

AMENDMENT 68

to the Fishery Management Plan for Groundfish of the Gulf of Alaska

(1) Insert the following as a new Chapter 3.7.2.

Chapter 3.7.2: Central Gulf of Alaska Rockfish Demonstration Program

3.7.2.1 Introduction

In Section 802 of the Consolidated Appropriations Act of 2004, the U.S. Congress included a directive to the Secretary of Commerce to establish, in consultation with the North Pacific Fishery Management Council (the Council), a pilot program for management of three rockfish fisheries in the Central Gulf of Alaska (the Central Gulf rockfish fisheries). At the February 2004 Council meeting, National Marine Fisheries Service (NOAA Fisheries) presented a brief discussion paper requesting Council input in the development of the pilot program. Based on this request and public testimony, the Council requested industry stakeholders to prepare and submit proposed alternatives for establishing the program to the Council at its April 2004 meeting. Industry representatives presented a proposal at that meeting that defined an alternative for management of the fisheries under the pilot program. Using the industry proposal and public input and staff discussion papers, the Council developed alternatives for the pilot program management of the rockfish fisheries at its June 2004, October 2004, December 2004, and February 2005 meetings. The Council conducted an initial review of the analysis of alternatives at its April 2005 meeting, directing staff to release the document, after making suggested revisions, for final review at its June 2005 meeting.

The Council developed the following problem statement defining its purpose for development of the rockfish pilot program:

The present management structure of the CGOA rockfish fishery continues to exacerbate the race for fish with:

- Increased catching and processing capacity entering the fishery,
- Reduced economic viability of the historical harvesters (both catcher vessels and catcher processors) and processors,
- Decreased safety,
- Economic instability of the residential processor labor force,
- Reduced product value and utilization,
- Jeopardy to historical groundfish community stability,
- Limited ability to adapt to Magnuson-Stevens Act (MSA) requirements to minimize bycatch and protect habitat.

While the Council is formulating GOA comprehensive rationalization to address similar problems in other fisheries, a short-term solution is needed to stabilize the community of Kodiak. Kodiak has experienced multiple processing plant closures, its residential work force is at risk due to shorter and shorter processing seasons and the community fish tax revenues continue to decrease as fish prices and

port landings decrease. Congress recognized these problems and directed the Secretary in consultation with the Council, to implement a pilot rockfish program with the following legislation:

SEC. 802. GULF OF ALASKA ROCKFISH DEMONSTRATION PROGRAM. The Secretary of Commerce, in consultation with the North Pacific Fishery Management Council, shall establish a pilot program that recognizes the historic participation of fishing vessels (1996 to 2002, best 5 of 7 years) and historic participation of fish processors (1996 to 2000, best 4 of 5 years) for pacific ocean perch, northern rockfish, and pelagic shelf rockfish harvested in Central Gulf of Alaska. Such a pilot program shall (1) provide for a set-aside of up to 5 percent for the total allowable catch of such fisheries for catcher vessels not eligible to participate in the pilot program, which shall be delivered to shore-based fish processors not eligible to participate in the pilot program; (2) establish catch limits for non-rockfish species and non-target rockfish species currently harvested with pacific ocean perch, northern rockfish, and pelagic shelf rockfish, which shall be based on historical harvesting of such bycatch species. The pilot program will sunset when a Gulf of Alaska Groundfish comprehensive rationalization plan is authorized by the Council and implemented by the Secretary, or 2 years from date of implementation, whichever is earlier.

The fishing fleets have had little experience with cooperative fishery management and needs to begin the educational process. For the fishery to be rationalized all aspects of the economic portfolio of the fishery needs to be recognized. To stabilize the fishery economy all the historical players – harvesters (both catcher vessels and catcher processors) and processors need to be recognized in a meaningful way. The demonstration program is designed as a short-term program for immediate economic relief until comprehensive GOA rationalization can be implemented.

3.7.2.2 Background

The rockfish species that are the subject of this program are primarily harvested using trawl gear, although some directed fishing with fixed gear has occurred. In the Central Gulf of Alaska, the directed trawl fisheries for these rockfish typically begin about the first of July. Directed fishing for these rockfish with hook-and-line opens on January 1. Separate total allowable catches (TACs) are set for the three different species. Trawl participants usually begin by targeting Pacific Ocean perch until that directed fishery is completed, then move on to the directed Northern rockfish and pelagic shelf rockfish fisheries. The directed fisheries for all three species are usually completed during the month of July.

