December 2003
Gulf of Alaska Rationalization
Descriptions of Proposed Alternatives
Part 1

At its October 2003 meeting, the Council received several staff discussion papers concerning the alternatives, elements and options proposed for rationalization of the Gulf of Alaska groundfish fisheries. In response to those discussion papers and public comment the Council developed a revised suite of alternatives and several refinements to the elements and options adopted for analysis at its June 2003 meeting. The alternatives proposed at the October meeting (the "October alternatives") and proposed revisions to the elements and options are shown in the following documents, each of which is attached hereto:

A1) Modified GOA Groundfish Rationalization Alternatives Tables for Fixed Gear Catcher Vessels, Trawl Catcher Vessels, and Catcher/Processors.

A2) GOA Motion Addressing 29 Staff Topics

A3) Options for Halibut and Sablefish IFQ participants and SEO fisheries proposed at the October 2003 Council meeting

A4) Community protection options - changes proposed at the October 2003 Council meeting

A5) Proposed staff analysis on salmon and crab bycatch measures

The Council requested staff to provide a simplified discussion paper concerning the proposed revisions to the alternatives, elements, and options to aid the Council in determining whether to adopt those revisions for analysis. This paper, together with annotated motion that follows, is intended to meet that Council request.

Part I of this paper describes the October alternatives – the proposed revised alternatives shown in the tables of Attachment A1. Since those tables define the October alternatives in a relatively simplified manner, a complete understanding of an alternative requires identification of the primary elements and options from which that alternative is constructed. This paper also identifies the elements and options that staff believes would define each of the October alternatives. This further definition of the alternatives is intended to both aid the Council in assessing the merits of advancing the alternatives for analysis and ensure that Council, public, and staff interpretations of alternatives are consistent. Since the Council has expressed its preference for having the ability to select different alternatives for the different sectors and because the alternatives are defined at the sector level, the discussion of the alternatives is separated by sector. This allows the Council to consider the breadth of alternatives created for the different sectors by the October alternatives. To contrast October's proposed alternatives with those adopted for analysis at the June meeting, the portion of the discussion paper comparing the June alternatives prepared by staff for the October meeting is attached as Attachment B. In addition, this paper directly contrasts the October alternatives and June alternatives, focusing on the breadth of the different sets of alternatives.

In considering which alternatives to advance for analysis, the Council should assess the range of alternatives. Each alternative should meet the Council's problem statement, should be feasible, and should be distinguishable from each other alternative. To assist the Council in assessing alternatives, the Council's purpose and need statement are Attachment C to this document. The discussion of alternatives that follows

focuses on the differences between alternatives to enable the Council to assess the degree to which alternatives are distinct, which should aid the Council in selecting a reasonable range of distinguishable alternatives.

To aid the Council in considering which alternatives to advance for analysis, staff has incorporated some preliminary analysis of critical components of the alternatives in this paper. This analysis is adapted from the staff discussion paper presented to the Council at its October meeting, modified to address both the June alternatives and the October alternatives.

Staff has also included in this paper a brief discussion of legal issues that arise under two of the community protection options that the Council is considering, the Community Incentive Fisheries Trust and the Community Fisheries Quota Program. The legal opinion provided by NOAA General Counsel (10/3/03) spurring this discussion is included as Attachment D. This discussion of legal issues is included in the preliminary analysis at the end of this document.

Part 2 of this paper is an annotated copy of the June Council motion that incorporates the revisions proposed in attachments A2, A3, A4, and A5. The annotated motion also includes staff comments concerning the effects of the revisions. This discussion and preliminary analysis is intended to aid the Council in deciding whether to include the revisions in one or more alternatives for analysis. These proposed revisions are intended to refine and clarify the alternatives for analysis.

Description of the October alternatives

To assist the Council in considering the breadth and contrast of the alternatives, a brief description of rules governing each vessel group under the different rationalization alternatives is contained in this section.[1] At the end of the descriptions for each vessel group, a comparison of the rationalization alternatives for that vessel group is presented. In addition to helping the Council assess the contrast of the alternatives, the Council may use these comparisons to guide its selection of options that would more fully define each alternative. In selecting options for the alternatives, the Council should consider the need for contrast among the alternatives. Greater contrast across the alternatives would allow the analysis to provide a better understanding of the differences between programs that may be reasonable meet the Council's purpose and need statement. In selecting options to make distinctions between the alternatives, the Council might also consider the implications of those choices for the analysis.

