires an accessible registry of current ownership, accessible trading information about potential buyers, sellers, and market prices, and access to capital for all potential buyers. These do not magically happen. In fact, under a hands-off approach to program design, the incentives are for brokers and potential monopolists to work hard to prevent them from occurring. But they are inexpensive and easy to provide, especially given modern technology.

A registration database must be maintained so that the TAC can be enforced. This should be expanded to register all transactions involving catch shares. Examples include information about sales — information on the parties to the transaction, the amount of the transaction, the buying and selling prices, and fees if any. Also information on loans and liens should be kept and made available. Public access to such information can and should be easily provided online.

It is also very easy and inexpensive to provide an **online marketplace** where buyers can bid, sellers can offer and trades can be completed in a transparent manner. If such a site is not available, brokers will operate in the manner of a black box charging a buyer a much higher price than the seller receives, pocketing the difference. This provides significant profit to the broker but severely limits the ability of buyers and sellers to find fair prices. Such an online site can be connected to the registration database for automatic data transference, reducing costs even further.⁵⁸ It should be noted that a single site can easily serve as the marketplace for many species. This would allow multi-species fishermen a simple place to manage the portfolio of catch shares they need to deal with their risks.⁵⁹

Once an accessible registry and a transparent marketplace are in operation, access to capital is made easier. The registry is a place that, for example, a lender can go to guarantee that the borrower really owns the asset. The marketplace is somewhere the lender can go to find information that helps provide a valuation for the asset. This reduces the risks to the lender and allows them to be able to lend more at better rates.⁶⁰



B. Magnuson-Stevens Act Sections RE: Fishing Communities and Regional Fishing Associations

16 U.S.C. 1802 MSA § 3

(17) The term “fishing community” means a community which is substantially dependent on or substantially engaged in the harvest or processing of fishery resources to meet social and economic needs, and includes fishing vessel owners, operators, and crew and United States fish processors that are based in such community.

(14) The term ‘regional fishery association’ means an association formed for the mutual benefit of members —

(A) to meet social and economic needs in a region or subregion; and

(B) comprised of persons engaging in the harvest or processing of fishery resources in that specific region or subregion or who otherwise own or operate businesses substantially dependent upon a fishery.

16 U.S.C. 1853a

MSA § 303A

(3) FISHING COMMUNITIES. —

(A) IN GENERAL. —

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

(I) be located within the management area of the relevant Council;

(II) meet criteria developed by the relevant Council, approved by the Secretary, and published in the Federal Register;

(III) consist of residents who conduct commercial or recreational fishing, processing, or fishery-dependent support businesses within the Council’s management area; and

(IV) develop and submit a community sustainability plan to the Council and the Secretary that demonstrates how the plan will address the social and economic development needs of coastal communities, including those that have not historically had the resources to participate in the fishery, for approval based on criteria developed by the Council that have been approved by the Secretary and published in the Federal Register.

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

(B) PARTICIPATION CRITERIA. — In developing participation criteria for eligible communities under this paragraph, a Council shall consider —

(i) traditional fishing or processing practices in, and dependence on, the fishery;

(ii) the cultural and social framework relevant to the fishery;

(iii) economic barriers to access to fishery;

(iv) the existence and severity of projected economic and social impacts associated with implementation of limited access privilege programs on harvesters, captains, crew, processors, and other businesses substantially dependent upon the fishery in the region or subregion;

(v) the expected effectiveness, operational transparency, and equitability of the community sustainability plan; and

(vi) the potential for improving economic conditions in remote coastal communities lacking resources to participate in harvesting or processing activities in the fishery.

(4) REGIONAL FISHERY ASSOCIATIONS. —

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

(i) be located within the management area of the relevant Council;

(ii) meet criteria developed by the relevant Council, approved by the Secretary, and published in the Federal Register;

(iii) be a voluntary association with established by-laws and operating procedures;

(iv) consist of participants in the fishery who hold quota share that are designated for use in the specific region or subregion covered by the regional fishery association, including commercial or recreational fishing, processing, fishery-dependent support businesses, or fishing communities;

(v) not be eligible to receive an initial allocation of a limited access privilege but may acquire such privileges after the initial allocation, and may hold the annual fishing privileges of any limited access privileges it holds or the annual fishing privileges that is [sic]¹⁷ members contribute; and

(vi) develop and submit a regional fishery association plan to the Council and the Secretary for approval based on criteria developed by the Council that have been approved by the Secretary and published in the Federal Register.

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

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

(i) traditional fishing or processing practices in, and dependence on, the fishery;

(ii) the cultural and social framework relevant to the fishery;

(iii) economic barriers to access to fishery;

(iv) the existence and severity of projected economic and social impacts associated with implementation of limited access privilege programs on harvesters, captains, crew, processors, and other businesses substantially dependent upon the fishery in the region or subregion;

(v) the administrative and fiduciary soundness of the association; and

(vi) the expected effectiveness, operational transparency, and equitability of the fishery association plan.



C. Regional Summaries of Panel Meetings

New England Regional Workshop

Boston, Massachusetts

June 1–2, 2010

Meeting Goals:

- Distill lessons learned from community experiences in catch share programs worldwide.
- Learn about New England's experience and new groundfish sector program.
- Explore a framework for recommendations.
- Identify research needs for the next meeting.

Presentations from Regional Experts:

Presentation 1: Biological Context/Status of the Stocks (New England groundfish, scallops and lobster): Jake Kritzer, Senior Marine Scientist, Environmental Defense Fund

Presentation 2: Past & Present Management Context for New England Groundfish Fishery: Peter Baker, New England Fisheries Campaign Manager, Pew Environment Group

Presentation 3: Past & Present Management Context for New England Scallop Fishery: Tom Dempsey, Fisheries Policy Coordinator, Cape Cod Commercial Hook Fishermen's Association

Presentation 4: Past & Present Management Context for New England Lobster Fishery: Patrice McCarron, Executive Director, Maine Lobstermen's Association

Presentation 5: Human/Social Dimension of Fishing Communities:

Madeleine Hall-Arber, Marine Social Scientist; Manager, Marine Social Sciences, MIT

Patricia Pinto da Silva, Social Scientist, Northeast Fisheries Science Center, NOAA Fisheries

Gulf Regional Workshop

New Orleans, Louisiana

July 6–7, 2010

Meeting Goals:

- Learn from the Gulf Reef Fish Individual Fishing Quota experience, and other coastal community experiences.
- Refine framework for recommendations.
- Identify research needs for the next meeting.

Presentations from Regional Experts:

Presentation 1: Biological Context/Status of Gulf Reef Fish Stocks: James Nance, Supervisory Research Fish Biologist, NOAA Fisheries, Southeast Fisheries Science Center

Presentation 2: Past & Present Management Context for Gulf Reef Fish Fishery, and Performance of IFQ Program: David Krebs, President, Reef Fish Shareholders'

Alliance

Presentation 3: Human/Social Dimension of Gulf Fishing Communities and Impacts of Catch Share Programs and other Fisheries Management Tools: Mike Jepson, NOAA Fisheries Southeast Regional Office, Social Science Branch

Presentation 4: Investing in the Long-Term Recovery of Coastal Communities/Community-Based Fisheries: Lorna Bourg and Helen Vinton, Southern Mutual Help Association

Pacific Regional Workshop

Portland, Oregon

August 25–26, 2010

Meeting Goals:

- Approve outline for Panel recommendations.
- Learn from the Pacific experience, including viewpoints on the Pacific Groundfish Trawl Individual Fishing Quota Program.
- Establish first draft of Panel Recommendations.

Presentations from Regional Experts:

Presentation 1: Biological Context/Status of Pacific Groundfish Stocks:

Jim Hastie, NMFS/Northwest Fisheries Science Center

Presentation 2: Past & Present Management Context for Pacific Groundfish Fishery, leading up to pending IFQ Program:

Jim Hastie, NMFS/Northwest Fisheries Science Center

Presentation 3: Trawler's Perspective:

Steve Bodnar, Coos Bay Trawlers Association

Presentation 4: Fixed Gear Fisherman's Perspective:

Bob Eder, Commercial Groundfish Harvester, Sablefish Traps

Zeke Grader, Pacific Coast Federation of Fishermen's Associations

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Regional Meeting Participants

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Boston, Massachusetts
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The responsibility for the opinions, recommendations, and facts contained in this report, as well as any unintended errors or omissions, lies with the Panel and Ecotrust.

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ENDNOTES

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- 44 <http://www.rurdev.usda.gov/rbs/coops/ssdpg/ssdpg.htm>
- 45 http://www.apfo.usda.gov/Internet/FSA_File/crp_prog_090210.pdf
- 46 http://www.acf.hhs.gov/programs/ocs/ocs_food.html
- 47 http://www.nmfs.noaa.gov/mb/financial_services/skhome.htm
- 48 The Federal Communications Commission periodically uses auctions to sell the right to transmit signals for radio, cell phone, and other uses over specific parts of the electromagnetic spectrum. These auction mechanisms have evolved considerably since their inception in 1994, and contain important lessons on the most effective mechanisms for allocating public goods. They replaced a previous, inefficient system of hearings and lotteries. For more information see <http://wireless.fcc.gov/auctions>.
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- 55 Theodore Groves is Professor of Economics and the Director of the Center for Environmental Economics at the University of California San Diego.
- 56 John O. Ledyard is the Allen and Lenabelle Davis Professor of Economics and Social Sciences at the California Institute of Technology.
- 57 For example, in complete and competitive markets the price to lease quota for one year would equal exactly the price to buy the quota this year minus the expected price to be received by selling it next year. In the real world with its myriad frictions,

this is rarely the case.

- 58 Some easy additions to this marketplace that would allow fishermen to better manage their risks are futures trading and trading in leases. The first is a way for fishermen to manage the long-term risks of fish population variation. The second is a way for fishermen to deal with short-term variations in catch that are either over or under the share of the TAC they currently own. This would also provide a straightforward way to manage by-catch problems.
- 59 This need not be anywhere as complicated as managing a stock portfolio in which prices move often and to mysterious forces. Here, trades will not happen very fast so one will not need to monitor the site all the time. Further, it is possible to provide very simple to use, inexpensive software tools that would enable every fisherman to participate in an informed manner.
- 60 This is similar to what careful assessments and title insurance do in a well-functioning, regulated housing market.







March 23, 2011

To: Pacific Fishery Management Council

Re: PFMC April Meeting agenda item I.6.c

Dear Members of the Pacific Fishery Management Council:

The California Fisheries Fund (CFF) is a nonprofit revolving loan fund that invests in the Pacific fishing industry. Our mission is to help our borrowers (fishermen, fishing businesses, ports, communities and others) succeed in fisheries that achieve environmental conservation, improved profitability for the industry and stability for port communities.

We have already begun to make loans to participants in the groundfish trawl IFQ fishery for vessel purchase and upgrades and gear upgrades/modifications. We expect to make further loans for quota leasing/acquisition and to aid young new participants in entering the fishery. Many of these loans will likely be secured (in whole or in part) with quota shares or quota pounds as collateral. At this time we would like to recommend that the Council and NMFS consider implementing the following steps to improve the system of pledging quota share as collateral. These steps will make the process better for lenders and borrowers:

1. Establish a transparent system available to lenders for confirming and verifying quota ownership
 - As the lender, we will need to confirm, at the time of loan closing and occasionally during the loan term, that our borrower is the owner of quota shares that have been assigned as loan collateral.
 - Our understanding of the current system being used for quota tracking is that lenders will not be granted any access to view quota information.
 - If quota ownership cannot be verified, lenders will find it challenging to take quota as collateral, which may make it difficult for fishery participants to get access to capital, especially in the event that they do not own their vessel or the vessel does not provide sufficient collateral to secure the loan.

2. Create unique identifiers for tracking transferable quota share/quota pound ownership
 - Not only will it be important for lenders to have access to ownership information; they must also be able to verify precisely which quota is owned by the borrower through the use of unique identifiers such as serial numbers.
3. Develop a clear method for perfecting a security interest in the collateral
 - Lenders will be aided significantly by the implementation of a system that records secured interest in fishing quota (i.e. a lien registry).
 - Maintaining a clear record of who owns the collateral is critical for helping to avoid disputes in the event the quota is sold or transferred.

Sincerely,
Larry Band
Fund Director

Subject: Fwd: Trawl Catch Share-Trailing Amendments MCA's
From: "pfmc.comments" <pfmc.comments@noaa.gov>
Date: Tue, 29 Mar 2011 15:11:11 -0700
To: Jim Seger <Jim.Seger@noaa.gov>

Supplemental public comment

----- Original Message -----

Subject: Trawl Catch Share-Trailing Amendments MCA's
Date: Tue, 29 Mar 2011 15:05:46 -0700
From: Bill James <Halibutbill@msn.com>
To: pfmc.comments@noaa.gov
CC: Bill James <Halibutbill@msn.com>

To: Members of the Pacific Fishery Management Council My name is Bill James and am requesting that the council look at if and how Marine Conservation Agreements could effect the Trawl Catch Shares and how CFA's (community fishing associations) and Co-ops might be affected also. Could "Marine Conservation Agreements"(easements) be conflict with some of the Manguson-Stevens Fishery Conservation and Management Act's Nation Standards # 1,# 4,# 5,# 6,# 7,# 8,# 10. I hope the council adds a thorough discussion at the same time as CFA's discussion takes place. Thank you for your time, Bill James

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Encumbering Harvest Rights to Protect Marine Environments: A Model of Marine Conservation Easements

Robert T. Deacon^a
Dominic P. Parker^b

April 21, 2008¹

Abstract: We adapt the concept of a conservation easement to a marine environment and explore its use to achieve conservation goals. Although marine environments generally are not owned, those who use them for commercial fishing often are regulated. These regulations grant harvesters rights to use marine environments in specified ways, and the possibility of encumbering these rights to achieve conservation goals creates a potential role for marine easements. We examine this potential under alternative fishery management regimes and find, generally, that marine easements tend to be most effective when harvest rights are delineated most fully. Our analysis suggests ways that marine easements can have flexibility and transactions cost advantages over other approaches to achieving marine conservation goals. We also propose ways in which the design of laws allowing marine easements should follow, or depart from, the design of laws authorizing conservation easements on land.

Keywords: by catch, marine habitat protection, conservation easement

JEL classifications: Q22, Q20, Q57

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¹ For helpful discussions, we thank Chris Costello of UCSB, Dan Hennen of the Alaska SeaLife Center, and Steve MacLean of TNC. Any errors are the authors' responsibility. We acknowledge valuable comments from Howard Chong and from other participants at the 10th Occasional Workshop on Environmental and Natural Resource Economics at UCSB, March 21, 2008.

1. Introduction

The Nature Conservancy (TNC) recently purchased seven federal trawling permits and four trawling vessels from commercial fishermen based in Morro Bay, a coastal town in central California. This deal, which cost TNC \$3.8 million, was unprecedented in that it was the first private purchase of Pacific permits and vessels for conservation purposes. The permits are for commercial groundfish, including sole and sable, and the goals are to reduce the bycatch of depleted seafloor species that are not valued commercially, e.g., canary rockfish and cow cod, and to reduce the negative impacts of bottom trawling on their sloping rocky habitat. One way for the Conservancy to pursue these goals is for it to retire the fishing permits and to sell the vessels for use elsewhere. Such a strategy, however, may lead to costly ‘conservation overkill’, meaning that TNC will also absorb the foregone value of harvesting groundfish in ways less damaging to other seafloor species. Instead, TNC is experimenting with leasing permits back to fishermen, but with lighter gear and restrictions that constrain fishing to areas with sandy or muddy bottoms and away from rock slopes. Depending on the success of this experiment, TNC and other conservation NGOs will consider similar transactions in other fisheries across the world (see TNC 2007, Barringer 2007).

In this paper, we examine ‘marine easements’ as another way for conservation NGOs to achieve a reduction in environmentally damaging actions without incurring excessive costs. Marine easement is a term we use to describe legally-binding agreements between commercial fishermen (grantors) and conservation NGOs (grantees) that amend certain fishing practices in exchange for payment. A marine easement differs from the buy-and-lease arrangement used by TNC in Morro Bay because, under easements, the NGO does not have to enter the business of owning permits. The grantor retains the right to harvest target species as regulated by law, but

agrees to amend the methods of fishing for the benefit of non-commercial stocks and habitats. Importantly, the easement encumbers the commercial permit and thus remains binding when the permit is transferred to another fisherman.

Our interest in exploring the uses of easements as a conservation management tool for marine environments is prompted in part by the impressive growth of terrestrial conservation easements in the US. Conservation easements are agreements between private landowners (grantors) and conservation organizations, known as land trusts (grantees).² Easements over land conserve open-space amenities, such as scenery and wildlife habitat, typically by prohibiting intense residential and commercial development but sometimes also by restricting certain farming and logging practices. The easement acreage held by state and local land trusts alone increased from 148,000 acres in 1984 to 6.2 million acres in 2005. During the same period, the acres acquired outright by these land trusts increased from 292,000 acres to only 1.7 million acres (Parker 2007). Conservation easements now comprise a significant fraction of land in some US regions, encumbering approximately eight percent of all private acres in Vermont, for example.

Although agreements that would qualify as marine easements currently are rare at best, the concept is analogous in many respects to conservation easements over land. The key difference in the marine context is the absence of property rights to marine habitats; there is no outright owner with whom a conservation NGO can negotiate. However, the regulatory policy in place to manage a fishery typically establishes property rights to use the habitat in various ways, and at specific times and places. An agreement by these rights holders to restrict their actions in specified ways, in exchange for compensation, would constitute a marine easement. The nature and extent of use rights established by existing fishery regulations is therefore a key

² Conservation easements are also held by various government agencies.

consideration in the efficacy of the marine easement approach to management.³ In this paper we consider the potential for marine easements under four fishery regulatory regimes: sole ownership, open access, limited entry and individual transferable quotas.

Our analysis suggests that greater delineation of commercial harvest rights will improve the effectiveness of marine easements in achieving conservation goals. The intuition for this is clear if we compare a regime in which such rights are entirely absent, open access, to a hypothetical regime in which such rights are complete, sole ownership.⁴ Under open access, a NGO clearly could negotiate a marine easement, paying a fisherman to refrain from taking an environmentally damaging action and thereby raising the firm's harvest costs. Yet there is nothing to prevent another harvester from entering the fishery and out-competing the fisherman under easement. In this case, the easement yields no conservation benefit in aggregate. Under sole ownership a firm or association holds rights to make coordinated decisions on all aspects of a marine habitat's use. So long as the habitat of interest is spatially contained within the area controlled by the sole owner, a NGO could seemingly achieve its goals by negotiating to constrain damaging actions. In fact, it may well be possible to go beyond specifying prohibited actions in this case and instead negotiate easements that delineate performance standards, e.g., directly specifying the desired stock of non-commercial species or the quality of its habitat. Performance easements should be more efficient than prohibitions on actions because they give the sole owner flexibility to adjust actions to minimize the costs of achieving conservation goals.

³ Access to harvest groundfish off the coast of central California, for example, is limited by a fixed number of commercial permits. TNC recognized that these access rights are legal interests that it could buy and lease. Our claim is that the efficacy of using easements to achieve goals, such as reducing the bycatch of rockfish and cow cod, in this fishery depend generally on how well easements can work in a limited entry fishery.

⁴ By open access we mean a circumstance in which any agent with the requisite capital can enter the industry and engage in harvesting fish without restrictions. By sole ownership, we mean a situation in which a single agent has the right to exclude others from taking any actions that alter the state of a specific marine environment and an ability to monitor how that resource is used.

Common fishery regulation regimes such as limited entry and ITQs lie between these extremes in the extent to which they establish rights to use a marine environment. Under common regulations, contracting for a performance standard on the state of the marine resource is not feasible because no single harvester controls all actions that determine the marine environment's state. Enforceable easements can only prohibit or require observable actions in these cases, and easement grantors can be expected to adjust their unobservable actions in ways that are privately optimal. These unobservable adjustments may substitute or complement observable actions specified in easements and will therefore also affect the non-commercial stocks and habitat that are of interest. The model we develop shortly examines these potentially offsetting effects and identifies other factors that determine the conservation benefits that marine easements can achieve.

The paper proceeds as follows. Section 2 briefly reviews the literature on conservation easements, with emphasis on the advantages easements have over other policy approaches and a discussion of enforcement problems and related issues. Section 2 also describes the relevant literature on marine bycatch and the policy approaches that may be used to conserve habitats and non-commercial stocks. Section 3 presents our model of marine easements. After describing the objectives of fishermen and NGOs, the model compares the effectiveness of marine easements under different regulatory regimes. Section 4 summarizes the policy implications of our analysis and gives recommendations for further study.

2. Literature on Conservation Easements and Marine Habitat Protection

A. *Conservation Easements*

Legal scholars often describe conservation easements by comparing land to a bundle of sticks. Each stick represents a right to use land or exclude others from using land in a certain manner. A conservation easement is simply a legal agreement in which a landowner cedes some sticks from his or her bundle for a specified duration, usually perpetuity. Rights ceded to land trusts via conservation easements can be categorized as negative or positive. Negative rights prevent landowners from actions such as building commercial structures, subdividing, clear-cutting, farming near streams, altering water courses, and erecting billboards. Positive rights allow trusts access to the property to do such things as construct recreational structures, remove non-native vegetation, and monitor wildlife. Whether negative or positive, the rights conveyed in easements “run with the land.” Successor landowners and successor land trusts are bound to the terms agreed upon by the original parties (Korngold 1984).⁵

Although the term ‘conservation easement’ was coined in 1959, the widespread use of easements by land trusts did not begin until the latter half of the twentieth century with the strongest growth occurring over the last 20 years (Brewer 2003). The number of U.S. state and local land trusts increased from 535 in 1984 to 1,663 in 2005. The easement acreage held by these trusts increased from 148,000 acres in 1984 to 6.2 million acres in 2005. During the same period, the acres acquired outright by these trusts increased from 292,000 acres to only 1.7 million acres. These figures do not include the nation’s largest land trust, TNC, which increased its conservation easement acres in the US from approximately 174,000 acres in 1984 to 1.6 million acres in 2003 (Parker 2007).