The current entry limitations to the harvest sector in Gulf of Alaska groundfish fisheries (which include the rockfish fisheries) have restricted the fisheries to historic participants.¹ The first measure limiting entry established a vessel moratorium in 1995 that generally limited entry to vessels that made a legal landing of a moratorium-designated species between January 1, 1988 and February 9, 1992. The second, and current, limitation is the License Limitation Program (LLP), under which licenses were issued to vessel owners that used their vessels to make groundfish harvests that meet both a general landing requirement and an area landing requirement. To meet the general requirement, a vessel must have a landing of a groundfish species during the general qualifying period (GQP), which is from January 1, 1988 to June 27, 1992.² To qualify for an area endorsement, a vessel must have a minimum number of landings from the applicable endorsement area during the endorsement qualification period, which is from

¹ In addition to the measures discussed here, a complete discussion of the evolution of management of the fisheries is contained in the Alaska Groundfish Fisheries Programmatic Supplemental Environmental Impact Statement (National Marine Fisheries Service, 2004).

² An exception extends the GQP for vessels less than 60 feet that fish with pot or jig gear until December 31, 1994.

January 1, 1992 to June 17, 1995. Separate endorsements apply to the Bering Sea, the Aleutian Islands, the Western Gulf of Alaska, the Central Gulf of Alaska (which also authorizes participation in West Yakutat), and the Southeast Outside management area. Landing requirements for endorsement qualification vary with vessel length, area, and vessel designation (i.e., catcher vessel or catcher/processor).

Although these limitations on entry have restricted the introduction of additional harvest capital in the fisheries, entry limitations alone are insufficient to substantially improve efficiency in the Central Gulf rockfish fisheries. For example, in the fisheries that are the subject of this program, all harvests take place in the course of a few weeks in the year. Although in some instances, participants may choose to concentrate landings for efficiency reasons, the level of concentration in the current fisheries contributes to inefficiency in both harvesting and processing. Harvesters add costs and sacrifice quality of landings by racing to obtain the largest possible share of the TAC prior to the fishery closing. Processors work quickly to offload and process landings to obtain market share and avoid spoilage of landings.

Slowing this race for fish will provide participants in both sectors with the opportunity to realize efficiencies and reduce waste. Allowing participants to schedule their activities to coordinate with participation in other fisheries should also improve efficiencies. Allowing participants to determine inputs to reduce costs of production and improve product recovery rates and quality, without risking loss of share of the fishery, should also improve efficiency. In addition, timing participation in response to market conditions could provide for some improvement in economic returns. Consumers could also benefit from slowing the race for fish through improvements in quality and quantity of outputs as product recovery rates rise.

3.7.2.3 Description of the Management Approach

To address its problem statement, the Council has adopted management approaches for the catcher processor sector, and the catcher vessel sector.

The catcher processor pilot program management approach makes an allocation to the sector, based on the histories of catcher processors in the CGOA rockfish fisheries. Participants in the sector could either join a cooperative, which would fish a cooperative allocation, fish in a limited access fishery with other non-members of cooperatives (instead of receiving an individual allocation as under the other alternative), or “opt-out” of many of the key components of the program.

The catcher vessel pilot program management approach allows each harvester to join a cooperative in association with the processor to which it delivered the most pounds of CGOA rockfish during the processor qualifying period. Each cooperative would receive an annual harvest share allocation based on the qualified harvest history of its members. Although no “explicit” processor delivery requirement is created by this cooperative/processor relationship, since cooperative formation depends on the processor association, some delivery arrangement should be expected to be incorporated into that relationship as defined by the parties, because these catcher vessels do not have the ability to seek membership in any other co-op, even if they cannot reach mutually acceptable terms with their “designated” processor. Harvesters that choose not to join a cooperative would be permitted to fish in a competitive fishery that receives an allocation based on the harvest histories of all CGOA catcher vessels not affiliated with a

cooperatives. Set asides of CGOA rockfish would be made for an entry level fishery and to support incidental harvests in other directed fisheries.