⁵ Conservation easements fall under the broader umbrella of servitude law. Servitude law also governs rights of travel across another’s land, rights to use another’s land or remove resources from it, and the covenants of housing associations (Dnes and Lueck 2007).

Three factors have probably contributed to the recent growth in conservation easements. First, during the 1980s and 1990s many U.S. states passed statutes explicitly allowing conservation easements and specifying that they can be held by land trusts, thereby overriding concerns that negative easements would not be enforceable under common law (Dana and Ramsey 1989, Gustanski and Squires 2000). Second, an increasing number of tax benefits were made available to donors of conservation easements. Federal income tax deductions for easement donors were made permanent in 1981, federal estate tax benefits were granted in 1997, and a number of states began offering state income tax credits to donors in recent years (Small 2000, McLaughlin 2005). The extent of tax benefits depends on the appraised value of easements, which is the difference between the full-market price of land and the price of the encumbered parcel (Boykin 2000). Third, land trusts, attorneys, judges, and landowners have become more familiar with conservation easements in recent years. This familiarity has reduced some of the long-term enforcement uncertainties associated with holding or granting easements (Parker 2004).

The potential benefits of conservation easements are well-recognized by economists and legal scholars. In contrast to land-use regulations, easements are incentive-based policies that can be customized to motivate voluntary conservation by landowners. Even if site-specific land-use regulations were allowed under law, governments would have difficulties imposing them in an efficient manner. As Boyd et. al. (2000) note, selecting properties where land restrictions offer the highest net benefits would require detailed information about private land-use values. Such information would be difficult to obtain without market negotiations. Conservation easements can also have efficiency advantages over the outright purchase of land. Efficiency gains from easements are most likely when the land has valuable commodities (e.g., soil, timber, or

minerals) that are better managed by a specialized landowner, and when the terms of the easement can easily be enforced over future time periods. Conservation easements meeting these criteria will tend only to prohibit activities that compete with open space, but leave production decisions to the more specialized landowner (see Parker 2004).

The main criticisms of conservation easements stem from concerns about their perpetual nature and about their tax deductibility. These concerns are linked because only perpetual easements are eligible for most tax benefits. Perpetuity means that easements can not easily be extinguished or amended in the future even if changes are desired by the NGO holding the easement. The perpetuity requirement is inconsistent with centuries of common law, which tends to discourage perpetual constraints on land use (Mahoney 2002), and it can reduce the long-term conservation benefits generated by an easement. As economic and ecological conditions change, the benefits and costs of conserving different parcels will change. Yet land trusts cannot respond by selling some of the easements in their portfolio to acquire the cash needed to reinvest in conservation elsewhere (Parker 2007).⁶

B. Policies for Conserving Non-Commercial Stocks and Marine Habitats

The goal of reducing actions that damage marine environments, or of improving the stocks of non-commercial marine species, can be achieved using a variety of policies discussed in the literature. Most of these policies are presented in the context of managing bycatch in multispecies fisheries, where bycatch is “the incidental take of a species that has some value to some other group” (Boyce 1996). The bycatch literature is relevant to our assessment of marine

⁶ Anderson and King (2004) discuss some of the potential implications of funding conservation easements with tax incentives.

easements because “incidental take” can be interpreted broadly to encompass any incidental, negative impact on non-commercial stocks and habitats.

In an early analysis, Marasco and Terry (1982) summarized several management options for controlling the incidental catch of commercial species (including halibut, salmon, and crab) by groundfish fishermen. The options they considered include a TAC quota for prohibited species, a tax on incidental catch, time and area closures, gear restrictions, and a decrease in the TACs for target groundfish species. The authors favor taxing incidental catch (so long as monitoring and informational problems can be solved), but this option has not gained traction in practice.

Actual policies have instead favored gear restrictions, time and area closures for fishing and TAC quotas for entire fisheries (see Larson et. al. 1996). Some observers point out that these management strategies may only serve to shift stock depletion from one commercial species to another, if the bycatch to be controlled is commercially harvested by another fleet. Ward (1994), for example, models the effects of gear modifications imposed on a multi-species fishery that exclude bycatch of a species that is the target of a single species commercial fishery. In his framework, such gear restrictions might limit harvest in the multi-species fishery, but any gains to the restricted stock could be offset by expansion in fishing effort, and resulting stock reductions, in the single species fishery. Other studies suggest that gear restrictions, time and area closures, and TAC quotas can be effective in increasing bycatch stocks, but note the potentially high cost of these policies to harvesters and fishery regulators.

Prospective rights-based policies for managing bycatch include ITQs for incidental catch and individual habitat quotas (IHQs). In the context of a two-species fishery, Boyce (1996) argues that an ITQ system on both the target and bycatch species creates the correct incentives to

maximize efficiency when both species have commercial value. The situation is more complex when the bycatch species has only existence value, e.g., dolphins in the tuna fishery, sea lions in the pollock fishery. Here an ITQ on the bycatch species must be coupled with a tax on the harvest of bycatch. This is because the price of the bycatch quota will only reflect the scarcity of bycatch TAC in the target fishery rather than reflecting the full social cost of taking additional units of bycatch.⁷ Holland and Schnier (2006) propose IHQs (individual habitat quotas), a cap-and-trade program on negative habitat impacts. In this system, the marginal damage due to fishing in certain areas or with particular gear types would be estimated by regulators and used to form an index of habitat impact. Total habitat impact would then be capped at an appropriate level and IHQs for imposing impacts would be created and distributed among fishermen. Harvesters engaging in damaging practices would then be charged an appropriate number of IHQs for their actions. IHQs would be similar to ITQs in several respects, including transferability and, presumably, controversy in determining the initial allocation.

3. A Model of Marine Easements under Alternative Fishery Management Regimes

We use the phenomenon of bycatch to motivate our model of marine easements and consider a setting where harvesting a commercially valuable stock degrades the stock of a species that has no commercial value but is valued by a conservation NGO for environmental reasons. With different wording and notation our framework would apply more generally to circumstances where actions of commercial harvesters impair the quality of a marine environment. We abstract from all dynamic aspects and assume the amount of the commercial stock that becomes available each year is fixed, independent of harvest in prior years. We assume the level of the bycatch

⁷ Hoagland and Jin (1997) also focus on the bycatch of non-commercial species, referring to this as a ‘passive-use stock’.

stock is determined by the contemporaneous actions of commercial harvesters, subject to environmental conditions. Both assumptions are most appropriate as very long run propositions.

A. *Modeling a Marine Conservation Easement*

A commercial stock of size Y becomes available at the beginning of each year. It is harvested by a commercial fleet consisting of a large number, N , of identical, independent vessels, indexed by i . A commercial harvester's catch depends on its actions a_i and b_i and on a set of factors that determine i 's harvest for a given level of fishing effort. Given its own actions, we postulate that the firm's catch depends positively on the size of the commercial stock (Y) and negatively on the number of harvesters (N). The regulatory regime (R) determines the conditions under which the firm can access the stock and thus affects the level of catch from a given choice of actions. The production function for catch is assumed to be strictly concave in the firm's actions and is written

$$h_i = h(a_i, b_i; Y, N, R). \quad (1)$$

Actions a_i and b_i are assumed to be 'normal' in the sense that expansion paths are positively sloped. We explain the difference between actions a and b shortly.⁸

The firm chooses a_i and b_i to maximize profit, taking other determinants of catch as given, subject to relevant regulatory constraints, R . The prices of actions a and b are denoted u and v , respectively, and the price of catch is p . Firm i 's harvest profit is

$$\pi_i = \pi(a_i, b_i; u, v, p, Y, N, R). \quad (2)$$

Because the production function is strictly concave in a and b the profit function has a unique maximum and we assume this is an interior solution. Profits depend negatively on u , v , and N ,

⁸ Our analysis generalizes readily to a context where firms have more than 2 actions to choose.

and positively on Y and p . The profit function will generally be non-concave when the firm is assumed to have an exit option; we consider this case later.

A conservation NGO wishes to affect the level of a non-commercial fish stock, called the bycatch stock. Its level, X , is determined by the aggregate actions of N commercial fish harvesters as well as environmental factors, E , as follows:

$$X = X(a_T, b_T; E), \quad (3)$$

where $\sum_{i=1}^N a_i = a_T$ and $\sum_{i=1}^N b_i = b_T$. We assume the effect of a on X is negative; the effect of b on X could be either positive or negative. Examples of actions that could affect X include the choice of gear used for commercial fishing, the timing and location of commercial fishing, the depth of fishing gear, and the level of care applied in returning bycatch. We assume the bycatch and commercial stocks do not directly interact, although the choices of actions can affect both simultaneously.⁹

To affect the level of bycatch stock, the NGO offers commercial harvesters payments in exchange for easements that restrict the harvesters' actions. The variable over which an easement is defined must satisfy two conditions; the firm must be able to control it and the NGO must be able to observe it to verify compliance. Easements are assumed to confine the firm's choices to a convex set, e.g., $a \leq \bar{a}$. Because an easement generally reduces the firm's maximal profit, it will not be accepted without compensation from the NGO.

We assume there is only one NGO offering to purchase easements and many independent harvesters, and assume the NGO is indifferent as to which harvesters it obtains easements from. Given its monopoly position, the NGO can make all-or-none offers to all harvesters

⁹ In Hoagland and Jin's (1997) model of non-commercial bycatch, the relationship between non-commercial and target stocks can be independent, mutualistic, or predatory. Here we ignore the mutualistic and predatory cases for simplicity.

simultaneously. Each harvester is offered an easement $a \leq \bar{a}$ in exchange for a compensation payment that slightly exceeds the loss in harvest profit the harvester would experience in moving from the original equilibrium, or status quo, to a new situation in which all harvesters are bound by the same easement. The same offer is made to all harvesters simultaneously, with the proviso that compensation will be provided only if all agree to accept the easement; if any harvester refuses, the status quo remains in effect.¹⁰ Because post-easement profit, including the compensation payment, exceeds the status quo profit for each harvester, each harvester's best response is to accept the easement. The NGO's compensation payment can, in the limit, be lowered to equal the profit differential between status quo and post-easement harvest profits. In the limit, the NGO can reduce its compensation to a level that exactly offsets the firm's profit loss and as a consequence all costs associated with granting easements are borne by the NGO.¹¹

We assume that the NGO can observe the firm's choice of action a and the total level of the bycatch stock, X . The firm's choice of action b is hidden, so easements cannot be defined for this action. Action b might indicate the depth of fishing effort or the level of care taken to avoid bycatch or to minimize damage when handling it when a given type of observable gear is used. If a firm grants an easement restricting its use of action a , it will choose the level of b to maximize its profit subject to the easement and any applicable regulations. Individual firms can control levels of their own actions, but not the actions of others.

The NGO's objective is to achieve a target for the bycatch stock, $X(a_T, b_T; E) \geq \bar{X}$, at minimum cost.¹² Because the NGO compensates harvesters for any profit reduction resulting

¹⁰ We are indebted to Howard Chong for suggesting this formulation of the NGO's strategy choice.

¹¹ As discussed in Section 2, the level of compensation for conservation easements over land is determined in the same way.

¹² If it fears the influence of unpredictable factors on the bycatch stock, the NGO may choose to buy easements that will achieve a greater degree of protection under average conditions, in order to have a degree of assurance that its goal will be met even under adverse circumstances. We do not model this explicitly, however.

from easements, its optimal policy will maximize harvester profits (2) subject to the bycatch stock constraint (3) and subject to the firms' profit maximizing choices of actions. We examine the cost and feasibility of marine easements under each of 4 regulatory regimes: sole ownership ($R=S$), a benchmark regime in which a single agent controls all actions that affect the commercial and bycatch stocks, open access ($R=O$), which places no restrictions on the actions of firms or their numbers, limited entry ($R=L$) which limits the number of firms but not their actions and an ITQ ($R=Q$) which limits the catch of individual harvesters. We also comment on the efficacy of marine easements under an ideal TURF system.

B. Marine Easements with Sole Ownership

We first consider an idealized case of sole ownership in which the commercial and bycatch stocks share the same habitat. This habitat is governed by a profit maximizing firm and neither stock is affected by actions taken outside this habitat. The firm can choose fishery-wide levels for actions a and b and can therefore determine the level of the bycatch stock in the sub-habitat it manages, subject to environmental factors, E .¹³ Fig. 1 illustrates this case. It shows the firm's profit contours as a function of its actions.¹⁴ Absent an easement, the owner would choose actions a_T^S, b_T^S , achieving a maximum profit of π^S . The downward sloping dark line is the NGO's target for the bycatch stock and its downward slope implies both actions are detrimental. The case where b helps conserve the stock is considered later. Action combinations on or below this line achieve the NGO's goal. Assuming the NGO can observe the bycatch stock directly, it can define a 'performance' easement in terms of a bycatch stock outcome, $X(a_T, b_T; E) \geq \bar{X}$. The hidden nature of action b is of no consequence because the easement is defined in terms of the

¹³ The firm also presumably chooses an optimal number of harvesting entities, e.g., vessels, which corresponds to N in the other regulatory regimes. We do not discuss this explicitly since it is of no concern for the main points we make regarding sole ownership.

¹⁴ Concavity of the production function ensures that the iso-profit contours enclose convex sets.

outcome. The sole owner will maximize post-easement profit by choosing actions \bar{a}_T and \bar{b}_T . The NGO pays $\pi^S - \bar{\pi}$ for the easement in this case.¹⁵ Assuming the profit function is positive and strictly concave for all $a, b > 0$, the performance standard will meet the NGO's goal at minimum cost.¹⁶ A real world institution that may approximate sole ownership is a TURF; if the relevant habitat is encompassed within the territory of a single TURF operator, then the preceding analysis and results will apply. Alternatively, a harvester cooperative that controls the entire harvest over a defined territory might effectively function as a sole owner.

C. *Marine Easements with Open Access Harvesting*

At the opposite end of the spectrum is open access, where firms are unconstrained in their choices of actions and free entry and exit guarantees that profit is zero in equilibrium.¹⁷ The equilibrium number of firms under open access is denoted N^O . The only type of easement available in this case is a limit on the firm's use of action a , e.g., $a \leq \bar{a}$; action b is unobserved and no individual firm has the ability to control the overall level of the bycatch stock. A restriction on a necessarily lowers the firm's profit. The firm's pre-easement profit is zero, however, and the firm can always earn zero profit by exiting the fishery. Any firm granting an easement under open access will therefore choose to exit the fishery and will be replaced by a

¹⁵ Considering the potential for bilateral monopoly, which arises because there is a single owner, would distract us from our central concerns, so we continue to assume the harvester captures no surplus from the easement transaction.

¹⁶ If there are separate habitats governed by separate sole owners, the NGO's cost minimizing strategy may involve paying a subset of these firms to shut down, with the result that their action levels are set to zero and their habitats become no-take zones. This could be efficient if the profit function is non-concave over a range of positive values for a and b , which might result when profit is negative over a range of actions and firms have an exit option.

¹⁷ If profit were positive for some N , entry would reduce the individual firm's catch and profits until the profit is eliminated. A symmetric process would ensue if profit were negative.

new entrant to restore the zero profit equilibrium. Consequently the NGO cannot accomplish any increase in X by using easements in the case of open access.¹⁸

Fig. 2 shows the firm's profit as a function of its choices of actions. In cases where there are many harvesters, it is diagrammatically convenient to express the NGO's target, $\bar{X} \leq X(a_T, b_T; E)$, as a function of the action levels of an individual firm, as follows:

$$\begin{aligned}\bar{X} &\leq X(a_T, b_T; E) \\ &= x(a_T / N, b_T / N; N, E) \\ &\equiv x(a, b; N, E)\end{aligned}\tag{4}$$

where a and b without subscripts refer to the common action levels taken by identical individual firms. In equilibrium the firm chooses actions a^o and b^o and its maximal profit is $\pi^o = 0$; all other profit contours reflect losses. The dark downward sloping line is now the NGO's target given that N^o firms are operating. If the NGO tried to hit its target by buying easements restricting action a , the firm would incur a loss and be replaced by an entrant choosing exactly the same actions, so there would be no improvement in the bycatch stock.

D. Marine Easements with Limited Entry

We next examine a simple form of limited entry that requires each firm to hold a license and fixes the number of licenses at a level $N^L < N^o$. The licensing requirement must fix some input used by the firm, e.g., one vessel per license, otherwise firms would be able to replicate all inputs and effectively circumvent the limitation. The specific input rendered scarce by the licensing requirement determines the firm's profit opportunities and input choices, and any profit earned is actually a rent attributable to the licensed input. In what follows we speak of capital per firm as

¹⁸ The equilibrium price of an easement is zero under open access because the firm earns zero profit both before the easement is granted and after it is granted and the firm has exited.

the input constrained by the license requirement and assume the limit on licenses is sufficiently constraining that firms earn positive net revenue in equilibrium.¹⁹ Because harvesters allocate effort independently under limited entry, the NGO cannot use a performance standard for the bycatch stock and must rely on easements on input a .

We initially consider a case where all firms' profit functions are identical and strictly concave. In this case the NGO can do no better than to offer identical easements $a \leq \bar{a}$, to all licensed harvesters.²⁰ In the absence of easements the individual firm's choice of actions, denoted a^L, b^L , maximizes (2) given $N = N^L$. If the NGO negotiates an easement specifying $a \leq \bar{a}$, the firm will respond by choosing action b to maximize (2) subject to this constraint. Each possible easement for a thus maps into a unique profit maximizing choice for action b , which we denote $b = b^L(a, N^L)$. The level of b required to meet the NGO's target for a given level of a and $N = N^L$ can be found by inverting (4); we denote this function $b = \hat{b}(a, \bar{X}, N^L)$. If $b^L(a, N^L) = \hat{b}(a, \bar{X}, N^L)$ has a solution in a for $a < a^L$, then there is an easement that will meet the NGO's target under limited entry. If there is more than 1 solution, the NGO's cost minimizing policy is the solution yielding the highest harvest profit. It is entirely possible, however, that no feasible easement exists. If the firm's response to an easement that reduces a is to increase b , this works against the NGO's desire to increase the bycatch stock. If the firm's adjustment to b is sufficiently strong, there may be no easement that enhances X enough to meet the NGO's goal.

¹⁹ An alternative form of limited entry fixes the number of licenses and imposes a TAC constraint and season closure when the constraint is met. In this case a race to fish will ensue and profit need not be positive in equilibrium. This type of limited entry regime is not considered here.

²⁰ This is an instance of the equal marginal cost principle for minimizing the sum of costs across firms, where each individual firm's cost function is strictly convex. Assuming profits are strictly concave implies that either profits are positive throughout the range of actions considered or that firms cannot avoid negative profits by shutting down.

The limited entry outcome is illustrated in Fig. 3 for the case where action b is detrimental. If the NGO acquires an easement fixing the observable action at a' , the firm will respond by setting b to maximize profit. This occurs at the vertical segment on the profit contour above a' . The dot-dashed line in Fig. 3 is an ‘offer curve’ that traces out the firm’s profit maximizing choice of b for each level of a . In Fig. 3 the easement $a \leq \bar{a}$ achieves NGO’s target at minimum cost, given that it cannot observe b , and the easement’s price is $\pi^L - \bar{\pi}$. Here we see that if the NGO could observe b , it could instead contract for an outcome at point d and this would reduce the price of the easement by the amount $\hat{\pi} - \bar{\pi}$. If the NGO’s constraint were more stringent, however, it might be impossible to reach it under limited entry by purchasing easements on action a . In Fig. 3 this would be a case where the NGO’s constraint lies below the offer curve. For completeness, Fig. 4 illustrates a case where action b is beneficial to the bycatch stock. Combinations of actions above the \bar{x} line meet the NGO’s target. The NGO’s minimum cost strategy is to negotiate an easement restricting a to a' .

In limited entry cases where the conservation goal can be achieved with an easement, the easement must be linked to the fishing permit rather than the specific firm holding it when the easement is granted. If the firm granting an easement left the industry for some reason, a new firm using the vacated permit must be bound by the same constraint.

E. Options Under Limited Entry: Identical Easements vs. Selective Shut-Downs

If some combinations of a and b yield negative profits and a firm can avoid these by shutting down, the NGO’s marginal cost for achieving additional reductions in a and b from the firm in question goes to zero at the firm’s zero profit point. In this case it may be less costly to shut

some firms down by purchasing their licenses and retiring them than to obtain identical easements from all harvesters. We refer to this option as a policy of ‘selective shut-downs’.

To see the principles involved consider successive increases in X , the NGO’s target for the bycatch stock, and the outcome under limited entry. Fig. 3 indicates that more stringent targets require more stringent restrictions on action a , leading to successively lower harvest profits and higher costs (foregone harvest profits) for the NGO. In Fig. 5, the curve $cdef$ shows the cost of achieving various targets, X , by obtaining identical easements from all N^L firms. For reference, point c is the ‘no easement’ outcome where profit equals the equilibrium level under limited entry. At point e harvesting has been eliminated and, from here, the bycatch stock can be increased without cost to its maximal level corresponding to point f .

When the number of harvesting firms is large, the cost of achieving various conservation goals by a policy of selective shut-downs can be approximated by *some* curve between points c and f . Notice that points c and f depict the same NGO actions under identical easements or selective shut-downs; all firms are shut down at point f and all are operating without easements at point c . The shape of this curve depends on the shape of the profit function (2) and the shape of the function that determines the bycatch stock, (3). We defer a detailed examination of this function to future research, and here consider its properties only in a special case. The case we examine is one where the bycatch stock function, (3), is linearly homogeneous in the actions, actions a and b are both detrimental, and the firms’ choices of actions and their resulting profits are independent of the number of firms operating. While these assumptions, particularly on actions and profits, are clearly implausible, they establish a benchmark outcome that is useful in discussing what is possible in more general settings.

With these assumptions, suppose the NGO purchases and retires the fraction β of the existing licenses, so $(1-\beta)N^L$ firms continue to operate. The choice of which licenses to retire is a matter of indifference to the NGO since all operators are identical, so the NGO arbitrarily designates a set of individual operators it wishes to shut down. It makes each of them an all-or-none offer, where the compensation offered is slightly greater than the firm's status quo profit from harvesting. As before, the NGO's offer is subject to the proviso that if the offer is rejected by any of the firms targeted, the offer will be withdrawn from all and the outcome will remain the status quo. Taking the offer is then the best response for each of the target firms. The NGO's offer can again, in the limit, be reduced to the point where it equals the target firms' harvest profit in the status quo situation. The assumption that firms continuing to operate do not alter their actions and that their profits are unchanged when the number of harvesters falls imply that the lost profit is simply $\beta N^L \pi^L$. The additional assumption of linear homogeneity implies that the bycatch stock will be found at the fraction β of the distance between X_0 and X_{max} , indicated by X_β on Fig. 5. Point g therefore lies on the cost function for increasing X by selective shutdowns, under the maintained assumptions. Similar reasoning indicates that the entire curve, $cgdf$, is a straight line in this case.

Comparing the two cost curves provides insight as to which policy will be preferred in a given situation. Identical easements will be preferred if the NGO's conservation target falls between X_0 and X_d . For goals in the X_d to X_{max} range, it is cheaper to use selective shut-downs. The range of per firm conservation targets that would result in negative profits if firms continued to operate is X_e to X_{max} . When this range is large relative to the overall range of conservation targets (X_0 to X_{max}), selective shut-downs are likely to be the preferred choice.

The more plausible outcome is that the actions and profits of firms continuing to operate increase following a shut down of some harvesters. We examine the likely effects of these adjustments in two steps. First, the ‘spillover’ increase in per-firm profit lowers the social cost of achieving any bycatch target.²¹ If this profit is realized, but firms do not adjust their activity levels upward, the effect is to pull the cost curve $cgdf$ downward. (Logically, the curve must still pass through points c and f , however.) This reduces the cost of achieving any target and expands the range over which selective shut-downs are the preferred choice. In highly over-capitalized fisheries, reducing the number of operators might even *increase* overall harvest profits, which represents a negative cost for achieving a conservation goal via selective shut-downs. (The curve $cgdf$ would lie below the horizontal axis for a range of targets in this case.) Second, if firms adjust actions upward in response to a decline in the number of active harvesters, the bycatch stock resulting from a given number of shut-downs is reduced. This factor drags the cost curve left, partly undoing the gain resulting from increased profits. The conservation NGO could attempt to negotiate easements with the remaining firms, to avoid this response, but this will be frustrated by the inability to observe b . A practical solution might be to purchase or lease the remaining vessels and operate them in a way that avoids this second kind of slippage.

F. Marine Easements with ITQ Regulation

When considering ITQ regulation we simplify by assuming all firms are identical and each receives an identical allocation of harvest rights \bar{h} . In this case there will be no trade of harvest rights in equilibrium and each firm will use its endowment. We also assume that any easement policy implemented by the NGO involves treating all active participants in the fishery identically. The ITQ policy requires $h(a_i, b_i; Y, N, R) \leq \bar{h}$, which constrains the firm’s choices of

²¹ This raises a possibility for the NGO to lower its costs of achieving any goal by facilitating lump-sum payments from the ‘spillover’ profits, earned by the firms that keep fishing to those that are shut down.

actions to lie on or below the \bar{h} isoquant depicted in Fig. 6.²² This catch level is assumed to maximize overall profit in the industry and $\pi^Q > 0$ is the resulting profit level for all firms. The profit contours drawn in Fig. 6 show perceived profit opportunities for the firm, taking as given the catch levels of all other harvesters. While each firm perceives a profit opportunity from departing from the ITQ constraint and choosing actions interior to the π^Q contour, these outcomes cannot be attained by all firms acting identically. The firm's profit maximizing choice of actions occurs at point *A*. Assuming the catch level was optimally set by the regulator, the result is a first-best optimum with respect to harvest of the target species.

Because an individual firm cannot determine the bycatch stock level under ITQ regulation, the NGO's only option is to negotiate for reductions in observable action *a*. To see the outcome, consider what would happen if the NGO offered to buy easements specifying various levels of *a* and ignored the ITQ constraint. The firm's responses would follow an offer curve of the kind sketched in Fig. 3 and 4, shown as the dot-dashed line *EBC*. Outcomes in the segment *EB* are not feasible because they violate the ITQ constraint; outcomes in the *BC* segment are feasible. Starting at point *A*, suppose the NGO offers to purchase an easement that would marginally reduce action *a*. So long as the firm's marginal profit from hidden action *b* is positive, it will respond by reducing *a* and increasing *b*. This is represented by a movement along isoquant \bar{h} from *A* toward point *B*. At point *B*, however, the marginal profit from hidden action *b* is zero and further movements to the northwest along the \bar{h} isoquant would reduce profit. The firm's optimal response to easements restricting *a* below what is indicated by point *B* are given by points on the offer curve. Overall, the firm's response to various easement offers is shown by line *ABC*.

²² For simplicity we assume profit is positive at all points on the isoquant.

The NGO's target has not been shown to avoid cluttering the figure, but it is clear that that several outcomes are possible. First, the \bar{x} constraint may intersect the firm's offer curve in segment AB , in which case an easement on observable action a can achieve the NGO's goal and the firm's resulting catch will exhaust its ITQ allocation. A second possibility is that the NGO's constraint intersects the firm's offer curve in a segment such as BC , where the ITQ constraint is not binding. In this case, the NGO's easement on action a causes the firm to reduce its catch below its ITQ allocation, so the ITQ constraint is no longer binding and the post-easement ITQ price becomes zero. The third possibility is that the firm's offer curve does not intersect the NGO's \bar{x} constraint at all. In this case the NGO cannot reach its target if easements on a are its only policy instrument.

If the NGO can negotiate easements on a and simultaneously purchase and retire ITQ shares, however, then it can achieve any desired goal and do so at minimum cost. For example, suppose the NGO's goal is most efficiently met by going to point D . The NGO could achieve this outcome by proceeding in 2 steps. First, purchase and retire sufficient harvest quotas to reduce catch to the isoquant that intersects point D . Given this catch constraint, the firm's optimal choice of actions will be at a point where the relevant isoquant is tangent to a profit contour. In all likelihood this tangency will not occur at point D , so the firm would choose a different mix of actions. If so, the NGO can take a second step and purchase an easement restricting the firm's use of a to achieve the outcome at D .²³

Some additional comments on these conclusions are in order. First, the NGO's constraint may intersect the firm's offer curve more than once, in which case the NGO's optimal policy is

²³ With only a single hidden action and a catch function (2) that links observed actions (a), catch (h), and the hidden action (b), fixing both h (by purchasing catch quotas) and a (by purchasing easements) suffices to determine b . If more than 1 action is hidden, achieving the minimum cost outcome in this fashion is not possible.

the one that meets the constraint with the minimum sacrifice in harvest profits. Second, if the intersection occurs in segment BC , so the firm's entire ITQ allocation is not used, the firm might seek to sell the unused portion of its ITQ allocation to an outside firm. This raises an important point: when the NGO uses easements on a to achieve its goal, the easements must encumber the *ITQ allocations*, rather than the firms holding them when the easement is negotiated. This ensures that if the firm granting the easement were to shut down or sell part of its catch allocation while continuing to operate, the acquiring firm would be encumbered by the same constraint the original firm negotiated.²⁴ Simply stated, the easement must apply to the ITQ allocation regardless of which firm holds it.

4. Discussion and Conclusions

Our analysis of marine easements as a tool for meeting marine conservation goals is motivated by the impressive growth of conservation easements in the U.S. and by TNC's recent purchase of commercial trawling vessels and permits in central California. The model we develop suggests easements will be a cost-effective alternative to the purchase-and-retiring of permits, provided conservation goals can be met in conjunction with commercial harvest and that a legal framework is in place to make easements enforceable. Whether easements will be more cost-effective than a policy of buying permits and leasing them on a temporal basis to fishermen with restrictions depends on tradeoffs that should be the subject of future research. On one hand, easements better exploit the specialization advantages that commercial fishermen may have in owning and exercising permits. On the other hand, temporal leases let NGOs experiment with different restrictions and adapt lease terms to new information. We expect the relative

²⁴ This analogous to the legal requirement that conservation easements 'run with the land'.

advantages of each approach to vary across fisheries depending on the importance of specialization and adaptation.

Although further research on the feasibility and design of marine easements is merited, three strong conclusions emerge from the present analysis. First, effective marine easements must apply to the permit or right in the same way that terrestrial easements ‘run with land’. This is true for each of the regulatory regimes we consider (limited entry, ITQ, and sole ownership), and it is a key distinction separating easements from more typical contractual agreements. If easements do not burden the permit, the costs to NGOs of meeting conservation targets will be increased and attempts at conservation will be frustrated by turnover in the fishery.

Second, marine easements are most valuable if the NGO has flexibility to amend and sell easements back to the fishermen who own the encumbered harvest rights. This flexibility is lacking with conservation easements, which perpetually separate land ownership, but it can be especially important in fisheries where institutional rules are rapidly changing. As some fisheries move from limited entry to ITQs, for example, an NGO may find it advantageous to shift their financial resources away from limited entry fisheries and into ITQ fisheries. Also, such a regulatory shift would shift the easement that is optimal for meeting the conservation goal. Flexibility is important even in the absence of institutional change because factors such as biological knowledge, harvest technologies, and prices for harvested species are likely to change over time. NGOs will want to adapt to this new information, possibly by selling easements back to encumbered fishermen and reinvesting the proceeds in other conservation stocks. Because laws concerning marine easements have yet to be written, it is important to study these and related advantages of flexibility now.

Third, our analysis shows that greater delineation of harvest rights implies greater scope for marine easements to accomplish conservation goals efficiently. This is intuitively clear when we compare the performance of easements under theoretical open access and sole ownership regimes. Easements under the former will accomplish nothing, while easements under the latter will achieve conservation goals at minimum cost. Applying this logic to real-world institutions suggests greater prospects for effective marine easements as we move along the completeness-of-rights continuum from limited entry, to ITQs, and possibly to TURFs. However, we note that overcapitalization within some limited entry fisheries may create opportunities for NGOs to achieve conservation goals within these fisheries while at the same time increasing profits per fisherman. This counterintuitive outcome may be feasible if the NGO uses a policy of selectively shutting down some permits in the overcapitalized fishery.

Our analysis also raises a number of questions that could be the subject of future research. It is a practical necessity to ask which legal constraints exist that might limit the use of marine easements in different fisheries. Are there limitations on who can ‘participate’ in a fishery and is an NGO ‘participating’ by owning easements? Could legal rules prohibit easements from encumbering a permit or ITQ when the identity of the permit or ITQ owner changes? Considering the possibility of institutional or regulatory change, can marine easements be framed so that they will respond to such change and remain effective? For example, how could the terms of an easement on a limited entry permit be modified so to appropriately encumber an ITQ? In terms of technical extensions, would the implications of our model substantively change if one incorporates bio-economics concerning the growth of stocks, the possible interactions between stocks, and the possibility of stochasticity in conservation outcomes?

A research extension that is of particular interest to us is one that analyzes the benefits that could be achieved by negotiating easements with harvester associations or co-ops, as opposed to individual harvesters. For the NGO, there appears to be a tradeoff. On one hand, a co-op will have greater market power that it can use to command higher easement prices. On the other hand, a co-op could internalize some decisions that would otherwise remain external in negotiations with individual vessel-owners. For example, an NGO might negotiate a performance standard easement with a co-op, especially if the co-op could act as if it were a sole owner over the relevant habitat. Even if performance easements were not feasible, the costs to the NGO of monitoring restrictive easement compliance could be much lower if the easement was granted by a co-op rather than by individual fishermen.

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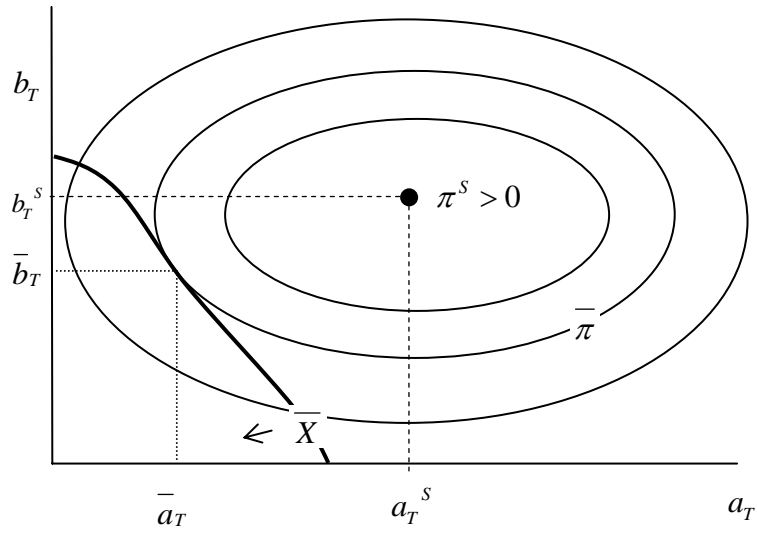


Fig. 1. Firm's actions and NGO's constraint with sole ownership.

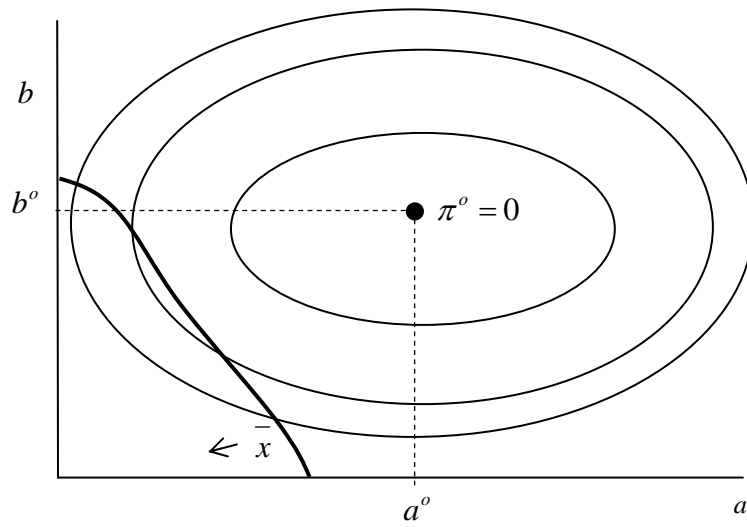


Fig. 2. Firm's actions and NGO's constraint with open access.

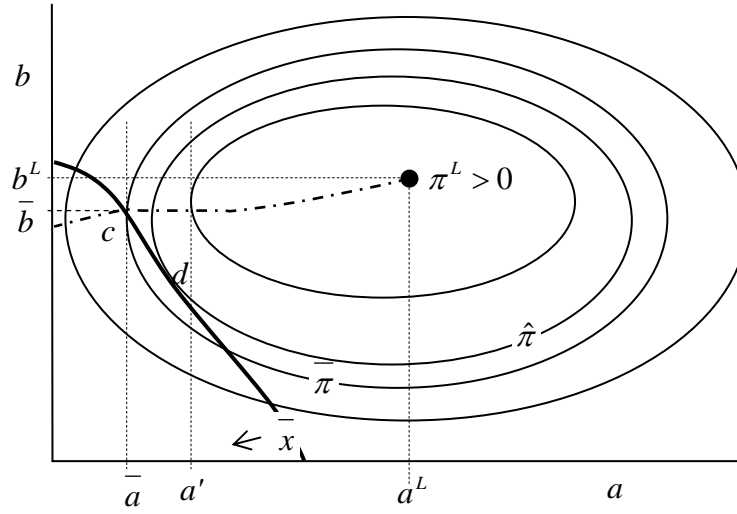


Fig. 3. NGO's conservation options with limited entry.

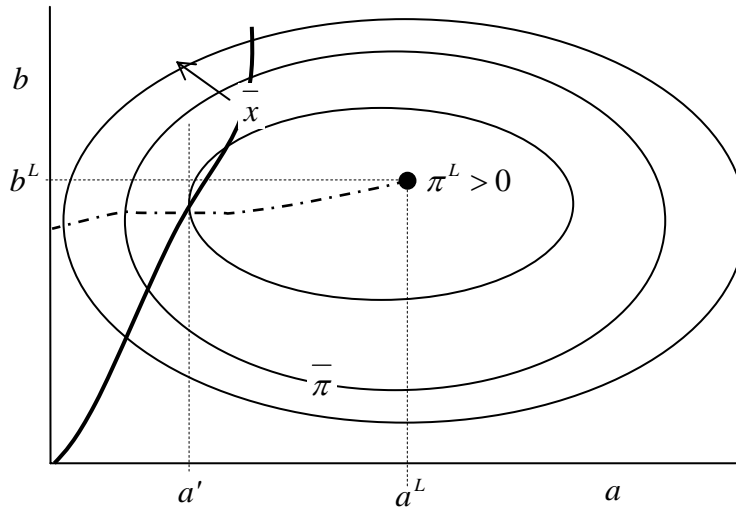


Fig. 4. The limited entry case when action b is beneficial.

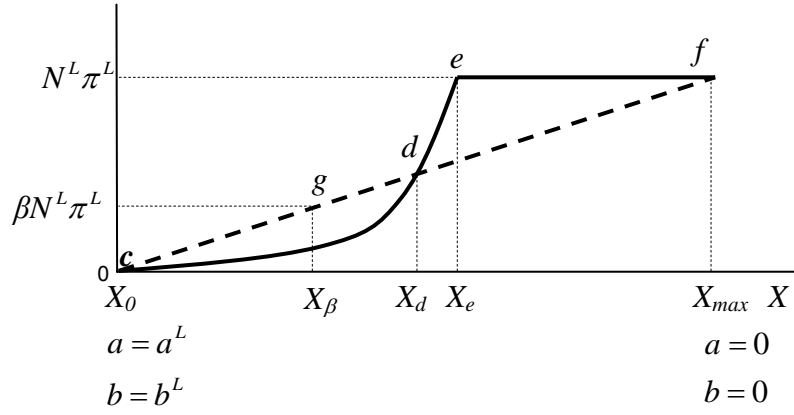


Fig. 5. Identical easements vs. selective shut-downs with limited entry.

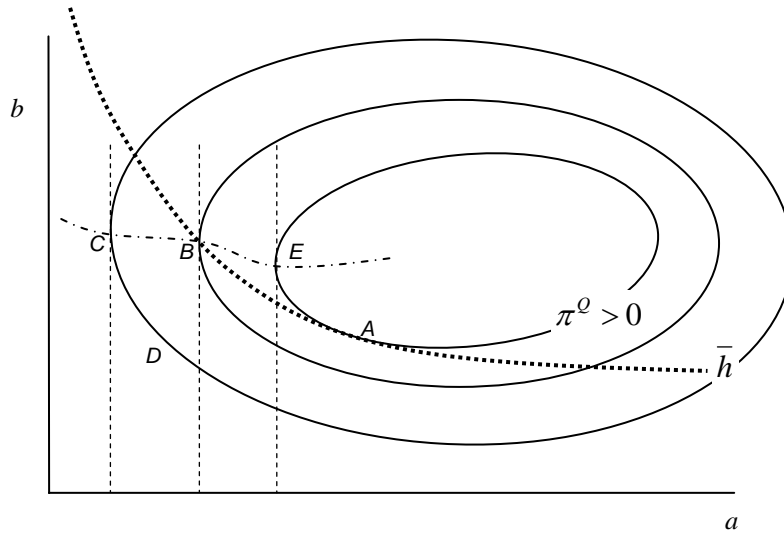


Fig. 6. Firm's actions and NGO's constraint with ITQ regulation.