3.7.2.3.1 The pilot program

Allocations are made to two sectors, trawl catcher processors and trawl catcher vessels. These allocations are then distributed to individual operations based on their historic harvests. Two TAC set asides of the target rockfish will be made prior to allocations to the sectors under the pilot program. The first of these set asides would allocate 5 percent of the TAC for each target rockfish species, which would be divided equally between two entry level fisheries (one for trawl fishermen and the other for non-trawl fishermen). The entry level fisheries would be open to harvesters that are not eligible for the primary program. All deliveries from the entry level fisheries must be made to processors that are not eligible for the primary program. The entry level trawl fishery would be prosecuted as a competitive limited access fishery, open to any LLP license holders endorsed for the CGOA on application. The trawl fishery is scheduled to open on the 1st of May, if PSC is available. If PSC is unavailable at that time, the fishery would open upon the next release of PSC. The non-trawl fishery would also be conducted as a competitive fishery open to all applicants eligible to participate in the CGOA limited access fisheries. The non-trawl entry level fishery would open on the 1st of January.

The second set aside of target CGOA rockfish would be an incidental catch allowance (ICA) to support incidental catch of rockfish by participants in other directed fisheries. This set aside will be based on the incidental catch needs of other fisheries, which are estimated using rockfish incidental catch rates from those non-rockfish directed fisheries in recent years.

After removal of the two set asides, the remainder of the target rockfish TAC would be allocated to the two sectors participating the pilot program. Allocations of the target rockfish to each sector would be based on retained catch (excluding landings processed into meal) by qualified vessels in the sector during the directed fishing season, using each vessel's best five of the seven years, from 1996 to 2002 (the qualifying period). Different years could be used for each species, by each vessel, for determining the allocation to maximize the catch history attributable to that vessel. Any holder of a permanent or interim LLP license, at the time of implementation that had at least one targeted harvest of CGOA rockfish during the qualifying period, would be eligible for the program.

3.7.2.3.2 Catcher processor sector allocation with cooperatives

Under the catcher processor sector allocation with cooperatives alternative, allocations would be made to the trawl catcher processor sector for target rockfish species and four of the five secondary species (sablefish, shortraker, roughey, and thornyhead) based on the historic harvests of sector members.³ Participants in the sector could either join a cooperative, which would fish the combined allocation of its members in accordance with a cooperative agreement, fish in a limited access, competitive fishery, which would receive an allocation based on the history of all operators that remain unaffiliated with a cooperatives, or "opt-out" of many of the components of the pilot program.⁴ A license holder's fishing history would be the history of the vessel that led to

³ Pacific cod, the fifth secondary species, would be managed using a 4 percent MRA.

⁴ Since the allocations to non-members of cooperatives would be made to the limited access fishery, no provision for opting out of the rockfish fishery is necessary under this alternative. Persons that do not wish to fish rockfish would be eligible for, but not required to, fish in the limited access fishery.

the license and the history of any vessel that fished using the license. For catcher processors, Weekly Processing Report data will be used to calculate qualifying catch.

The secondary species allocations (shortraker, rougheye, thornyhead, and sablefish) to the sector would be based on catch of those species by the sector during the qualifying years, while targeting rockfish. The allocations of these species would be a percentage of the TAC, based on the average annual percentage of retained catch of all sectors, harvested by the sector in the CGOA rockfish fishery. Under this approach, the sector's annual percentage of retained secondary species catch while targeting rockfish, relative to total retained catch of that secondary species by all gear types and participants, would be averaged over the qualifying years. Within the sector, these secondary species allocations would be allocated in proportion to the allocation of CGOA rockfish to cooperatives and the limited access fishery. Pacific cod would be managed using a revised maximum retainable allowance percentage of 4 percent of target rockfish. All other species (except halibut PSC) would be managed using the current MRA levels.

Halibut mortality would also be allocated under the pilot program, based on halibut mortality during the qualifying period. The total allocation to the pilot program would be based on total mortality, summed across both sectors, during the qualifying period (1996 to 2002, inclusive). To determine the annual allocation to the pilot program, the total mortality would be divided by the number of qualifying years (seven). This percentage of the overall allocation would be divided among the sectors, based on each sector's relative share of the target rockfish allocation under the program (i.e., total qualified rockfish pounds).