CFAs in Action

Central Coast Community Quota Bank



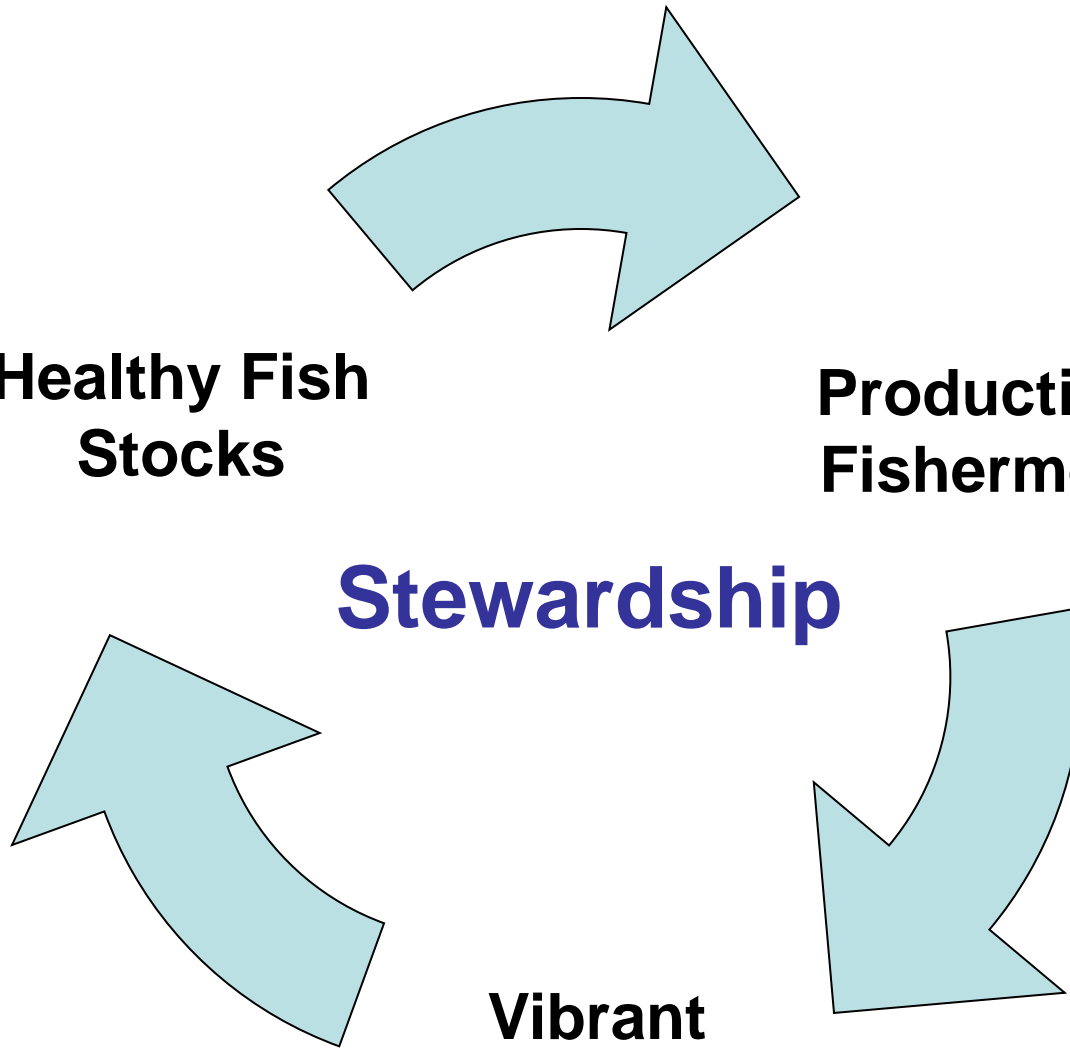


**Healthy Fish
Stocks**

**Productive
Fishermen**

Stewardship

**Vibrant
Fishing
Communities**



Central Coast Community Quota Bank

MISSION: The Community Quota Bank (CQB) is formed through cooperative work of community leaders, fishing businesses & science/conservation interests to create the needed economies of scale and access to capital to participate and compete in the new Groundfish IFQ under a strategy that will support community stability and stewardship in the fisheries sector.

OBJECTIVES:

Social

- Create mechanism for new entrants & inter-generation fishing access
- Ensure that existing permit holders can reach viable scale

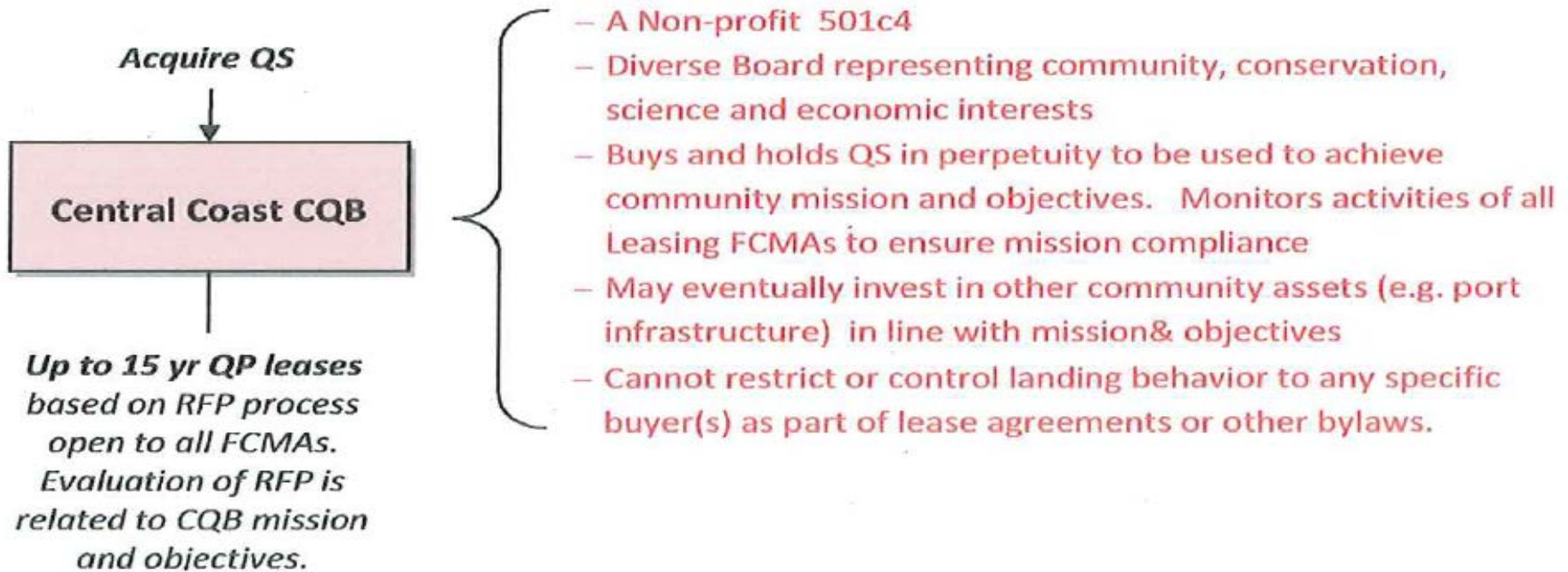
Economic

- Help the Port to participate effectively in the fishery
- Improve economic viability of fishery

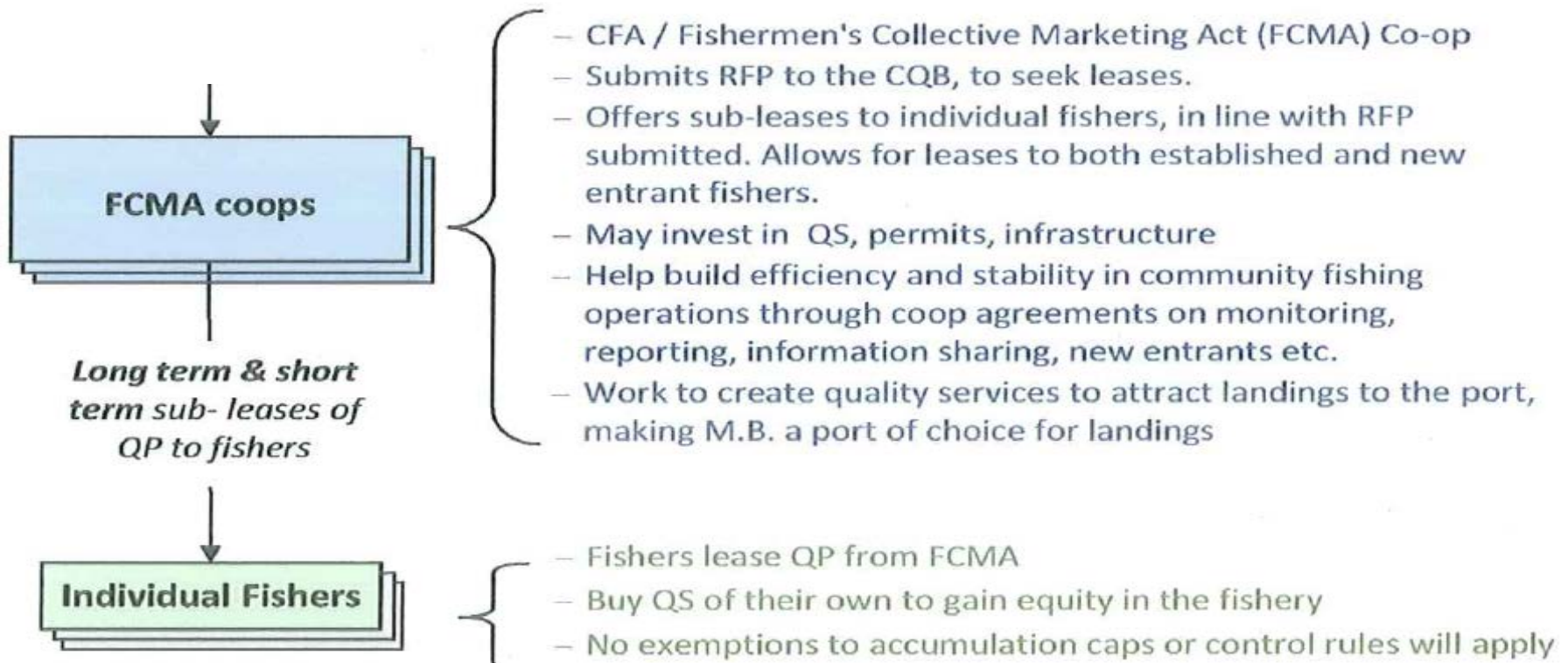
Environmental

- Improve conservation and efficient use of constraining overfished species QS

Central Coast Community Quota Bank



Central Coast Community Quota Bank



What the CFA is NOT

- CFA will **NOT** take quota share rights away from existing holders – CFA will need to acquire quota shares.
- CFA will **NOT** advantage one fishermen over another – all fishermen leasing QPs from the CFA (through an FCMA or directly) must comply with accumulations caps or control rules that apply to all fishermen in the catch shares program.

CFAs support National Standard 8

Conservation and management measures shall:

- (8) Take into account the importance of fishery resources to fishing communities to provide for the sustained participation of, and minimize adverse impacts to, such communities (consistent with conservation requirements).

Requests of PFMC to give communities a chance

1. Continue to prioritize CFAs in trailing amendments.
2. Include provisions for qualifying CFAs to have exceptions to accumulation limits.

Comment on Supplemental NMFS Report on Cost Recovery Program (CRP)

CRP Question #1. Could one CRP applicable to both the trawl and sablefish fisheries be created for implementation in 2012?

NMFS Answer: Keeping the two programs separate makes sense because the two programs are quite different.

Our Answer: We agree, the programs should remain separate. NMFS overall management support is not applied to cost recovery under LAPP programs. The MSA specifically refers to the recovery of the “*actual costs directly related to the management, data collection, and enforcement....*” of a LAPP (Section 304(d)(2). Section 303A(e) also refers to costs that are “*directly related to and in support of the program...*” The trawl catch share programs and the sablefish program are very different and so the government cost to manage them will be quite different. For the same reason, comparison of the west coast trawl fisheries as a group with Alaskan halibut and crab IFQ programs and the surf clam IFQ program may not be useful in developing a CRP framework for the MS and CP whiting coop programs. Comparisons with IFQ programs elsewhere may be appropriate for the shoreside trawl IFQ fisheries. However, cost and structural comparisons between IFQ programs and the coop structure of the offshore whiting fisheries do not seem comparable because coop programs are, for the most part, self managed, self-monitored, self-enforced and paid for by participants.

CRP Question #2.1: How should CRP fee collection be structured for the inshore IFQ fishery?

NMFS Answer: Charge 1st receivers on behalf of QS holders.

Option 1. Collect fees *based on vessel landings* associated with QS, *based on initial transfers of QP to vessel accounts* (QS holders should be held responsible for QS fee even if unused, to incentivize use of QS.) Ex-vessel *value* is the value of landings as reported on fish tickets.

Option 2. Vessel account holder is responsible for paying fees to the processor and the processor is responsible for submitting fees to NMFS. Link fee collection to permitting and QS accounts. Is withholding quota issuance an option?

Our Answer: Based on observer reports of landed fish, the CV landing the fish should be billed by NMFS for its share of the cost recovery amount. QS holders should NOT be held responsible for QS CRP fees if unused or caught by another vessel. There are a variety of reasons QS may go unharvested including premature closure of the fishery. It would be punitive and unreasonable to charge a QS holder for cost recovery when no cost has been incurred. A separate permitting fee should be charged for the “actual cost directly related to the...” issuing the permits.

CRP Question #2.2: How should CRP fee collection be structured for MS and CP coop fisheries?

NMFS Answer: For both sectors the Coop is responsible for paying the fee directly to NMFS on an annual basis. Ex-vessel landings for the coop would be based on shorebased IFQ whiting value. Link fee collection to permitting.

Our answer: The MS Whiting Coop should NOT be responsible for paying the CRP fee. The Coop does not possess the observer data to calculate the fee. The cost recovery fee for the MS Whiting Coop should be paid by the CV that harvested the fish so that it can be properly accounted for in NMFS observer reports. Any link to future permitting would be to the CV that harvested the fish. There would be no link to the QS holder or Coop permits other than the actual and direct cost to issue the permit. There would be no charge for unused QS. Such a cost would be punitive and unreasonable.

CRP Question #3: How are costs associated with running the catch share program identified and calculated?

NMFS Answer: The Council is responsible for working with NMFS to identify costs directly related to the management and enforcement associated with the program. The main recoverable costs associated with the program are due to changes in staffing. The FEIS states that changes in staffing related to the program will result in a cost of \$8 million annually, during the early years of the program. NMFS will brief the Council on updated numbers. We must address how we treat the 3 sectors (Shorebased IFQ, MS Coop and CP Coop) when calculating the fee. Is this 1, 2 or 3 LAPPs?

Our Answer: We agree that the Council is responsible for working with NMFS to identify the “actual costs directly related to the management, data collection and enforcement” of a LAPP (MSA).. In the *Trailing Action Calendar and Status* document, Table 2 describes the status of the A. 20&21 Trailing Action on Cost Recovery. According to the document, the last Council direction on this issue was given at the November Council and is described as: “Move ahead with NMFS lead. Requested transparency of cost information used to determine fees. Cost assessments should be sector specific.” Unfortunately, the documents available at this meeting seem to accomplish neither. We are told the program will cost \$8 million annually, but that number is not broken down so that it transparently identifies costs linked to specific tasks. It also does not identify the costs specific to each sector. The costs are very different for each of the three west coast trawl fisheries because the Council crafted three very different programs based on their separate characteristics. This was a deliberative Council process as described in the A. 20 EIS. According to the *Trailing Action Calendar*, a Council preliminary decision is scheduled for the June meeting, final implementation at the September meeting and implementation in 2012. *It is our hope that before the June Council meeting, NMFS will provide a detailed discussion paper that identifies the “actual and direct” costs and tasks associated with management and enforcement of the catch share programs of the three separate west coast trawl fisheries and that it also include draft alternatives that describe a framework for cost recovery fee collection for the three separate programs.* In this way, the public and the Council can engage in a meaningful and transparent process.

CRP Question #4: How is the value of the fishery calculated?

NMFS Answer: Ex-vessel landing or standardized pricing? Base on fish tickets, make associated field for posting price at time of sale mandatory.

Our answer: The cost recovery fee should be based on a pre-determined amount per ton that is derived from the actual and direct cost of administering and enforcing the sector-specific program.

CRP Question #5: Where do the collected fees go, how are they allocated, and to whom are they allocated?

NMFS Answer: The MSA (304(d)(2)(i)) is clear in how it addresses questions and leaves no flexibility: Fees are deposited in the Limited Access System Administration Fund. Fees are available, without appropriation or fiscal year limitation, only to the Secretary *for the purpose of administering and implementing the MSA in the fishery in which the fees were collected.*

Our Answer: We agree. The MSA is clear that fees be specific to the actual cost of administering and implementing a limited access program and that the funds collected be used only in the program where it was collected so that the fees are spent on the actual costs of the program and not be used to subsidize the costs of other programs. For all these reasons, a cost recovery program for the west coast fisheries should be sector-specific to the program from which it is collected.

CRP Question #6: Can collection/reallocation of fees be done in coordination with the states?

NMFS Answer: NMFS is still evaluating the appropriate mechanism(s) for addressing state costs.

Our Answer: As part of the transparent process to identify the actual and direct costs of administering the LAPP programs, any costs incurred by the states will identified.

GENERAL GROUNDFISH FISHERY AND TRAWL RATIONALIZATION ISSUES
TO BE ADDRESSED BY THE NMFS
PROGRAM IMPROVEMENT AND ENHANCEMENT (PIE) RULE

During the fall of 2010, the Council identified, scoped, and prioritized a number of potential trailing actions pertaining to its trawl rationalization and intersector allocation amendments (Amendments 20 and 21 to the groundfish fishery management plan [FMP], respectively). A calendar for action on these issues is provided in Agenda Item I.7.a, Attachment 1. Also included in that attachment is a brief description of the current status on each issue.

At its March 2011 meeting, NMFS reminded the Council that there were some follow-up on actions needed to complete implementation of the program (e.g. rules for entry of new west coast observer providers) and notified the Council that there are a number of adjustments needed in the regulations to complete the implementation process. NMFS briefed the Council on its intent to develop a program improvement and enhancement (PIE) rule that would include issues brought forward by NMFS as well as any other trailing actions from the Council that were ready for rulemaking. Issues NMFS is proposing for the PIE rule include adjustments to the regulations needed to better implement actions already taken by the Council and approved by NMFS. The adjustments range from clerical matters, such as revising paragraph titles, to matters necessary to facilitate administration of the program, such as a new end-of-year process to allow reconciliation of quota pound (QP) accounts and application of the QP carryover provisions. A generalized schedule of rulemakings and description of the types of measures that NMFS is proposing be included in rulemakings over 2011 are provided in Agenda Item I.7.b, NMFS Report 1. The specific items proposed for consideration in the PIE rule are provided in Supplemental Agenda Item I.7.b, NMFS Report 2. Implementation of some elements of the PIE rule intended to be in effect at the start of the 2012 fishery will likely require Council final review by June 2011. Needed regulatory changes which are not ready for Council review by June 2011 would be covered in a subsequent PIE rule.

Also at its March 2011 meeting, the Council identified the need for an ad hoc committee to address additional regulatory adjustments that might enhance the effectiveness of the trawl rationalization program (e.g. reducing constraints on the configuration of trawl gear). Work by this committee would feed into the rule making processes which follow the initial PIE rule. The Groundfish Advisory Subpanel (GAP) identified involvement of agency personnel as a key element in the constitution of this committee. A proposed charge and seats for the committee is provided at Agenda Item I.7.a, Attachment 2. The Council should discuss issues relative to this new ad hoc committee under this agenda item; formal establishment is scheduled to occur under Agenda Item J.4.

Council Action:

- 1. Provide guidance on the PIE rule as needed.**
- 2. Review calendar and priorities, adjusting as needed.**
- 3. Discuss the need for, charge and seats for ad hoc committee.**

Reference Materials:

1. Agenda Item I.7.a, Attachment 1: Trailing Action Calendar and Status.
2. Agenda Item I.7.a, Attachment 2: Proposed Ad Hoc Committee Charge and Seats.
3. Agenda Item I.7.b, NMFS Report 1: Draft Rulemaking Plan.
4. Agenda Item I.7.b, Supplemental NMFS Report 2: NMFS Items for PIE Rule.

Agenda Order:

- a. Agenda Item Overview
 - b. Reports and Comments of Advisory Bodies and Management Entities
 - c. Public Comment
 - d. **Council Action:** Review and Provide Direction Regarding Emerging Issues and the NMFS' PIE Rule
- Jim Seger

PFMC
03/25/11

TRAILING ACTION CALENDAR AND STATUS

Table 1: Calendar for trailing actions.

Trailing Action Issue	2011					2012						2013
	Mar	Apr	Jun	Sep	Nv	Jan 1	Mar	Apr	Jun	Sep	Nv	Jan 1
1 A-21 Supersedence of A-6	PPA		FPA					Impl				
2 Halibut Allocation	PPA		FPA			Impl						
3 Cost Recovery		Y	PPA	FPA		Impl ?						
4a QS/QP Control Rule Safe Harbor		Y	PPA	FPA					Impl			
CFAs												
4b Risk Pools		Y	PPA	FPA					Impl			
4c Lenders		Y	PPA	FPA					Impl			
5 Severability of Catch History/ Endorsement From Mothership/ Catcher Vessel Permit	PPA		FPA			Impl						
6 AMP Pass Thru		Y	PPA	FPA					Impl			
7 Program Improvements and Enhancement (PIE) Rule		Y	?	?		Impl ?						

PPA = Council selects preliminary preferred alternative.

FPA = Council selects final preferred alternative. **Impl** = Target implementation date.

Y = Council activity.

Table 2: Status of trailing actions.

Issue	Last Council Direction	Urgency (Implementation by)
1 A-21 Supersedence of A-6	March 2011: Preliminary Preferred Alternative (PPA) Selected	"Highest Priority" 2013 (needed for/with biennial spex)
2 Halibut Allocation	March 2011: PPA selected	2012 (emergency rule expires at end of 2011)
3 Cost Recovery	Nov 2010: Move ahead with NMFS lead. Requested transparency of cost information used to determine fees. Cost assessments should be sector specific.	2012 (stated Council objective)
4 QS/QP Control Rule Safe Harbor		
4a CFAs	Nov 2010: Move ahead. general guidance on alternatives and analysis provided in Council motion.	QS trading starts in 2013
4b Risk Pools	Nov 2010: Move ahead with alternatives provided in staff document. Request NMFS/General Counsel participation and meetings with constituents regarding need for action by the Council and type of action needed. NMFS report requested for April.	Not specified
4c Lenders	Nov 2010: Move ahead. Included in 4b (verbal clarification of motion)	Not specified
5 Severability of Catch History/ Endorsement From Mothership/Catcher Vessel Permit	March 2011: PPA selected.	2012 (stated Council objective)
6 Adaptive Management Program Quota Pound Pass Thru	Nov 2010: Move ahead. A range of alternatives provided.	2013 (needed in lieu of other direction for using AMP pounds)
7 PIE Rule	Added to Council April agenda for initial consideration.	TBD

PROPOSED AD HOC COMMITTEE CHARGE AND SEATS

At its March meeting, the Council decided to consider appointment of an ad hoc committee on trawl rationalization. This recommendation was partially in response to the following Groundfish Advisory Subpanel (GAP) recommendation:

. . . . During GAP discussion, other items that seemed either a) relatively simple; b) integral to the success of the TIQ program; or c) a combination of both (a) and (b) became apparent and should be added to the PIE [Program Improvement and Enhancement]:

1. Changing the shoreside Pacific whiting start date.
2. Rockfish Conservation Area (RCA) modifications.
3. The IFQ Holding Requirement.
4. Processing at sea.

The last overarching GAP recommendation is that an ad-hoc committee or panel be organized to address these issues. In order to work most effectively and efficiently, in addition to constituent representation, such a group should include the fishery managers. Council staff, NMFS region and enforcement staff, and NOAA General Counsel representation on this committee would be needed to provide guidance and avoid wasting energy developing reports on proposals that may be non-starters (e.g., not be doable for reasons such as enforcement, NMFS regulations, or other system constraints).

Assuming that final Council action on the first PIE rule is to be taken at the June meeting, it seems likely that any recommendations from this committee would be incorporated into subsequent rules. The Council may want to have a procedural discussion on this point.

Listed below are proposed objectives, duties, and membership for this Committee in accordance with COP 8 (attached).

Committee Name:	Trawl Rationalization Regulatory Evaluation Committee (TRREC)
Objective:	Identify regulatory changes that may enhance the fishery's ability to fully realize the benefits potentially achievable under the trawl rationalization program.
Duties:	<p>Specifically, the TRREC</p> <ul style="list-style-type: none">• will review the full suite of groundfish regulations applying to trawl vessels, first receivers, observers and observer companies operating under the trawl rationalization program to identify those measures which may no longer be necessary or unnecessarily restrict operations in a manner which reduces flexibility or otherwise inhibits achievement of the goals and objectives of the trawl rationalization program,

- may provide the Council with advice about other program improvements and enhancements that are in line with the goals and objectives of the trawl rationalization program, and
- will take on other trawl rationalization related advisory tasks specifically assigned to it by the Council or, between Council meetings, by the executive director.

Proposed Candidate Seats:

<p>Constituent Representatives</p> <ul style="list-style-type: none"> Catcher Processors Mothership Processors Mothership Catcher Vessels Shoreside Whiting Catch Vessels Shoreside Nonwhiting Catcher Vessels Fixed Gear Limited Entry Vessels Shoreside Processors Observer Provider Companies Conservation Risk Pools/CFAs 	<p>Agency Representatives</p> <ul style="list-style-type: none"> NMFS OLE NMFW Region NOAA General Counsel CDFG ODFW WDFW PSMFC - Policy PSMFC – Data Manager
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PFMC
03/25/11

COUNCIL OPERATING PROCEDURE

Ad Hoc Committees

8

2.1 Approved by Council: 03/11/05

2.2 Revised:

PURPOSE

To establish procedures for creating, operating, and terminating Ad Hoc Committees.

CREATION AND TERMINATION

Ad Hoc Committees are created to address specific (or short term) issues and are intended to be in place for a limited duration. Ad Hoc Committees are created and terminated by vote of the Council. Current Ad Hoc Committees (including names and affiliations, but not contact information) shall be listed in the Council Roster.

OBJECTIVES AND DUTIES

Objectives, duties, and expected duration for each Ad Hoc Committee shall be specified at the time the committee is created.

MEMBER COMPOSITION AND TERMS

Based on the advice of Council members and advisory committees, the Council Chair appoints Ad Hoc Committee members.

Member Terms

Ad Hoc Committee members serve until the tasks assigned to the Ad Hoc Committee are completed. However, an Ad Hoc Committee member may be replaced at the Council Chair's discretion if a member; 1) transfers employment or moves to a different location, 2) is absent from two or more consecutive meetings without giving adequate notification to the Committee Chair or Council Executive Director, or 3) appears unable to fulfill their obligations as a Committee member.

Alternate Members

Due to the limited and specific nature of Ad Hoc Committees, members shall, generally, not be allowed to appoint alternates and are strongly encouraged to attend all Ad Hoc Committee meetings. However, at the discretion of the Council Chair or Executive Director and upon advance notice, in writing, committee members may designate alternates to serve in their absence. Such designees may participate in Ad Hoc Committee deliberations as a regular member. At the discretion of the Council Chair or Executive Director, alternates may be reimbursed for expenses per the Council travel rules.

Officers

The Chair and Vice Chair of each Ad Hoc Committee shall be appointed by the Council Chair and shall serve for the duration of the Ad Hoc Committee. The presiding officer has the responsibility and authority to ensure that meetings are conducted in an orderly and business-like manner.

MEETINGS

The committee shall meet at the request of the Council Chair or Executive Director as often as necessary to fulfill their responsibilities.

Public Participation

The public will be permitted to comment on items relative to the agenda at a time to be announced in the *Federal Register* and a Council news release. Comments may be limited if deemed necessary by the Committee Chair. Written statements also may be submitted during the public comment period. The public will not be permitted to interject comments during the meeting at any time other than the established comment period unless asked to do so by the Chair or a Committee member. Members of the public may be asked to leave the meeting at the Chair's discretion if their conduct is impeding the orderly progress of the meeting.

The granting of permission for the public to tape all or any part of the meeting is at the discretion of the Committee Chair and such permission shall be obtained in advance of the meeting.

Copies of this operating procedure shall be available upon request from the Council office.

Public Notification of Meetings

Timely public notice of each Ad Hoc Committee meeting, including the time, place, and agenda topics for the meeting, shall be widely distributed via facsimile machine, electronically (e-mail and Council website), and/or U.S. Postal Service to individuals on mailing lists maintained by the Council and to local media. The notice also may be announced by such other means as will result in wide publicity. For purposes of this notice, the term "timely" will be defined as two weeks prior to the actual meeting. However, the Council recognizes that due to the expediency of some Council actions and/or other reasons deemed valid, such two-week advance notice may not always be possible.

Timely notice of each regular meeting, emergency meeting, and hearing also shall be published in the *Federal Register*. Council staff shall prepare this notice in coordination with the appropriate NMFS regional office. In this context, the term "timely" shall denote submission (at least 23 calendar days prior to the meeting) of the notice to NMFS for publication in the *Federal Register*.

Minutes and Reports

As workload permits, a Council staff member shall attend and draft minutes of each Ad Hoc Committee meeting. Such minutes shall be submitted for approval by the majority of committee members prior to or at the next committee meeting.

Ad Hoc Committees shall report to the Council as directed by the Council Chair or Executive Director.

Reports will describe both areas of consensus and differences. If necessary, majority and minority reports may be drafted to present the divergent views of the Ad Hoc Committee. The Committee Chair will present both majority and minority reports to the Council.

Draft reports or statements prepared and discussed at these meetings will be available to the public in final form after submission to the Council. They will not be distributed to the public during the meeting unless authorized by the Chair.

STAFF RESPONSIBILITIES

In addition to drafting meeting minutes, a Council staff member shall be assigned to assist the committee with coordination, organization, and meeting logistics (e.g., *Federal Register* and meeting notices), and to provide other expertise needed by the Committee on a case-by-case basis.

Draft Rulemaking Plan

National Marine Fisheries Service (NMFS) implemented the trawl rationalization program (program) in January 2011 under extremely tight regulatory timelines. As mentioned by NMFS during the trawl rationalization program regulatory deeming process over 2010, there would be follow-up rulemakings to further implement regulations for the program as needed. As can be expected, there are still aspects of the program that need further attention as soon as possible. These items fall in to the following three general categories:

- 1) Errors or old regulatory language that needs to be corrected or revised.
- 2) Further revisions that are beyond simple corrections but are still within Council intent for Amendments 20 and 21; these are needed to address items that did not get thoroughly addressed last year as a result of the tight implementation timeline or that have come to light since the fishery was implemented.
- 3) New areas the Council could address in response to implementation issues, including measures to make the fishery more flexible or efficient.

Note that some of these revisions would affect sectors other than trawl, including the limited entry fixed gear, open access, and possibly the recreational sectors.

NMFS may implement these items through one or more rulemakings over 2011. In addition, NMFS may include other Council trailing actions in these rulemakings, as appropriate. NMFS has termed these post-implementation rulemakings the “Program Improvement and Enhancement (PIE)” rule and envisions multiple PIE rules over the next couple of years, as needed. Below is a tentative schedule of rulemakings related to trawl rationalization for 2011, a summary of what might be included in those rules, and the affected sectors.

- **Correction**

1. Timing: Final rule & effective – May or June
2. Includes: Items needing more immediate correction, such as
 - Erroneous cross references
 - Duplicate entry of a regulatory paragraph
 - Remove reference to term whiting “bycatch limits”
3. Sectors affected: limited entry trawl (IFQ/MS/C/P), limited entry fixed gear, open access

- **PIE 1**

1. Timing: Proposed rule – August
Final rule – November
Effective – January 1, 2012
2. Includes: Any items ready for rulemaking with a target implementation of January 1, 2012, including any trailing actions such as Amendment 21 v. 6, halibut allocations, items to further implement Council intent, etc. Also see Agenda Item I.7.b, Supplemental NMFS Report 2, April 2011.

3. Sectors affected:
limited entry trawl (IFQ/MS/C/P), limited entry fixed gear, open access,
and possibly recreational
- **Cost Recovery** - (details being discussed under Agenda Item I.6.b)
 1. Timing: Proposed rule – November Final rule – February 2012
Effective – March 2012
 2. Includes: See Agenda Item I.6.b, Supplemental NMFS Report 1, April 2011.
 3. Sectors affected: limited entry trawl (IFQ/MS/C/P)

PFMC
03/25/11

ENFORCEMENT CONSULTANT REPORT ON GENERAL GROUND FISH FISHERY AND
TRAWL RATIONALIZATION ISSUES TO BE ADDRESSED BY THE NMFS PROGRAM
IMPROVEMENTS AND ENHANCEMENT (PIE) RULE

The Enforcement Consultants (EC) has reviewed Agenda Item I.7.b, Supplemental NMFS Report 2, April, 2011, NMFS Items for PIE Rule(s) and has the following comments.

Issue 1: Consider revisions to requirements for observer coverage until offload complete.

The EC recognizes there have been challenges associated with implementing 100 percent observer coverage. In an effort to provide for efficiencies without compromising catch accountability needs, the EC recommends a combination of options 2, 3, and 5 in addition to a reporting requirement to National Marine Fisheries Service (NMFS) enforcement.

Option 2 requires that the observer and vessel representative document the number of each overfished species before observer and crew depart the vessel. Option 3 requires that the observer document and provide the vessel operator the weight of the overfished species. In order to document and track the overfished species, the species type, number and weight of each should be recorded onto a three-page carbon copy form created by the observer program, with signed copies distributed to the vessel, observer and catch monitor. If the later landed weight differs from the recorded weight on these forms, then the Council and/or NMFS should determine how this difference will be reconciled and what weight will be deducted from the quota pounds (QP) in the vessel account.

EC support for this hybrid strategy is based on the recognition that bycatch of Bocaccio, Yelloweye, Canary, and Cowcod species should be particularly small for each trip. Therefore, the EC believes that observers will be able to accurately document the number of each species, in addition to the weight of each species.

Option 5 requires a hold sealing strategy to attempt to prevent unobserved offloads from occurring. The EC recognizes the potential benefits of sealing the hold and all entrances with some type of tamper-resistant tape or device, as a secondary measure, to ensure accurate accounting of catch. However, the type of device or material to seal the hold will require much further research and analysis by NMFS. Regardless of the material type used, in the event a seal is broken, it is our recommendation that an investigation be required to be initiated.

Enforcement Notification of a Delay in Offload

Observers should be required to notify NMFS enforcement two hours prior to departing a vessel in port, which retains any individual fishing quota (IFQ) catch onboard. This notification must include: observer name, vessel name and documentation/registration number, date, port, number, and weight of each overfished species retained onboard and estimated time of departure for the observer.

This option will facilitate enforcement agencies in monitoring vessels and ensuring catch accountability of overfished species, target species and species close to deficit levels. For vessels

with little QP left for various species, this will allow enforcement the option of monitoring the vessel to ensure catch is not tampered with.

Additional Regulatory Changes.

Regulations currently require observer coverage until final offload of the catch. Regulations should be revised to allow an exemption of this requirement as long as the observer and vessel meet the required actions, as determined by the Council and published in Federal regulations. Additionally, the term “catch monitor” should be included in applicable regulations, to allow catch monitor to complete functions such as securing, unsealing of the hold for offload, hold inspections and any other applicable duties,

Issue 2: Moving between limited entry and open access fisheries.

Under current regulations and NMFS interpretation, limited entry permit (LEP) trawl vessel can declare into numerous fisheries including; Highly Migratory Species, Coastal Pelagic Species, salmon, crab, open access (OA) longline, fixed gear, pot, and OA non groundfish trawl pink shrimp, but are prohibited from declaring into OA non groundfish trawl California halibut, ridgeback prawn, and sea cucumber unless fishers remove the LEP from the vessel.

Council staff has determined that Council action on Issue 2 would more closely align with Council intent under Amendment 20 and with the FMP in that under this action LEP trawl vessels could declare into all non groundfish exempt trawl, (pink shrimp, California halibut, sea cucumber, and ridge back prawn) and keep their LEP on the vessel, but could not declare into OA line, fixed gear and pot unless they removed the LEP from their vessel.

The EC believes the status quo situation is supported by regulation, is understood by the industry, and is enforceable. Alternatively, Council action on Issue 2 would also be enforceable and as expressed by Council staff, align more with Council intent and the FMP.

Issue 3: Clarify the open access language for non-groundfish trawl fisheries.

The EC would like to point out for the Council, that if the Council adopts Issue 2 (moving between limited entry and open access fisheries), Issue 3 (clarifying the open access language) becomes mandatory in that this would be a required action to implement Issue 2. If the Council does not move Issue 2 forward for final action in June, Issue 3 is still an option for Council consideration.

Issue 5: Review and, if necessary, revise crossover provisions.

The EC has no recommendation on this element, but would point out that the monitoring of fishing activity by LEP permitted vessel, both trawl and fixed gear, is monitored by a vessel monitoring system.

Issue 7: Clarify first receiver has to complete and submit an electronic fish ticket before the fish leaves the offload site.

The EC spent considerable time on this issue and can cite specific examples where the situation described in the background has occurred. The e-ticket used in catch accounting was developed by Pacific States Marine Fisheries Commission (PSMFC) to emulate the state fish ticket programs which currently use a paper format. The electronic version of the state fish ticket has been used in the Pacific whiting fishery for the past four years and is a current Federal requirement for all IFQ landing in the TRat program.

The EC has evaluated the state fish ticket requirements and developed a common set of fish ticket requirements for Federal adoption. With this adoption, state(s) that require more restrictive regulations can do so under the premise: state law can be more restrictive than Federal law, but not more liberal.

To further facilitate state adoption of the electronic format while supporting implementation of the TRat program, the EC would like to see the following actions forwarded for final consideration at the June Council meeting.

Creation of Additional E-Ticket Fields

1. A field to type the name of the vessel operator.
2. A signature block for the vessel operator's written signature for printed documents.
3. A signature block for first receiver's written signature for printed documents.

Currently, all three West Coast States require that the fisher making the landing and First Receiver (FR) sign the fish receiving ticket, certifying that the information contained therein is true and accurate. This longstanding requirement provides for accountability and allows for punitive action with respect to falsifying reports. Case law exists recognizing this type of certification as being equivalent to a sworn document and business record.

With these field changes the EC recommends the immediate completion and submittal of the e ticket at the off load site, the term immediate should be defined as "at the time of receipt, purchase or transfer of fish, whichever occurs first." (WA WAC) With these changes, there will be no confusion between the FR and the Catch Monitor (CM) regarding the e-ticket initiation time line and designation. The FR, CM, and the vessel operator will be able to verify the accuracy of the e-ticket prior to submittal because all three parties are in the same location, the off load site. The need for dock receipts, multiple e-ticket submittals, and other redundant documentation will be eliminated. A simple bill of lading would be the only paper work required during transport. Individual state regulations related to transporting fish and required documentation still apply.

Upon submittal, the FR would print a hard copy of the e-ticket for signature by the vessel operator and FR, where upon the vessel operator would retain the hard copy for their records.

FRs have pointed out that these revisions will require computers and printers to be at the offload site and that the FR personnel at the offload site would be filling out and submitting the e-ticket

at remote offload sites instead of the more competent and trained bookkeepers and accountants at their headquarter facilities. They suggest that the recording and submittal goals stated above could be accomplished using alternative technology such as fax. This approach and other potential alternatives for e-ticket submittal are options the EC would like to explore with the industry during the intervening time between now and the June Council meeting. The EC believes that a good dialogue has been initiated with the industry on this issue and that alternative approaches can ultimately be accommodated either through regulation changes or modifications expressed in the individual Catch Monitor Plans submitted by all FRs during the permitting process. The EC also sees value in streamlining Federal and state catch accounting processes where possible. With practiced use, efficiencies will be identified and system changes should evolve.

The EC would also like to see limits placed on the types of edit, number of edits, and how far out in time they can occur. Allowed changes should be evaluated in terms of the potential for abuse or fraud. Most fields should require little change, while others may require additional time. In order to understand industry needs, the EC has requested more information from them with respect to reasonable change and timeframes. The EC will also consult with PSFMC to ascertain past practices. As stated above, the states have the option to address broad areas in Federal regulations with more specific and restrictive rules.

As with the previous submittal issue, the EC is engaged with the industry on these issues and will use the intervening time between now and June to further refine this proposal for final action consideration by the Council in June.

Issue 8: Mandatory requirement to fill out ex-vessel value on electronic fish ticket.

Both Oregon and Washington use ex-vessel price for excise tax determination. By example: Oregon's administrative rules spell out how the tax is calculated based on value. Dealers file monthly report and pay taxes on a monthly basis. For the states of Washington and Oregon to consider adopting the e-ticket format, ex-vessel price must be a required field of the e-ticket.

PFMC
04/12/11

GROUND FISH ADVISORY SUBPANEL REPORT ON GENERAL GROUND FISH FISHEY
AND TRAWL RATIONALIZATION ISSUES TO BE ADDRESSED BY THE NMFS
PROGRAM IMPROVEMENTS AND ENHANCEMENT (PIE) RULE

The Groundfish Advisory Subpanel (GAP) received a report from Mr. Jim Seger and Ms. Jamie Goen on the Program Improvement and Enhancement (PIE) rule and the Trawl Rationalization Regulatory Evaluation Committee (TRREC). After receiving the report from Ms. Goen and Mr. Seger and reviewing Agenda Item I.7b Supplemental NMFS Report 2, the GAP understands that several of the items in that document are not ripe for decision. Referring to those items (numbers 2, 3, 4, 5, and 9) the GAP offers no specific recommendations, but appreciates National Marine Fisheries Service (NMFS) highlighting those issues and looks forward to providing comment at the appropriate time. Referring to the items that are ripe for decision, we offer the following specific comments.

Issue 1 – Consideration of revisions to requirement for observer coverage until offload complete – The GAP prefers option 2 (observer and skipper agree to the number of constraining species prior to departing the boat). Option 2 is easy to comprehend, will prevent misunderstanding, does not require weights, and will save the fleet significant amounts of money by allowing the observer to depart the boat before offloading occurs.

Issue 6 – Consideration of a process to allow end of year resolution of accounts – The GAP recommends the NMFS-preferred option (option 2). It is the least disruptive, is not administratively burdensome, and will enable carryover pounds to be distributed in an appropriate timeframe.

Issue 7 – Clarification that first receiver has to complete and submit an electronic fish ticket before the fish leaves the offload site – The GAP believes it may be difficult for some first receivers to submit an electronic fish ticket. This may be due to the remoteness of the site and lack of internet access. It may also be due to the fact that site managers may not be comfortable with computers. The GAP requests an option that would authorize a central processing plant to fax a blank fish ticket to the first receiver site, have the first receiver site manager fill in the blank form, and then fax that back. We believe that would not compromise the need to have a fish ticket completed before the fish leaves the offload site.

A related issue that may arise is the time it takes to offload, particularly for large loads (e.g. whiting). There may not be space at the site for the trucks to load and hold the product in order to offload a complete trip. Likewise, a processor may not have enough totes to hold a large load. It is imperative to clear space and that some product move while offloading is still occurring. If a fish ticket number could be assigned to the entire load and individual bills of loading assigned to each truck, we could maintain the accuracy and completeness of the fish tickets without impairing the normal operations of a processor/first receiver site.