Cooperative agreements under this alternative would have a term of one year, and would include a fishing plan for the harvest of the cooperative's allocation. Cooperatives are intended only to conduct and coordinate fishing of their member's allocations, and would not be formed under the Fishermen's Collective Marketing Act (and therefore could not negotiate prices). Cooperative members would be jointly and severally liable for the harvest of the cooperative's allocation. The cooperative would be required to file its agreement with NOAA Fisheries to receive an annual allocation. A cooperative would be required to accept membership of any LLP license holder eligible for the cooperative subject to the same terms and conditions as governing other members. A cooperative could include fishing practice codes of conduct in its membership agreement.

Cooperatives that meet a minimum two LLP license threshold would be permitted to engage in the transfer of annual allocations to other cooperatives. Catcher processors could also transfer annual allocations to catcher vessel cooperatives, but could not acquire annual allocations from catcher vessel cooperatives. Any transfers would be temporary transfers of a single year's annual allocation with the history reverting to the LLP license from which it came. No person would be permitted to hold or use in excess of 20 percent of the catcher processor pool. This cap would be applied to limit the amount of shares that an individual could bring to a cooperative, either through license holding or through inter-cooperative transfers. To apply this cap, inter-cooperative transfers would need to be conducted through individuals. In addition, no catcher processor vessel could harvest in excess of 60 percent of the catcher processor pool.⁵ Persons or vessels with history in excess of these limits at the time of final Council action, June 6, 2005, would be grandfathered at their historic levels at that time.

The season for the rockfish cooperatives would be extended substantially beyond the current season. The specific season length will be set to meet the management needs of NOAA Fisheries

⁵ History transferred to catcher vessel cooperatives would remain subject to the catcher processor caps and would not be subject to catcher vessel or shoreside processor caps.

(including monitoring requirements). The Council has recommended a season that opens on the 1st of May, and extends until the 15th of November. As under current management, the limited access portion of the catcher processor CGOA rockfish fishery would open in the beginning of July, and would close when its participants have fully harvested the allocation in that fishery. All species, except for the target rockfish, would be managed with MRAs. The allocated species (shortraker, rougheye, thornyhead, and sablefish) would be managed with a revised MRA, intended to maintain catch levels below the allocated amount. All other species would be managed with MRAs.

An LLP license holder that is eligible for the program would be permitted to transfer the license. The transfer would also transfer any privilege to participate in the program that is associated with or arises from holding the license. The interest in the program that is derived from the license would not be severable from the license, or divisible.

Sideboards will be established to limit encroachment of participants in the pilot program on other fisheries. Since the CGOA rockfish fishery is prosecuted in July, sideboards are generally intended to limit pilot program participants to their historic harvests in other fisheries during July. Specifically, in Gulf fisheries that are historically constrained by TAC, eligible participants from each sector would be limited to their historic catch, in the aggregate. Sideboards for Gulf fisheries that are historically constrained by halibut PSC would limit eligible participants in each sector to their historic halibut mortality in the month of July, in the aggregate. Since halibut in the Gulf is not managed in each fishery, but is managed Gulf-wide for the deep-water complex and the shallow-water complex, management of the sideboard on a fishery-by-fishery basis would be substantially more complicated than managing one sideboard for the deep-water complex and a second sideboard for the shallow-water complex. NOAA Fisheries would develop two separate halibut sideboards (one for the deep-water complex and the other for the shallow-water complex).⁶ These July halibut sideboards would be administered by ending fishing in halibut limited fisheries in a complex by sector members eligible for the rockfish program when the sector halibut limitation is reached in that complex.

Additionally, each catcher processor participant would be required to abide by a stand-down in all the Bering Sea and Aleutian Islands and Gulf of Alaska non-pollock groundfish fisheries. The stand-down would start on the July opening of the rockfish fishery and end on the earlier of two weeks or on the harvest of 90 percent of the participant's cooperative allocation, if the harvest of the allocation began on the traditional July opening. The maximum stand-down would allow participants to begin at a time other than early July, provided they are willing to abide by the two week stand-down.