Issue 8 – Mandatory requirement to fill out ex-vessel value on electronic fish ticket – The GAP supports the requirement to fill out ex-vessel value on fish tickets. The confounding part of the

issue is the timeliness of submitting the ex-vessel landing value. After polling processors, the GAP has determined that three weeks would be a reasonable time period for this requirement.

Issue 10 – Adding “first receiver” to list in conflict of interest regulations for catch monitors and catch monitor providers – The GAP agrees that first receivers should be in the conflict of interest regulations and that the absence of first receivers in that list was a simple oversight.

TRREC committee

The GAP believes the TRREC needs to be narrowly focused in both composition and charge in order to be most effective. At present, the group seems overly large and cumbersome. The GAP recommends narrowing the focus of the committee solely to shoreside trawl issues. The GAP also recommends changing the composition of the group as specified below. Specifically, the GAP recommends the following make-up: 1 shoreside trawler from each state, 1 additional at-large trawler (preferably with shoreside whiting expertise), 1 processor, 1 NMFS Office of Law Enforcement, 1 NMFS Northwest Region, 1 National Oceanic and Atmospheric Administration General Counsel, 1 state enforcement officer from one of the three states, and 1 Council staff.

The GAP believes the highest priority for the TRREC should be to focus on regulatory artifacts of the old management system that have the potential to limit the success of the trawl rationalization program. Such issues include, but are not limited to, gear regulations (e.g. two seam net required shoreward of the Rockfish Conservation Area [RCA] may impede gear innovation that reduces bycatch), RCA boundaries, the individual fishing quota holding requirement, and the whiting season start date. In order to keep the committee as small as possible, and the charge as narrow as possible, the GAP recommends that the committee not address issues that are allocative in nature or have crossover connotations.

The GAP notes TRREC meetings will be open public meetings allowing for input from other stakeholders, and also notes that all recommendations will still need to go through the complete Council process providing ample opportunity for soliciting comment from all sectors and stakeholders.

PFGC
04/12/11

GROUND FISH MANAGEMENT TEAM REPORT ON GENERAL GROUND FISH FISHERY
AND TRAWL RATIONALIZATION ISSUES TO BE ADDRESSED BY THE NMFS
PROGRAM IMPROVEMENTS AND ENHANCEMENT (PIE) RULE

The Groundfish Management Team (GMT) received a briefing from Ms. Jamie Goen on those National Marine Fisheries Service (NMFS) items which may be considered in a Program Improvement and Enhancement (PIE) rule (Agenda Item I.7.b, Supplemental NMFS Report 2). The GMT understands that this rule is still in the early stages of development and not all details have been fully fleshed out. Therefore the GMT is only highlighting a few considerations in this statement which may have analytical or management implications. The GMT will continue to track these issues, communicate with NMFS, and may provide additional comments as the PIE rule is further developed.

Moving between limited entry and open access fisheries

One of the analytical implications the GMT would like to highlight is relative to calculation of set-asides for groundfish mortality in non-groundfish fisheries, also known as the incidental open access fisheries. Depending on the Council decision relative to this issue, there may be a need for the GMT to re-evaluate the incidental open access set-asides and re-calculate as necessary. The GMT recommends that if set-aside adjustments are necessary, those adjustments be included into the PIE rule since there is currently no mechanism to adjust set-asides inseason.

The GMT discussed the management implications of a potential effort shift of vessels holding limited entry trawl permits and moving into the incidental open access and groundfish open access fishery. Under the current regulations and the NMFS proposal, the limited entry trawl permit could remain assigned to the vessel while operating in the incidental open access fishery, providing maximum flexibility. The GMT notes effort shift into state-managed non-groundfish trawl fisheries is limited since participation is already capped through a state permit. Some latent state permits (e.g., pink shrimp) may become active as a result of the expected consolidation in the trawl fishery, but the extent is unknown.

Under the NMFS proposal, if a vessel with a limited entry trawl permit intends to fish in the open access fishery (e.g., sablefish), the limited entry trawl permit would need to be removed and count against the open access allocation. The extent of effort shift into the open access fishery is also unknown. Industry indicates that spillover may be minor compared to that experienced from displaced salmon fishermen in a bad salmon year. The trawl spillover is limited by the number of limited entry trawl permits where the open access universe is unlimited and could include salmon fishers as well as new participants. The GMT will continue to track this issue and may provide additional comments in the future as the PIE rule is further developed.

Catch accounting regulations

Accurate catch accounting will be essential, especially to inform allocations and trip limit models. For example, the GMT has already identified some catch accounting issues outside the rationalized trawl fishery that have impacted trip limit models ([Agenda Item H.4.b, Supplemental GMT Report 1, March 2011](#)¹). Since NMFS has yet to fully develop the implications of revising the catch accounting regulations, the GMT will provide comments in the future as the PIE rule is further developed. Further, the GMT will work with PacFIN to ensure all queries accurately attribute catch to the correct sector.

Processing At-Sea

The GMT notes that the Groundfish Advisory Subpanel ([Agenda Item H.5.b, Supplemental GAP Report, March 2011](#)) and the Oregon Department of Fish and Wildlife (WDFW) requested ([Agenda Item H.2.c, ODFW Letter 2, March 2011](#)) potential regulation changes for the “at-sea processing” provision currently described in Federal Regulations for the IFQ fishery. Prior to the IFQ fishery, it was legal for limited entry non-whiting trawl vessels to process fish at sea. It is our understanding that at least one non-whiting trawl vessel processed groundfish at sea by freezing a portion of their groundfish shortly after capture during the pre-IFQ period.

The activity is now illegal, made so by the regulations issued to implement the IFQ fishery. We do not know if this change reflects the Council’s intent or if it was instead an unintended consequence not recognized during the deeming process. In their letter, ODFW makes the argument that similar situations have grandfathered “at-sea processing” regulations after transitioning to a new management scheme (e.g., Amendment 14). ODFW’s letter also explains the impacts to the affected vessel.

From the GMT perspective, we note that the catch accounting concern under the current IFQ program is now lower relative to the pre-IFQ period because of the full observer coverage in this sector. Observers could allow improved precision of accounting for weight differences caused by glazing (i.e., verify product recovery rates), although this would require a special project outside of normal observer duties as we understand it.

If the Council were to choose to address the issue with a broad exemption for at-sea processing instead of with a grandfathering-type option, then we imagine the analysis of impacts would be broader than just catch accounting.

Trawl Rationalization Regulatory Evaluation Committee (TRREC)

The GMT noted the proposed list of candidates for the TRREC did not include a designated GMT member. Although the list of candidates did include state agency representatives, the GMT notes that the state representative may or may not be a GMT member, and those state members will be representing state interests. Depending on the scope and tasks of the ad hoc committee, the GMT sees benefit in having a designated seat on the committee to address management implications. This would allow the GMT to actively participate in the committee and provide comments as necessary. Although the GMT would have the ability to comment on any committee recommendations at a Council meeting, workload and/or competing priorities

¹ This error did not result in any miscalculation of the primary tiers for sablefish, total limited entry sablefish fixed gear landings, or total sablefish harvest north of 36° N. latitude.

may not allow for sufficient review time. Alternately, the Council may wish to consider the GMT a “situationally invited participant,” invited to provide comments on management issues as they arise.

PFMC
04/12/11

NMFS Items for PIE Rule(s)

NMFS has several items to be addressed through a future rulemaking (i.e., PIE rule(s)) for the Pacific Coast groundfish fishery. NMFS intends to implement many of these through a rulemaking with a target effective date of January 1, 2012. As mentioned under NMFS draft rulemaking plan (Agenda Item I.7.b, NMFS Report 1, April 2011), these items fall in to the following three categories:

- 1) Further revisions that are beyond simple corrections but are still within Council intent for Amendments 20 and 21.
- 2) Errors or old regulatory language that needs to be corrected or revised.
- 3) New areas the Council could address in response to implementation issues, including measures to make the fishery more flexible or efficient.

Items NMFS may address in a future rulemaking are listed below and grouped under these three category headings. These items are still in development and additional items may be added as the rulemaking progresses. Where preliminary regulatory language has been drafted, it is provided below.

Further Implementation of Council Intent

- 1) Consider revisions to requirement for observer coverage until offload complete.

Council consideration: Policy decision

Background:

Because Amendment 20 to the Pacific Coast Groundfish Fishery Management Plan (FMP) required 100% observer coverage, NMFS implemented a requirement for the observer to remain onboard the vessel until all IFQ species were offloaded, as specified at 660.112(b)(1)(xiii) and 660.140(h)(1)(i). NMFS and the Council have received feedback from the industry that this requirement is overly restrictive, a burden on the industry, and a concern for the observer providers. Are there options to make this requirement more flexible?

Recommended change:

In response to the Council's discussion on allowing the observer to depart the vessel upon return to port and for the catch monitor to conduct the hold inspection at the end of the

offload, the following options are being considered to allow this action while ensuring catch accountability. The goal of these options are to ease the burden on industry, observers and observer providers, while still ensuring accurate catch accounting and limiting incentives/opportunities for IFQ species to be altered prior to landing (especially overfished species or species near deficit).

Note: Some of the following options apply only to bocaccio, yelloweye, canary, and cowcod, while others apply to all IFQ species. Preliminary analysis determined that bocaccio, yelloweye, canary, and cowcod are the critical species to track because they are overfished, their retention rates have increased and the amounts available to the fishery are low. If these 4 species are chosen as the only ones to track in one of the options below, additional species could be added in the future if determined necessary.

Option 1: Observer or catch monitor onboard until final offload: Would apply to all IFQ species. Modify the regulations to say that an observer or catch monitor monitors the fish until final offload. This adds the catch monitor as being able to be onboard vessel while in port until all IFQ species are offloaded and to inspect the hold. While this would be the least flexible of the options, it is more flexible than status quo and would help reduce costs if the catch monitor has a lower rate than the observer. This change from current regulations could be considered because the providers have notified NMFS that catch monitors carry the minimum insurance coverage to allow them to board a vessel while in port.

Option 2: Number Determination (NMFS Preferred): Would apply only to bocaccio, yelloweye, canary, and cowcod, or other species as determined necessary. Prior to departing the vessel, the observer would provide the vessel operator the number of fish for each overfished species. If the observer and operator's numbers are in agreement, the observer and crew would depart.

Discrepancies: Potentially, the operator and observer numbers may differ, possibly as a result of mis-identification while at sea. In these cases, NMFS would likely require the observer and crew to stay onboard until offload is completed. In addition, upon landing, there could be a discrepancy in the number of fish for each species due to misidentification, lost fish during the offloading process, seabirds scooping in and eating one, etc.

Accurate weight: This option does not provide any weight to compare with the offload weights. In a possible scenario there could be "drop fish" to replace big fish with small ones to reduce the weight being deducted from their quota pounds (QP) (opposite of high-grading). In response, if the numbers don't match up, NMFS would take the higher of the numbers,

just like weight (described in option 3). NMFS can apply an average weight to the total number to get the total weight of the species. The process would be to use the observer or catch monitor data for those 4 overfished species (with weights and counts) to calculate the average weight and then apply that weight to the highest number.

Harassment/Coercion: Observers may face increased pressure or influence by operators to change the numbers especially if the crew and observer would be required to stay due to a difference in numbers.

Reporting: Reporting: A means to report and document this number would need to be developed or outlined. Catch monitors would also have to document the number of fish and these two numbers would have to be compared. A simple form could be created wherein the vessel and observer enter the number of these 4 overfished species caught in each haul. The form could be printed on paper that has three copies with everyone's signatures: one the vessel keeps, one given to the catch monitor, and one the observer keeps.

Option 3: Weight determination: Would apply only to bocaccio, yelloweye, canary, and cowcod, or other species as determined necessary. Prior to departing the vessel, the observer would provide the vessel operator the weight for the overfished species. If the operator agrees to the weight, the observer and crew would depart. If there is a difference between the observers weight and landing weight (supervised by a catch monitor) than the highest weight will be deducted from the QP in the vessel account.

Discrepancies: Operator may disagree with the observer's weight. All overfished species must be weighed in port and the operator must agree with observer's weight, prior to the crew or observer departure OR crew and observer must stay onboard until offload.

Accurate weight: It has been NMFS' position that the catch must be accurately weighed; underestimates and overestimates are not permissible. However, weight taken by observers may not be as accurate as the weight upon landing due to: visual estimates, inaccuracies as a result of environmental conditions while weighing on scales at sea, etc.

Harassment/Coercion: Observers may face increased pressure or influence by operators to change their weights especially if the crew and observer would be required to stay due to a difference in numbers.

Reporting: A means to report and document this weight between the observer and operator would need to be developed or outlined. The same process as outlined in option 2 would apply.

Option 4: Observer estimates all species onboard near deficit: Would apply to all IFQ species or species near deficit. Similar to Option 2 or 3, but applies to more than just 4 overfished species. May be labor intensive, cost prohibitive, or not possible given space and time. In addition, observer would have to be alerted on a trip by trip basis by NMFS on which species to estimate.

Option 5: Lock-out / Tag-out Procedure: Could apply to all IFQ species or if any IFQ species with low available amounts onboard (i.e., bocaccio, yelloweye, canary, and cowcod, or other species as determined necessary). This would include sealing the hold and all entrances with a secure tamper evident tape or material.

This may be a secondary option, used in conjunction with one of the methods above to prevent tampering with catch.

Option 6: Cameras: Would apply to all IFQ species. This would require cameras at any hold opening. Could be cost prohibitive and require increased government resources (financial and/or personnel) to review the camera footage for each vessel. Determination of weight, based on video footage, for any altered or removed catch would present difficulties for ensuring accurate catch accounting.

Regulatory sections affected: 660.112(b)(1)(xiii) & 660.140(h)

Sectors affected: IFQ

2) Moving between limited entry and open access fisheries.

Council consideration: Further implementation of Council intent.

Background:

Since implementation of the catch share program, there has been much interest in the rules and restrictions around moving between limited entry and open access fisheries or even between sectors within the limited entry trawl fishery. NMFS developed a matrix to guide participants on the requirements (see a public notice dated 1/19/2011 and in the small entity compliance guide revised 2/25/2011). In general, current groundfish regulations are interpreted to allow all limited entry fishermen (trawl and fixed gear) to move between limited entry and open access fisheries with no permit action and simply changing their fishery declaration between fishing trips, with 3 exceptions (non-

groundfish trawl gear for California halibut, ridgeback prawn, or sea cucumber). Under this interpretation moving between the IFQ fishery and open access fishery is distinct from “gear switching” under the IFQ program. Under gear switching all catch is covered by quota pounds regardless of the legal groundfish gear used. In moving between the IFQ fishery and open access fishery, quota pounds cover catch in the IFQ fishery and trip limits cover catch in the open access fishery. NMFS concern with the interpretation in our matrix is how freely vessels can move between the limited entry and open access fisheries and which allocations catch is being counted against.

The final environmental impact statement for Amendment 20 addressed concerns over “double-dipping,” taking from 2 allocations of fish (limited entry and open access) (Appendix A, p.A-15) and structured the fishery to require quota pounds to cover catch by most gears if the vessel has a limited entry trawl permit registered to it regardless of which fishery it is declared in to, with some exceptions. The Amendment 20 FMP language in Appendix E, section A-1.1 states the following:

For trips delivered shoreside, QP will be required to cover catch of all groundfish (including all discards) by limited entry (LE) trawl vessels with certain gear and species exceptions.

Gear Exception: Vessels with an LE trawl permit using the following gears would not be required to cover their groundfish catch with QP: exempted trawl^a, gear types defined in the coastal pelagic species FMP, gear types defined in the highly migratory species FMP, salmon troll, crab pot, and LE fixed gear when the vessel also has a LE permit endorsed for fixed-gear (longline or fishpot) AND has declared that they are fishing in the LE fixed-gear fishery.

^a California halibut gear of 7.5” or greater used in state waters is exempted.

In discussing this issue with Council staff, the current groundfish regulations may only partially match the Council’s action from Amendment 20.

Recommended change:

This provision should be more thoroughly reviewed to ensure that it matches Council action from Amendment 20 and tracks with catch accounting procedures.

One of the regulatory changes needed is to clarify the IFQ regulations on gear exceptions at 660.140(e)(1)(i) to make it clear that these exceptions are still subject to the open access requirements and limits when declared in to an open access fishery. Therefore, 660.140(e)(1)(i) should be revised to read:

(i) Gear exception. Vessels with a limited entry trawl permit using the following gears would not be required to cover groundfish catch with QP or Pacific halibut catch with IBQ pounds: Non-groundfish trawl, gear types defined in the coastal pelagic species FMP, gear types defined in the highly migratory species FMP, salmon troll, crab pot, and limited entry fixed gear when the vessel also has a limited entry permit endorsed for fixed gear and has declared that they are fishing in the limited entry fixed gear fishery. These open access fishery exceptions are subject to the open access fishery restrictions and limits when declared in to an open access fishery.

To more accurately reflect the intent of Amendment 20, all catch of IFQ species by a vessel registered to a limited entry trawl permit (not participating in the at-sea whiting fisheries) must be debited from a vessel account instead of being subject to trip limits, unless the limited entry trawl permit is removed from the vessel, with some exceptions (listed in 660.140(e)(1)(i) cited above). For these exceptions, the vessel does not have to remove the limited entry trawl permit from the vessel to participate in the open access fishery and be subject to trip limits; they only need to change their fishery declaration from an IFQ fishery to an open access fishery. When declared in to an open access fishery, the catch of groundfish would be deducted from the open access allocation. That being said, all limited entry vessels (trawl and fixed gear) could move to the open access fishery by removing the limited entry permit from the vessel and declaring in to the open access fishery.

Other regulatory sections will need to be reviewed and, as necessary, revised to reflect this interpretation.

Regulatory sections affected:

660.11 (def. of open access fishery and non-groundfish trawl), 660.55(f) catch accounting, 660.60(h)(7) crossover provisions, 660.140(e)(1)(i) may need interpreted in other sections of the regulations, 660.140(k) on gear switching should be reviewed, 660.232 limited entry fixed gear before primary season, Subpart F open access fisheries

Sectors affected: All commercial

3) Clarify the open access language for non-groundfish trawl fisheries.

Council consideration: Further implementation of Council intent (related to previous item).

Background:

The outcome of the previous item on moving between limited entry and open access

fisheries may affect this item. To clarify that ridgeback prawn, California halibut, and sea cucumber are open access fisheries, NMFS intends to add the words “open access, non-groundfish trawl” to those regulations. This would distinguish the open access, non-groundfish trawl gear used for those fisheries from other gear that may be used for those fisheries.

Recommended change:

Change language at 660.333 under paragraphs (b)(1), (c)(1), and (d)(1) to read “A *trawl vessel will be considered participating in the open access, non-groundfish trawl (insert ridgeback prawn, California halibut, sea cucumber) fishery if:*”

There may need to be further revisions to these regulations to reflect decisions in the previous item on moving between limited entry and open access fisheries.

Regulatory sections affected: 660.333(b), (c), (d)

Sectors affected: open access

4) Review and, as necessary, revise catch accounting regulations.

Council consideration: Further implementation of Council intent

Background:

Due to the tight timeline to implement regulations for the trawl rationalization program, some regulations should be reviewed to make sure they are still accurate. The catch accounting regulations at 660.55 should be reviewed and revised, as appropriate, for both the trawl/nontrawl fisheries and the limited entry/open access fisheries. The catch accounting between regulations should be reviewed for accuracy also in light of decisions under the item above on switching between fisheries. The current limited entry/open access regulations are old regulatory language from before Amendment 21 was implemented and may no longer be accurate or only accurate for non-Amendment 21 species.

Current regulatory language at 660.55(f) reads as follows:

(f) Catch accounting. Catch accounting refers to how the catch in a fishery is monitored against the allocations described in this section. For species with trawl/nontrawl allocations, catch of those species are counted against the trawl/nontrawl allocations as explained in paragraph (f)(1) of this section. For species with limited entry/open access allocations in a given biennial cycle, catch of those species are counted against the limited entry/open access allocations as explained in paragraph (f)(2) of this section.

(1) Between the trawl and nontrawl fisheries —

(i) Catch accounting for the trawl allocation. Any groundfish caught by a vessel registered to a limited entry trawl-endorsed permit will be counted against the trawl allocation while they are declared in to a groundfish limited entry trawl fishery and while the applicable trawl fishery listed in subpart D of this part for that vessel's limited entry permit is open.

(ii) Catch accounting for the nontrawl allocation. All groundfish caught by a vessel not registered to a limited entry permit and not fishing in the non-groundfish fishery will be counted against the nontrawl allocation. All groundfish caught by a vessel registered to a limited entry permit when the fishery for a vessel's limited entry permit has closed or they are not declared in to a limited entry fishery, will be counted against the nontrawl allocation, unless they are declared in to a non-groundfish fishery. Catch by vessels fishing in the non-groundfish fishery, as defined at §660.11, will be accounted for in the estimated mortality in the non-groundfish fishery that is deducted from the OY.

(2) Between the limited entry and open access fisheries. Any groundfish caught by a vessel with a limited entry permit will be counted against the limited entry allocation while the limited entry fishery for that vessel's limited entry gear is open. When the fishery for a vessel's limited entry gear has closed, groundfish caught by that vessel with open access gear will be counted against the open access allocation. All groundfish caught by vessels without limited entry permits will be counted against the open access allocation.

Some concerns over the current catch accounting regulations, specifically the trawl/nontrawl regulations in relation to Amendment 21, include:

- The draft regulation seems to indicate that catch by vessels using non-groundfish trawl gear without a limited entry permit would count against the nontrawl quota. Amendment 21 eliminated the fixed allocations between limited entry and open access gears for Amendment 21 species but it did not change the Amendment 6 accounting rules. This means that the groundfish catch by a vessel with a limited entry permit still counts against the limited entry allocation but the limited entry allocation is determined during each biennial management cycle rather than through an allocation fixed across years.
- Under the current regulations, darkblotched rockfish in the pink shrimp fishery would come off the top before formal allocations.

In a separate, but related issue, NMFS has received questions from industry on the catch accounting for discards in the IFQ fishery between IFQ species versus non-IFQ species (e.g., trip limit species). To clarify, the IFQ fishery is a “total catch” fishery where, for

IFQ species, both landings and discards count against the quota pounds in a vessel account. For the non-IFQ species subject to trip limits, only landings are counted toward the vessel's trip limit. Discards of non-IFQ species are estimated by the observer and accounted for in the annual total mortality report. This data is used in calculating the biennial harvest specifications. The current regulations account for the discards of both IFQ and non-IFQ species, albeit differently, and no regulatory change is needed.

Recommended change:

Regulations at 660.55(f) on catch accounting should be reviewed and, as necessary, revised.

Regulatory sections affected: 660.55(f)

Sectors affected: All commercial

5) Review and, if necessary, revise crossover provisions.

Council consideration: Further implementation of Council intent.

Background:

In the regulations, crossover provisions apply to two activities: 1) operating on different sides of a management line, or 2) moving between limited entry and open access fisheries during a 2-month cumulative limit period. The crossover provisions were structured for trip limit fisheries. In some places, the current regulations are no longer applicable or do not accurately reflect the new catch share program. For example, under the IFQ program, there are multiple management areas rather than just a north-south management area and vessels may not fish in more than one management area during a single trip. The crossover provisions need to be reviewed and revised appropriately.

Recommended change:

Regulations on crossover provisions for the groundfish fishery overall, as well as the limited entry trawl fishery and perhaps the limited entry fixed gear and open access fisheries, need to be reviewed and revised. The emergency rule (75 FR 82296, 12/30/2010) made some modifications to the crossover provisions and should be reviewed to determine what changes should be made more permanent through a full rulemaking. In reviewing the crossover provisions, NMFS will consider any implications for dual-endorsed limited entry permits.

Regulatory sections affected: 660.12(a)(6)?, 660.60(h)(7), 660.120, 660.220, 660.320

Sectors affected: All commercial

6) Consider a process to allow end of the year resolution of accounts.

Council consideration: Policy decision

Background:

NMFS is developing the process for end of the year account resolution, especially with regard to the carrying over a surplus. This is a database and accounting issue. It is envisioned that any surplus carryover in a vessel account can be transferred to a different vessel account.

Recommended change:

The following are some potential options:

Option 1: Prohibit fishing from 12/15-12/31 to resolve accounts and calculate the carryover.

Option 2 (*NMFS preferred*): Do not prohibit fishing for end of the year account resolution. Populate accounts with the next year's available quota pounds on or near January 1 (including any deductions for using the carryover provision to cover a deficit in the previous year). NMFS could then calculate any surplus carryover from the previous year and add that amount later in the year once available (e.g., end of January). This option was brought forward by the GAP at the Council's March 2011 meeting (Agenda Item H.5.b, Supplemental GAP Report, March 2011, p.5).

Regulatory sections affected: 660.112 (maybe), 660.140(e)

Sectors affected: IFQ

7) Clarify first receiver has to complete and submit an electronic fish ticket before the fish leaves the offload site.

Council consideration: Implementation issue

Background:

The intent of this regulation is to prohibit transport of catch away from the point of landing until the catch has been sorted, weighed, and recorded on the electronic fish ticket (e-ticket). There was some confusion about this requirement early in the program which lead to data issues with the electronic fish ticket (since resolved). The e-ticket can be filled out and recorded at a different location, but the recording must be done prior to transport. For example, the e-ticket could be filled out and submitted 20 hours after the offload from another facility in the port, but the fish must not be trucked away from the point of landing until the fish ticket is submitted. The current regulations should be

revised to clarify that the e-ticket must be completed and submitted before the offload is transported away from the point of landing. It is NMFS understanding that transport requires supporting documentation per state regulations and this requirement would support the state regulation.

Recommended change:

The regulations could be revised to read as follows:

it is unlawful for any person or vessel to:... (iv) Transport catch away from the point of landing before that catch has been sorted and weighed by federal groundfish species or species group, and recorded ~~for submission~~ and submitted on an electronic fish ticket. (If fish will be transported to a different location for processing, all sorting and weighing to federal groundfish species groups must occur before transporting the catch away from the point of landing).

In addition, the GAP provided a suggestion on this issue at the Council's March meeting as follows (Agenda Item H.5.b, Supplemental GAP Report, March 2011, p.4-5):

The GAP identified one potential solution. In situations where fish are being transported prior to processing, an e-ticket should be assigned to the first-receiver site from the home office to prevent double counting of landings. It should be required that an e-ticket be assigned to each dock receiving document at the first receiver site during the course of the offload and that signatures should be required on each document prior to the weighed and sorted product leaving the first receiver site from a vessel representative, the observer/monitor, and the first receiver. That e-ticket number would follow the observer's paperwork and dock tickets when they are faxed from the first receiver to the home office – and the home office would submit the final e-ticket within 24 hours of the completion of the off-load.

NMFS comment: NMFS would like to have more discussion of the GAP's option. NMFS may not be comfortable with the catch monitor signing first receiver documents. If it included the tallies from the offload and a duplicate copy was provided to the catch monitor, NMFS might be more comfortable with this option.

Regulatory sections affected: 660.112(b)(2)(iv)

Sectors affected: IFQ

8) Mandatory requirement to fill out ex-vessel value on electronic fish ticket.

Council consideration: Implementation issue

Background:

Regulations require first receivers to complete certain fields on an electronic fish ticket (e-ticket). Since the program was implemented in January, NMFS has had mixed reporting of the ex-vessel value on the e-ticket because it is not currently listed in the “required information” section of the regulations. The regulations have a clause that the Regional Administrator may deem other information as required to be completed by the IFQ first receiver on the e-ticket. In a memo dated April 4, 2011, NMFS’s Northwest Regional Administrator determined that the ex-vessel value of the landing is a mandatory field that must be completed by the IFQ first receiver. Therefore, NMFS has added the ex-vessel value of the landing as a mandatory field to be completed on the e-ticket and will update the regulations accordingly.

NMFS has determined that the ex-vessel value of the landing is a mandatory reporting requirement for several reasons. In order for the states to have the option of adopting the Federal e-ticket to cover their state reporting requirements, the e-ticket must include the items required to be reported on the state fish tickets. The ex-vessel prices are a state reporting requirement for the state to be able to collect excise taxes and fees. The ex-vessel value will be also used in the cost recovery program that is currently being developed by the Council and NMFS. The ex-vessel value is not collected through the economic data collection program forms and is necessary information for that program to measure the economic changes in the fishery for the 5-year review of the program and beyond. In other words, if the information is not collected on the electronic fish ticket, the EDC forms may need to be revised to collect the information. The ex-vessel value may also be used by NMFS in required regulatory flexibility analyses for rulemakings.

Recommended change:

The regulations will be revised to read as follows:

(i) Required information. All IFQ first receivers must provide the following types of information: Date of landing, vessel that made the delivery, vessel account number, gear type used, catch area, first receiver, actual weights of species landed listed by species or species group including species with no value, condition landed, number of salmon by species, number of Pacific halibut, ex-vessel value of the landing by species and any other information deemed necessary by the Regional Administrator as specified on the appropriate electronic fish ticket form.

Regulatory sections affected: 660.113(b)(4)(i)

Sectors affected: IFQ

9) Review and, as appropriate, clarify what ownership changes must be reported to NMFS.

Council consideration: Implementation issue

Background:

NMFS intends to review and, as appropriate, clarify the regulations for all limited entry permits and IFQ vessel accounts regarding what constitutes a change in ownership, how owners report a change, and how that affects the accounting/ownership interest process. For example, the addition of a person is a change in ownership, but is the removal of a person?

For vessel accounts, if a person no longer owns the vessel, they shouldn't be able to renew the vessel account or get carryover. If ownership of the vessel account has changed (i.e., one person added or someone dies) does a new account need to be created?

Recommended change:

The regulations should be reviewed and, as appropriate, revised with regard to reporting requirements for ownership changes. NMFS also intends to add a prohibition against fraudulently using a vessel account.

Regulatory sections affected: 660.25(b)(4)(iv), 660.112, 660.140(e)

Sectors affected: IFQ

10) Add "first receiver" to list in conflict of interest regulations for catch monitors and catch monitor providers.

Council consideration: Implementation issue

Background:

In the conflict of interest regulations for catch monitors and catch monitor providers, add "first receiver" to the list of businesses. The current conflict of interest regulations apply to any interest in a business involving vessels and shorebased or floating stationary processor facility. These regulations should have also included "first receivers." This was an inadvertent omission and NMFS will revise the regulations accordingly.

Recommended change:

The regulations for both catch monitors and catch monitor providers will be revised to read as follows:

(i) Any ownership, mortgage holder, or other secured interest in a vessel, first receiver, shorebased or floating stationary processor facility involved in the catching, taking, harvesting or processing of fish,

(ii) Any business involved with selling supplies or services to any vessel, first receiver, shorebased or floating stationary processing facility; or

(iii) Any business involved with purchasing raw or processed products from any vessel, first receiver, shorebased or floating stationary processing facilities.

Regulatory sections affected: 660.18(c)(1) & (d)

Sectors affected: IFQ

Corrections/Consistency

11) Correct erroneous cross references.

CORRECTION RULE

Background:

Some redesignated sections from initial issuance final rule had the wrong cross references and need fixed.

Regulatory sections affected: 660.70-.79

Sectors affected: Commercial and recreational

12) Correct duplicate entry in regulation.

CORRECTION RULE

Background:

The electronic Code of Federal Regulations (eCFR) has 2 entries for a specific regulation. The one marked [Reserved] is a mistake.

Regulatory sections affected: 660.150(f)(2)

Sectors affected: Mothership

13) Delete use of term “bycatch limits” for whiting

CORRECTION RULE

Background:

The new trawl rationalization program regulations do not use the term “bycatch limits” for the whiting fisheries. The term should be removed from regulation and replaced with “non-whiting groundfish species with an allocation.”

Regulatory sections affected: 660.131(c)(4)

Sectors affected: Trawl

14) Update electronic fish ticket hardware and software requirements.

Background:

Update regulations with current hardware/software requirements for electronic fish ticket. If requiring higher standards, the Council may need to address this. NMFS will double check if any updates are needed for the following other software requirements: QS account (660.140(d)(2)), vessel account (660.140(e)(2)), or obs (660.140(h)(2)(iii), 660.150(j)(2)(iii), 660.160(g)(2)(iii)).

Regulatory sections affected: 660.15(d)

Sectors affected: IFQ

15) Review and, if necessary, revise sorting requirements and electronic fish ticket requirements.

Background:

For sorting requirements, review harvest specifications final rule to see if it updated the sorting requirements to match the additional species levels for new OFLs, etc. Check if electronic fish ticket requirements need updated to require species reporting to the levels required under sorting requirements. Revise 660.130(d)(2)(i) for first receiver sorting to state, "must be sorted to the species groups specified in paragraph (d)(1) of this section."

Regulatory sections affected: 660.113(b)(4), 660.130(d)

Sectors affected: All commercial

16) Make it clear who is responsible for daily testing of at-sea scales.

Background:

There has been some confusion over who is responsible for the daily testing of at-sea scales. NMFS will review and revise the regulations to make this more clear.

Regulatory sections affected: 660.15(b)

Sectors affected: Mothership and catcher/processor

17) Clarify regulatory title.

Background:

Consider separating this paragraph in to two, one for “size limits” and one for “weight limits” or change the title to “Weight and size conversions.”

Regulatory sections affected: 660.60(h)(5)

Sectors affected: Commercial and recreational

18) Streamline first receiver site license application process.

Background:

Fix the first receiver site license application process so that it doesn’t require a separate written request for a site inspection. Could change form to add a line stating that the form serves as the written request to schedule a site inspection.

Regulatory sections affected: 660.140(f)(3)(iii)(B)

Sectors affected: IFQ

19) Move paragraph on training and certification to catch monitor responsibility rather than catch monitor provider responsibility.

Background:

The regulations at 660.17(e)(14) list items and responsibilities of the catch monitor, but are listed under the catch monitor provider section of the regulations. This paragraph should be moved to the appropriate place, likely within paragraph (b).

Regulatory sections affected: 660.17(e)(14)

Sectors affected: IFQ

20) Repeat AMP allocation language in the IFQ allocation paragraphs so all IFQ allocation steps are in one place.

Background:

Add “10 percent of non-whiting QS will be reserved for the AMP during years one and two of the Shorebased IFQ Program, but the resulting AMP QP will be issued to all QS permit owners in proportion to their non-whiting QS during years one and two” to the IFQ fishery paragraphs on allocation. Language would be copied from 660.140(l) on the adaptive management program and duplicated in the allocation section to have all allocation steps in one place.

Regulatory sections affected: 660.140(d)(1)(ii)(A)

Sectors affected: IFQ

21) Further clarify that halibut under the size limit still count against IBQ.

Background:

Clarify that all halibut caught N of 40° 10’ count against IBQ regardless of the size (</> 32”). Right now interpret 660.140(d)(1)(ii)(C) to mean that but could be more clear.

Regulatory sections affected: 660.140(d)(1)(ii)(C)

Sectors affected: IFQ

22) Revise fishery declaration regulations to make consistent with the declaration worksheet.

Background:

Add the following declarations to regulations to match what is included on the declaration worksheet. In regulation, “open access net gear” would be replaced by (1) Open access CPS net gear; (2) Open access CA gillnet complex gear. Also consider adding “open access” before non-groundfish trawl entries in regulations and in the declaration worksheet to make it more clear what sector those fisheries are associated with.

Regulatory sections affected: 660.13(d)(5)(iv)(A)

Sectors affected: Open access

23) Consider revisions to make applicable RCAs more clear.

Background:

Rethink how RCA boundaries displayed for trawl fishery (Table 1 north and south). While it is clear in the regulatory text that the RCAs apply for any fishing done in the Shorebased IFQ Program, there was some confusion based on language in the trip limit tables (Table 1 north and south). The trip limit table language is being revised through the final rule for the harvest specifications.

Regulatory sections affected: Table 1 (North and south) & 660.130(e)

Sectors affected: All trawl

24) Review use of “transfer” in relation to permits and change to “change in vessel registration.”

Background:

Review use of “transfer” in relation to permits and change to “change in vessel registration” where appropriate to be more specific.

Regulatory sections affected: 660.25

Sectors affected: All limited entry permits

25) Delete old effective date language from regulations.

Background:

Delete sentence under "General" paragraph that refers to beginning January 1, 2011. This sentence is no longer needed because the program is already implemented.

Regulatory sections affected: 660.140(a), 660.150(a), 660.160(a)

Sectors affected: IFQ, mothership, catcher/processor

26) Clarify regulations for sorting/weighing requirements for non-whiting IFQ species.

Background:

The regulations are inconsistent with regards to the sorting and weighing requirements for non-whiting IFQ species.

The prohibitions at 660.112(b)(2)(ii) state that it is unlawful to: *“(ii) Fail to sort fish received from a IFQ landing prior to first weighing after offloading as specified at*

§660.130(d)(2) for the Shorebased IFQ Program, except the vessels declared in to the limited entry midwater trawl, Pacific whiting shorebased IFQ at §660.13(d)(5)(iv)(A), subpart C may weigh catch on a bulk scale before sorting as described at §660.140(j)(2).”

While the regulations at 660.140(j)(2)(viii) and (ix) on catch weighing requirements state:

(viii) Pacific whiting. ... (exemption mentioned above)

(ix) For all other IFQ landings the following weighing standards apply:

(A) A belt or automatic hopper scale may be used to weigh all of the catch prior to sorting. All but a predominant species must then be reweighed.

[paragraphs (B) and (C) are not inconsistent with the above prohibition at 660.112]

The prohibition at 660.112(b)(2)(ii) restricts what 660.140(j)(2)(ix)(A) allows for non-whiting groundfish. The activity listed in 660.140(j)(2) has occurred in the past in Washington and may still be occurring. The state laws on this have differed, so 660.140(j)(2) was to allow groundfish to be weighed in a hopper scale, then sorted by species, and each species (or group) weighed back and deducted from original total weight, IF it was allowed by state law. This activity has also been previously allowed under an EFP for both whiting and non-whiting groundfish.

Regulatory sections affected: 660.112

Sectors affected: IFQ

27) Revise to consistently use the term “deficit”

Background:

Change the word "overage" to "deficit" for consistency with rest of section.

Regulatory sections affected: 660.112(b)(1)(iv)

Sectors affected: IFQ

Potential Future Council Actions

28) Develop a process to certify new observer providers.

Background:

Develop regulations for observer provider certification for new providers. To start the trawl rationalization program, NMFS grandfathered observer providers who were permitted to provide observer services in the North Pacific. Now that the trawl rationalization program is underway, the Council and NMFS need to create a certification process specific to the Pacific Coast groundfish fishery to 'approve' observer providers in future years. To the extent practicable, this program should be developed to parallel the catch monitor provider certification.

Regulatory sections affected: 660.140, 660.150, 660.160

Sectors affected: IFQ, mothership, catcher/processor

29) Consider increasing flexibility to allow change in vessel registration 2 times per year or to allow permit stacking.

Background:

Current regulations restrict the number of times a limited entry permit may be registered to a different vessel to one time per calendar year (except for MS permits, and limited entry trawl permits with an MS/CV or C/P endorsement which are restricted to two times per calendar year). This restricts the flexibility of the IFQ participants and limited entry fixed gear fisheries more than the at-sea whiting fisheries. It also complicates the regulations.

This restriction, in tandem with the regulatory restriction that limits the stacking of fixed gear and trawl endorsed LE permits on the same vessel, limits the participation of limited entry fixed gear and limited entry trawl permit owners from moving between the trawl and limited entry fixed gear fisheries (except dual-endorsed permits).

Example 1: A vessel may start the year registered to a limited entry trawl permit and fish in the IFQ fishery. It may then remove the trawl permit from the vessel and declare in to the open access non-groundfish trawl fishery for California halibut in late January. It may only want to fish for 2 weeks in the California halibut fishery. The limited entry trawl permit could again be registered to the vessel to fish in the IFQ fishery, but would not be effective until March 1. The vessel would have another opportunity to remove its limited entry trawl permit to fish in an open access fishery, but that permit could no longer be used to fish in the limited entry trawl fisheries for the remainder of the calendar year.

Example 2: A vessel may start the year registered to a limited entry trawl permit and fish in the IFQ fishery. It may then remove the trawl permit and register a limited entry fixed gear sablefish-endorsed permit to the vessel to fish its sablefish tier beginning in May. It may only take 2 weeks to fish the sablefish permit tier amount. That vessel may remove the sablefish permit and register with the trawl permit. The limited entry fixed gear permit would have used its limit on vessel registrations and could not be used to fish for the remainder of the calendar year.

Allowing 2 changes in vessel registration per year would increase flexibility for both limited entry trawl and limited entry fixed gear permits. However, increasing the flexibility of vessels to move between limited entry and open access fisheries may also create more “double dipping” opportunities between a capacity controlled fishery and one that is not capacity controlled, potentially exacerbating management problems.

Another option the Council could explore is allowing limited entry trawl and limited entry fixed gear permits to be registered to a vessel at the same time (i.e. stacked). Either approach may require additional analysis.

Regulatory sections affected: 660.25(b)(4)(vi)

Sectors affected: IFQ and limited entry fixed gear

30) Consider revisions to weight conversion factors based on any new information.

Background:

Are any species missing that should have a conversion? Are there species landed dressed/head-on that need a conversion factor?

31) Clarify distinction between “cease fishing reports” for whiting vs. one for observer program

32) Develop the adaptive management program and a process for allocating quota pounds.

Science, Service, Stewardship



Agenda Item I.7.b
Supplemental NMFS PIE Items PowerPoint
April 2011

Trawl Rationalization

NMFS Items for PIE Rule

April 2011

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3 rulemakings planned over 2011-

1. Correction

- *Items needing more immediate correction, such as:*
 - *Erroneous cross references*
 - *Duplicate entry of a paragraph*
 - *Remove term whiting "bycatch limit"*
- *Sectors affected*
 - *limited entry trawl (IFQ/MS/C/P), limited entry fixed gear, open access*
- *Schedule*
 - *May or June – final rule publishes & effective*



3 rulemakings planned over 2011-

1. Correction

2. PIE 1

- *Any items ready for rulemaking with a target implementation of January 1, 2012, including any trailing actions such as Am 21 v. 6, halibut allocations, items to further implement Council intent, etc. Also see Agenda Item I.7.b, Supplemental NMFS Report 2.*
- *Sectors affected*
 - *limited entry trawl (IFQ/MS/C/P), limited entry fixed gear, open access, and possibly recreational*
- *Schedule*
 - *August – proposed rule publishes*
 - *Nov – final rule publishes*
 - *1/1/2012 – effective*



3 rulemakings planned over 2011-

1. Correction
2. PIE 1
3. Cost Recovery
 - *Cost recovery for the trawl rationalization program.
See Agenda Item I.6.b, Supplemental NMFS Report 1.*
 - *Sectors affected*
 - *limited entry trawl (IFQ/MS/C/P)*
 - *Schedule*
 - *Nov – proposed rule publishes*
 - *Feb 2012 – final rule publishes*
 - *~3/1/2012 – effective*

Science, Service, Stewardship



NMFS Items for PIE Rule

Agenda Item I.7.b,
Supplemental NMFS Report 2

**NOAA
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NMFS items for PIE

3 categories of items for PIE rule

1. Further implementation of Council intent
2. Corrections/consistency
3. Potential future Council action/new issues

Early stages of drafting; items may be added/removed



NMFS items for PIE

- 1) Consider revisions to requirement for observer coverage until offload complete.
 - Option 1: Observer or catch monitor onboard until final offload
 - can be used with options 2-4
 - Option 2: Number Determination (*NMFS Preferred*)
 - Option 3: Weight determination
 - Option 4: Observer estimates all species onboard near deficit
 - Option 5: Lock-out / Tag-out Procedure
 - Option 6: Cameras



NMFS items for PIE

2) Moving between LE and OA fisheries.