In lieu of the stand-down in the Gulf of Alaska groundfish fisheries (other than the CGOA rockfish fisheries), a cooperative may (subject to NMFS approval) manage a sideboard of its catch in Gulf of Alaska groundfish fisheries. Under this approach, a cooperative would be limited in the aggregate to the historic catch of target species, if target catch constrains the fishery (or halibut PSC, for halibut PSC constrained fisheries) of its members in the qualifying years.

Participants that choose to fish in the limited access fishery and who account for less than 5 percent of the allocated catcher processor history of Pacific Ocean perch, would be subject to no sideboard or stand-down, beyond the aggregate sector sideboards. Limited access fishery

⁶ The deep-water complex includes sablefish, rockfish, deepwater flatfish, rex sole, and arrowtooth flounder. The shallow-water complex includes flathead sole, shallow water flatfish, pollock, and Pacific cod.

participants that account for 5 percent or more of the sector's Pacific Ocean perch would be required to stand-down in Gulf of Alaska, as well as in the Bering Sea and Aleutian Islands non-pollock groundfish fisheries, until 90 percent of the limited access Pacific Ocean perch is harvested.

Eligible catcher processors could also choose to "opt-out" of the program, forgoing the opportunity to fish CGOA rockfish. Participants that choose to opt-out would be subject to two week stand-downs in the Gulf of Alaska, Bering Sea, and Aleutian Islands fisheries in which they have less than two years of participation during the first week of July in the qualifying years. History of vessels that "opt-out" of the pilot program would be reallocated within the catcher processor sector, based on history to persons that elect to remain in the fishery.

A program review would also be conducted at the end of both the first and second year under all of the pilot program alternatives. This review would assess the effects of the program on harvesters, processors, communities, and conservation.

3.7.2.3.3 Catcher vessel cooperative with processor associations

The catcher vessel sector would receive an allocation as described under the catcher processor sector allocation. In addition, annual allocations of CGOA rockfish, secondary species (with the exception of shortraker and roughey rockfish, and the addition of Pacific cod), and halibut PSC would be made to cooperatives, based on the CGOA rockfish history of their members, and to a limited access fishery, as described under the preceding catcher vessel alternative. Shortraker and roughey would be managed under a 2 percent aggregate MRA, along with a provision to put shortraker rockfish on PSC status, if the fleet catches in excess of 9.72 percent of the shortraker TAC. Holders of a permanent or interim CGOA LLP license at the time of implementation, with a targeted landing of CGOA rockfish in the directed fishery, would be eligible for the program.

Eligible catcher vessel LLP license holders would have the choice of either joining a cooperative, fishing in a limited entry competitive fishery open to eligible license holders that choose not to join a cooperative. The allocation to the competitive, limited access fishery would be based on the combined histories of participants in that fishery. All harvests from the competitive, limited access fishery must be landed with an eligible processor. This competitive fishery would be closed on the attainment of the allocation of CGOA rockfish, or PSC halibut that is necessary to support that rockfish harvest. Secondary species would be managed in the limited access fishery as described under the previous catcher vessel alternative.

Each eligible catcher vessel license holder would be eligible to join a cooperative associated with the eligible processor to which it delivered the most pounds of CGOA rockfish during the processor qualifying period (1996 through 2000), four years as selected by each eligible processor). To be eligible, a processor must have processed in excess of 250 metric tons of CGOA rockfish per year in four of the years from 1996 to 2000, inclusive. In determining eligibility for a processing license, if a facility has closed and another processor has purchased the history of the closed facility, that history would be credited to the purchaser.

The terms of the cooperative/processor association are not specified, but would be subject to negotiation and agreement by each processor and its associated cooperative. Processor licenses and associations would not be transferable. No processing entity would be permitted to process in excess of 30 percent of the aggregate catcher vessel sector allocation. Any processor that historically processed in excess of the chosen cap would be grandfathered at its historic level of

processing. Persons with history in excess of this limit at the time of final Council action, June 6, 2005, would be grandfathered at their historic levels at that time.