- Recommended change to more accurately reflect Am 20 FMP gear exception language
- Affects if groundfish catch counts against IFQ (QP) or trip limits AND, for managers, which allocations (trawl/nontrawl; LE/OA) catch counts against (i.e., catch accounting. See item 4)).
- All catch of IFQ species by LE trawl permitted vessel must be debited from vessel account, unless permit removed from vessel and declared in to OA, with some exceptions.

Exceptions: Non-groundfish trawl, CPS, HMS, Salmon troll, Crab pot, and LE fixed gear (i.e., dual-endorsed permits)

- For exceptions, do not have to remove LE trawl permit to fish in OA, just change declaration to OA.



NMFS items for PIE

- 3) Clarify the OA language for non-groundfish trawl fisheries.
 - Related to item 2)
- 4) Review/revise catch accounting regulations.
- 5) Review/revise crossover provisions.
 - Crossover provisions apply to two activities:
 - 1) operating on different sides of a management line, or
 - 2) moving between LE and OA fisheries during a 2-month cumulative limit period.



NMFS items for PIE

6) Consider a process to allow end of the year resolution of accounts.

Option 1: Prohibit fishing from 12/15-12/31 to resolve accounts and calculate the carryover.

Option 2 (*NMFS preferred*): Do not prohibit fishing. Populate accounts with the next year's available QP on or near January 1 (including any deductions for using the carryover provision to cover a deficit in the previous year). NMFS could then calculate any surplus carryover from the previous year and add that amount later in the year once available (e.g., end of January). This option was brought forward by the GAP at the Council's March 2011 meeting.



NMFS items for PIE

- 7) Clarify first receiver has to complete and submit an electronic fish ticket before the fish leaves the offload site.
- 8) Mandatory requirement to fill out ex-vessel value on electronic fish ticket.



NMFS items for PIE

- 9) Review/clarify what ownership changes must be reported to NMFS.
- 10) Add “first receiver” to list in conflict of interest regulations for CM and CM providers.



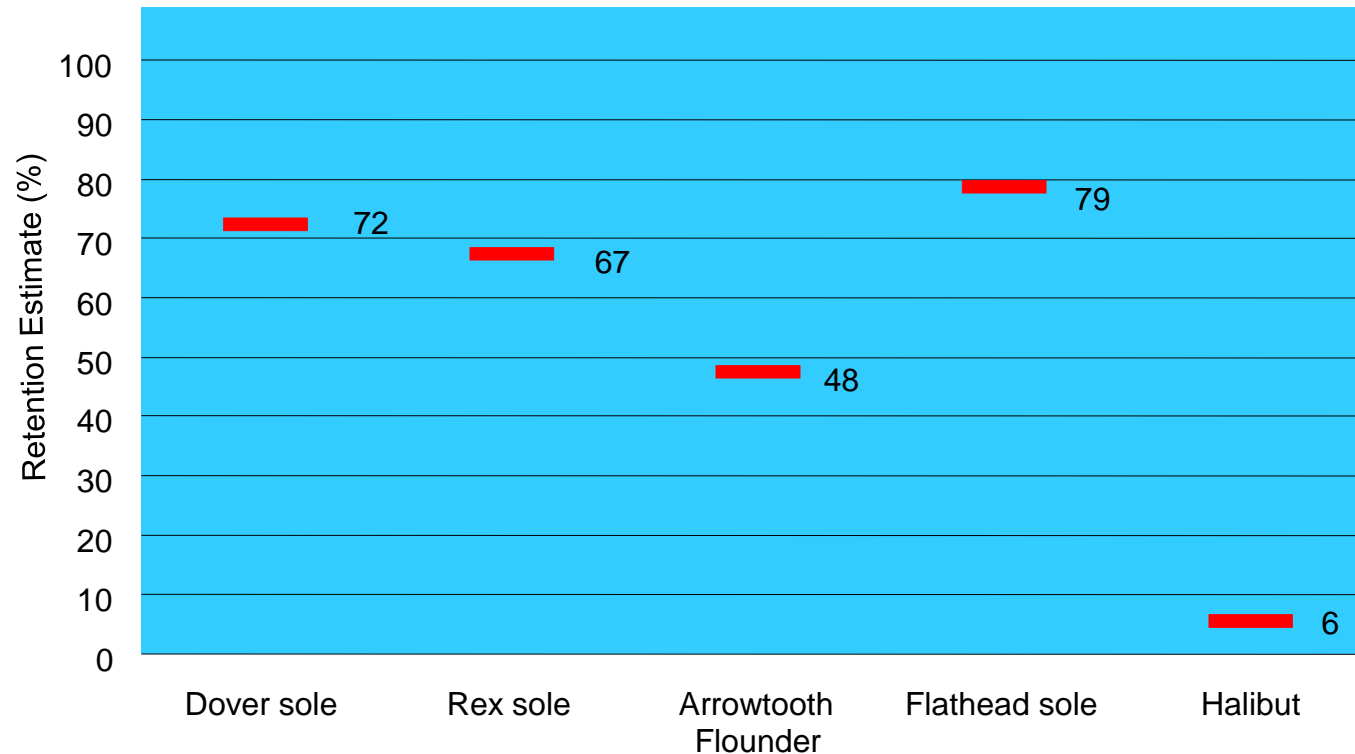
Questions?

Use of flexible grate halibut excluders in flatfish trawls in Alaska



John Gauvin
Science Projects Director
Alaska Seafood Cooperative

Halibut excluders are used in flatfish fishing in Alaska with high success



Results in terms of percentage of total catch by species retained by weight

Today most halibut excluders are flexible grates

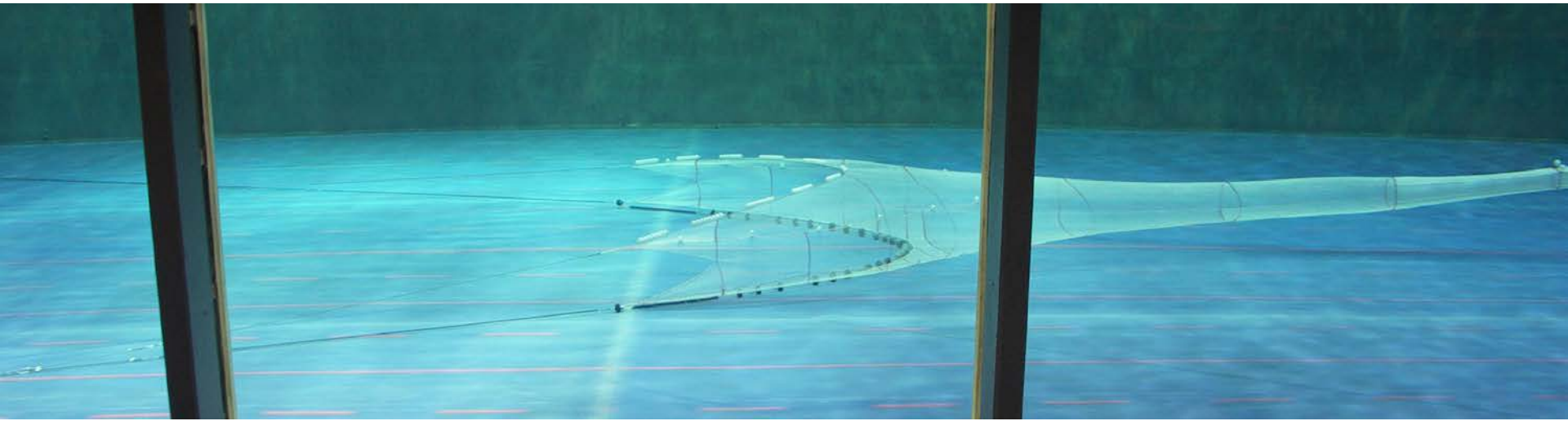


- Flexible materials achieve rigidity with water flow
- Ease of use on daily basis because they go up on reel
- Rigidity from water flow creates correct sorting surfaces for selectivity
- Failure to achieve correct shape and rigidity results in low halibut escapement or high target catch loss

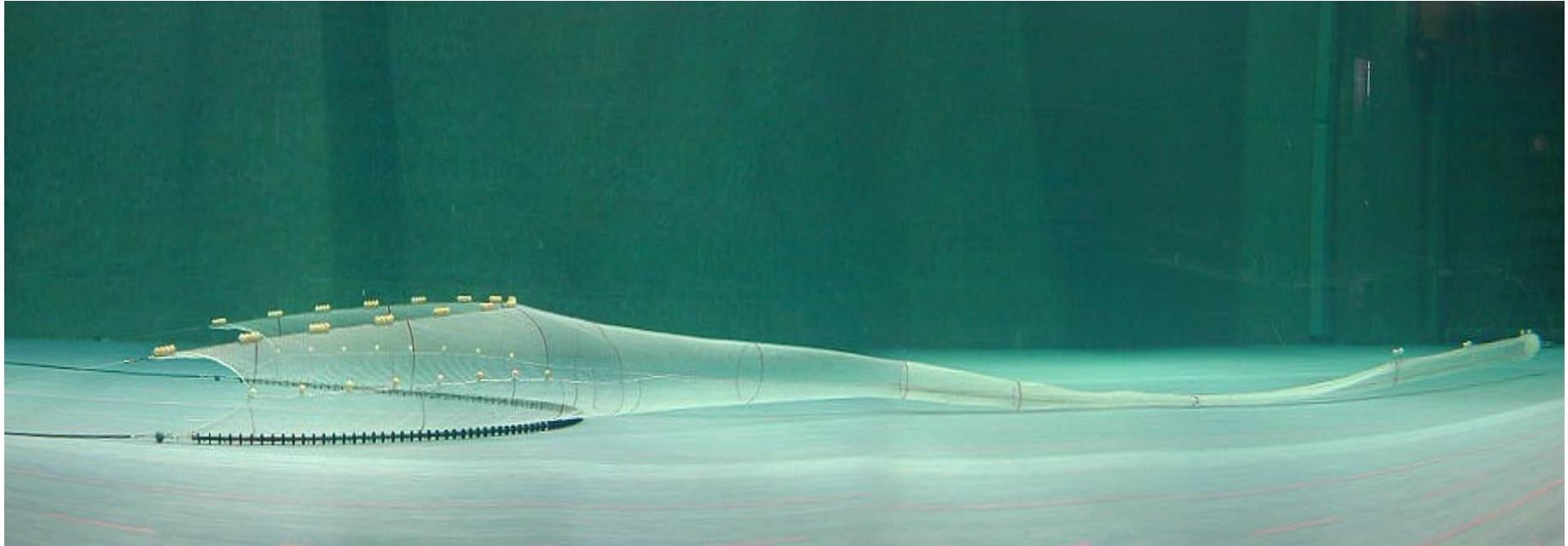
Aqua-pex gauntlet-style excluder by
Dantrawl



Four seam flatfish trawls are designed to achieve good flow in back end of net.
Most fishermen use four-seam nets with flexible grate excluders

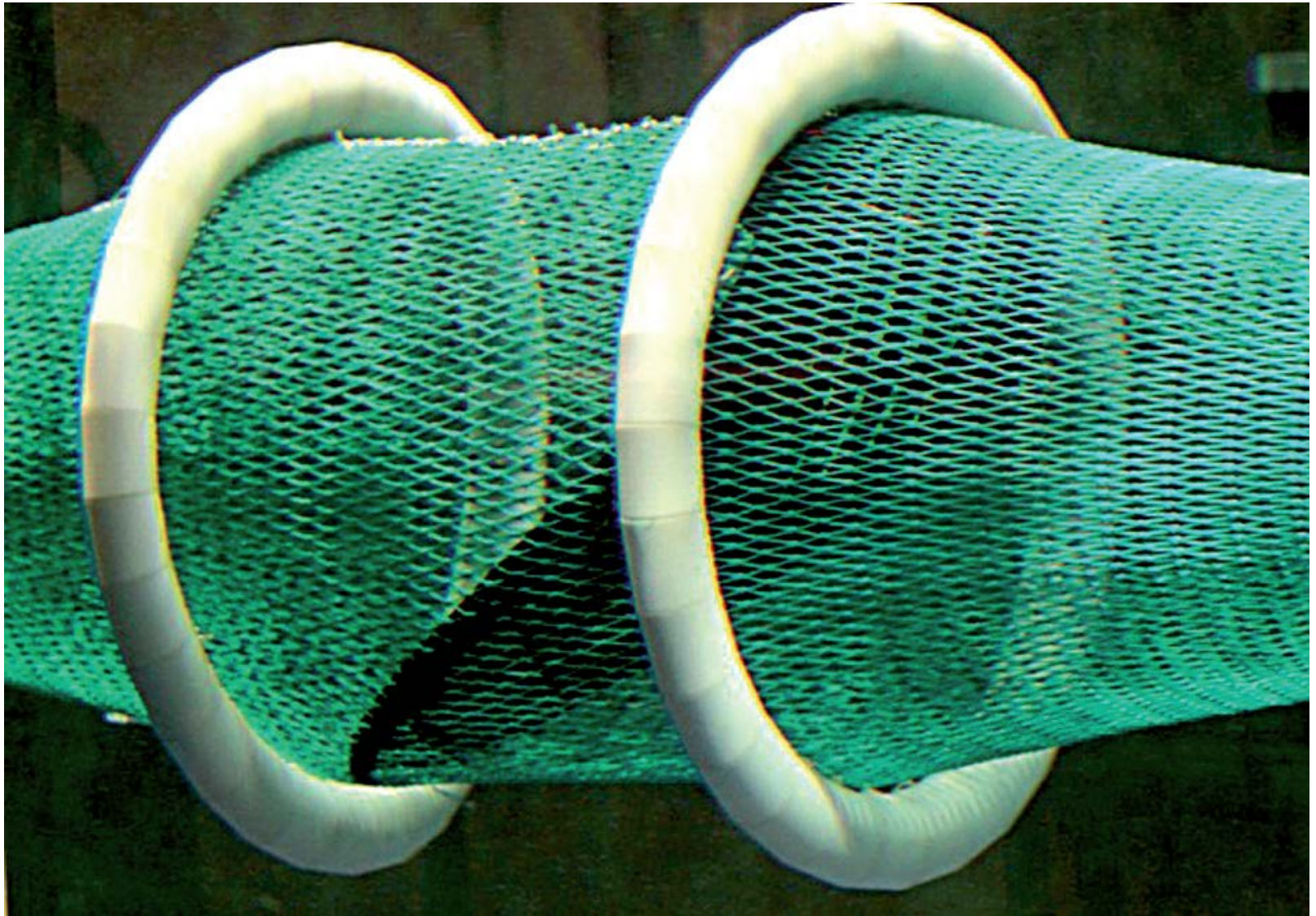


Two-seam flatfish trawls sometimes have low flow rates in intermediate section

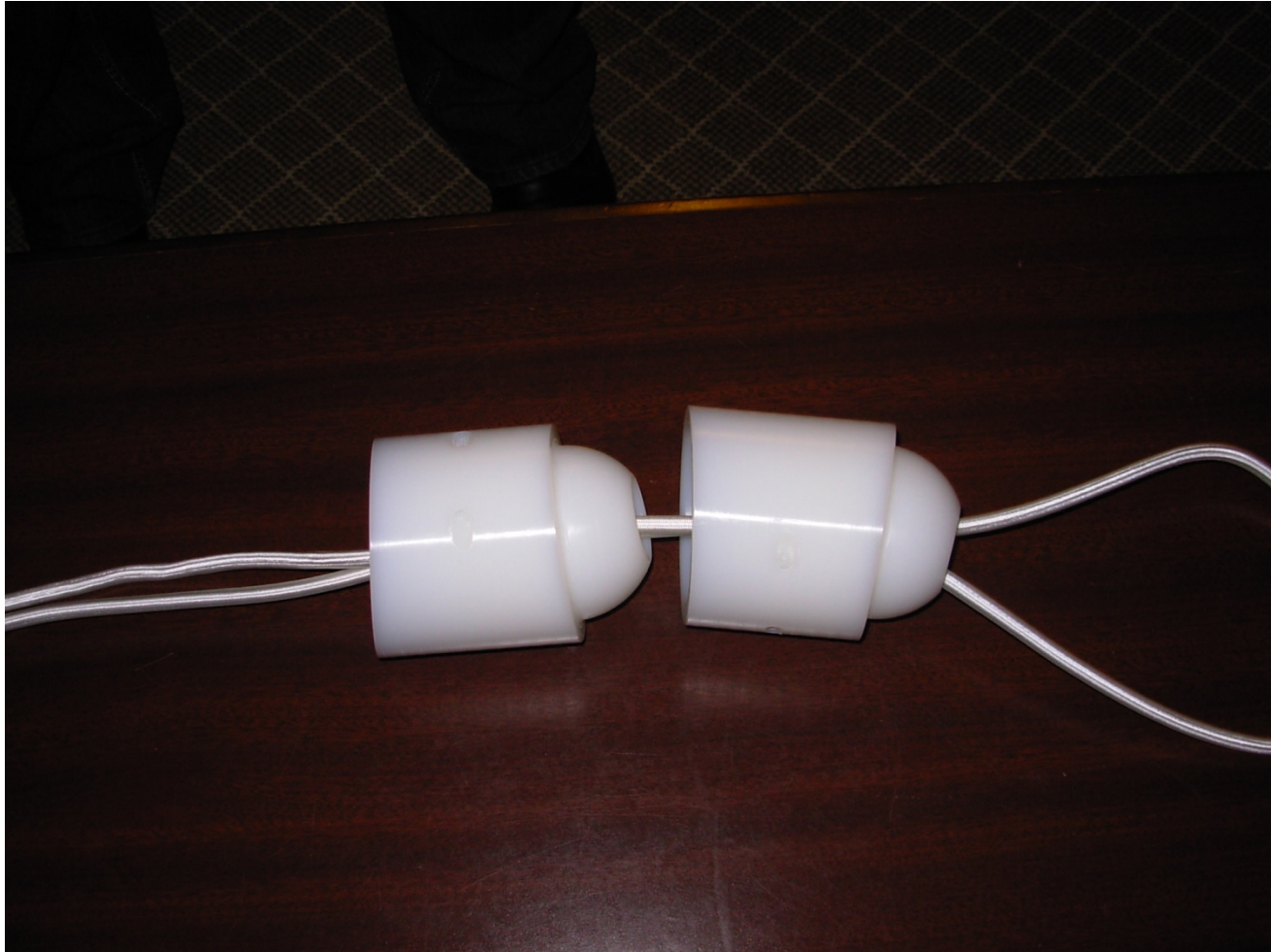


Low-rise shape in front end, but can have poor flow in intermediate

Potential “fix” to achieve rigidity



UHMW couplers rigged with elastic cord







Achieving sufficient rigidity in the net where the excluder is installed through water flow versus add-on devices

- Stiffener bars, hoops, and frames can work to create rigidity in two-seam trawls but are high maintenance, create slowdowns, add handling problems
- Better water flow in four-seam trawls avoids the need for add-ons and increases efficiency of a flatfish net
- Net catches fish better and excluder performance improved by rigidity of flow

Rethinking the need for regulating trawl parameters (e.g. selective flatfish trawl in RCAs)

- Most four seam nets would not meet requirements of flatfish trawls for RCA regulations
- Four seam nets can be modified to reduce rockfish bycatch via headrope set back and other modifications
- Fishermen now have direct incentives to avoid rockfish bycatch (output controls). Input controls (e.g. net regulations) probably hampers ability to use halibut excluders and manage halibut bycatch
- Requirement for nets that meet “selective flatfish trawl” gear definition may no longer be needed

CONSIDERATION OF INSEASON ADJUSTMENTS – PART II, IF NECESSARY

This agenda item considers inseason adjustments to 2011 groundfish fisheries. Inseason adjustments are also considered under Agenda Item I.5. Should the Council adopt preliminary recommendations under Agenda Item I.5, then final action will be taken under this agenda item. However, should the Council make final recommendations under Agenda Item I.5, then this agenda item will be cancelled.

Council Action:

- 1. Adopt final inseason adjustments to 2011 groundfish fisheries, as necessary.**

Reference Materials:

None at time of briefing book distribution.

Agenda Order:

- a. Agenda Item Overview
 - b. Reports and Comments of Advisory Bodies and Management Entities
 - c. Public Comment
 - d. **Council Action:** Adopt Final Recommendations for Adjustments to 2011 Groundfish Fisheries
- Kelly Ames

PFMC
3/21/11