Only a single cooperative may form in association with each eligible processor. To form, a cooperative would be required to have membership of the holders of in excess of 75 percent of the harvest history eligible for the cooperative. The cooperative would be required to file its agreement, and a contract with the associated processor, with the NOAA Fisheries to receive an annual allocation. Cooperatives are intended only to conduct and coordinate fishing of their member's allocations and would not be FCMA cooperatives. Cooperative agreements would have a term of one year and would include a fishing plan for the harvest of the cooperative's allocation. Cooperative members would be jointly and severally liable for the harvest of the cooperative's allocation. A cooperative would be required to accept membership of any LLP license holder eligible for the cooperative, subject to the same terms and conditions as governing other members. A cooperative could include fishing practice codes of conduct in its membership agreement. Processor affiliated license holders would be permitted to join cooperatives, but would not be permitted to engage in price negotiations, except as permitted by antitrust laws.

No catcher vessel cooperative would be permitted to hold or use in excess of 30 percent of the catcher vessel sector's allocation, while no person would be permitted to hold or use in excess of 5 percent of the catcher vessel sector's allocation. This cap would be applied to limit the amount of shares that an individual could bring to a cooperative, either through license holding or through inter-cooperative leasing. To apply this cap, inter-cooperative transfers would need to be conducted through individuals. Persons receiving an allocation in excess of the cap would be grandfathered at the level of the allocation. Persons with history in excess of these limits at the time of final Council action, June 6, 2005, would be grandfathered at their historic levels at that time.

Cooperatives would be permitted to engage in the transfer of annual allocations. Catcher vessel cooperatives would be permitted to acquire annual allocations from catcher processor cooperatives, but could not transfer annual allocations to catcher processor cooperatives. Any transfers would be temporary transfers of a single year's annual allocation, with the history remaining with the LLP license of origin. Future annual allocations would be based on the cooperative membership of the LLP holder. Catcher vessel cooperatives would be permitted to acquire annual allocations from catcher processor cooperatives, but could not transfer annual allocations to catcher processor cooperatives. Any transfers would be temporary transfers of a single year's annual allocation with the history remaining with the LLP license from which it originates. Future annual allocations would be based on the cooperative membership of the LLP holder. No catcher vessel cooperative would be permitted to hold or use in excess of 30 percent of the catcher vessel sector's allocation, while no person would be permitted to hold or use in excess of 5 percent of the catcher vessel sector's allocation. This cap would be applied to limit the amount of shares that an individual could bring to a cooperative, either through license holding or through inter-cooperative leasing. To apply this cap, inter-cooperative transfers would need to be conducted through individuals. Persons receiving an allocation in excess of the cap would be grandfathered at the level of the allocation.

Sideboards would limit the participation of eligible catcher vessels in other fisheries. As would be applied to catcher processors, a general sideboard would limit catcher vessel participants, in the aggregate, to their historic harvests in other fisheries in the month of July, the month during which the rockfish fisheries have been prosecuted historically. To accomplish this end, in Gulf fisheries that are historically constrained by TAC, eligible participants from each sector would be limited to their historic catch in the month of July, in the aggregate. Sideboards for Gulf fisheries

that are historically constrained by halibut PSC would limit eligible participants in each sector to their historic halibut mortality in the month of July, in the aggregate. Since halibut in the Gulf is not managed in each fishery, but is managed for the deep-water complex and the shallow-water complex, management of the sideboard on a fishery-by-fishery basis would be substantially more complicated than managing one sideboard for the deep-water complex and a second sideboard for the shallow-water complex. NOAA Fisheries would develop two separate halibut sideboards (one for the deep-water complex and the other for the shallow-water complex).⁷

Qualified catcher vessels would also be limited by a second set of sideboards that would prohibit their entry to the Bering Sea and Aleutian Islands direct fisheries for yellowfin sole, “other” flatfish, or Pacific Ocean perch in the month of July.

In addition, qualified catcher vessels would be limited in the month of July, to their historic average total catch in the Bering Sea and Aleutian Islands Pacific cod fishery, in the aggregate. Catcher vessel participants in the AFA that are not exempt from Gulf sideboards under the AFA would be exempt from any sideboards under this program. Program reviews would be conducted as under the catcher processor sector allocation alternative.

⁷ The deep-water complex includes sablefish, rockfish, deepwater flatfish, rex sole, and arrowtooth flounder. The shallow-water complex includes flathead sole, shallow-water flatfish, pollock, and Pacific cod.