Catcher/processor alternatives

October Alternative 2

Under October Alternative 2,

- Catcher/processor share holders are treated as a single sector.
- Eligible persons with catcher/processor history would be allocated harvest shares based on that catch history.

[1] For all sectors, alternative 1 is the status quo. Since the status quo must be analyzed and differs substantially from any rationalization alternative, a discussion of the differences between the status quo and other proposed alternatives is omitted from the paper.

- Exclusive annual allocations would be granted to all holders of shares regardless of cooperative membership (i.e., cooperatives are voluntary).
- Annual allocations of cooperative members would be made to the cooperative and would be fished in accordance with the rules of the cooperative. Individuals that are not cooperative members would receive and fish individual annual allocations.
- Share holders that do not join a cooperative would receive a reduced bycatch allocation to create an incentive for cooperative membership.

The following elements and options would apply to <u>catcher/processors under October Alternative 2</u>:

- 2.5.3.1 - PSC allocation reduction for non-members of cooperatives (provision is a proposed addition to elements and options from October meeting)
- 4.1, Option 1 - voluntary cooperatives
- 4.2.1 - the sector must be clearly defined under this alternative
- 4.2.1.1 - no processor association for catcher/processor cooperatives
- 4.2.2 - one option should be selected for minimum cooperative membership
- 4.2.3 - defines cooperative agreement duration
- 4.3.1, Option 1 - cooperative will receive the annual allocation of its members (not that of the entire sector)
- 4.4 - include all subsections - define individual and vessel use caps
- 4.4 - bullets may be included
- 4.5.1 - rules concerning movement between cooperatives

October Alternative 3

Under October Alternative 3,
- Catcher/processor share holders are divided into trawl, longline, and pot gear sectors.
- Eligible persons with catcher/processor history would be allocated harvest shares based on that catch history.
- To receive an exclusive annual allocation, the holder of shares would be required to join a cooperative.
- The annual allocation would be made to the cooperative and would be fished in accordance with the rules of the cooperative.
- If the holder of harvest shares chooses not to join a cooperative, the shares of that person would be allocated to an open access fishery of all non-members of cooperatives of the gear type in the catcher/processor sector.
- The bycatch allocation to the open access fishery would be reduced to create an incentive for cooperative membership.

The following elements and options would apply to <u>catcher/processors under October Alternative 3</u>:

- 2.5.3.1 - PSC allocation reduction for non-members of cooperatives (provision is a proposed addition to elements and options from October meeting)
- 4.1, Option 2 - mandatory cooperatives
- 4.2.1, iii or iv - sectors are defined for each gear type
- 4.2.1.1 - no processor association for catcher/processor cooperatives
- 4.2.2 - one option should be selected for minimum cooperative membership

- 4.2.3 - defines cooperative agreement duration
- 4.3.1, Option 1 - the cooperative will receive the allocation of its members (not that of the entire sector)
- 4.4 - including all subsections - define individual and vessel use caps
- 4.4 - bullets may be included
- 4.5.1 - rules concerning movement between cooperatives
- 4.6, Option 1 - defines open access for non-members of cooperatives

Comparison of catcher/processor alternatives

The two October alternatives differ in a few respects. October Alternative 2 is a voluntary cooperative program under which shareholders that choose not to join cooperatives receive individual annual allocations. October Alternative 3 is a mandatory cooperative program, under which shareholders that choose not to join a cooperative do not receive an annual allocation. Instead, annual allocations derived from the shares of non-cooperative members would be allocated to an limited open access fishery that would be fished competitively by all share holders that are not members of a cooperative.

Another possible distinction in the alternatives is the level of aggregation across different gear types in sector definition (i.e., whether catcher/processors form a single sector or three separate sectors, one for each gear type). The table of alternatives suggests that under alternative 2 catcher/processors of all gear types will be considered a single sector, while under alternative 3 the different gear types would be treated as separate sectors. This distinction is suggested by the revision to Section 4.2.1 of the motion at the October meeting.

The voluntary cooperative management of the fishery under October Alternative 2 differs substantially from the mandatory cooperative alternative management of the June alternatives providing analytical contrast not present if only the June alternatives are advanced for analysis. October Alternative 3 is identical to June alternative 3 with the limited open access option for non-members of cooperatives.[2] October Alternative 3 is also very similar to June Alternative 3, with a possible difference being the definition of sectors by gear under June Alternative 3. A complete discussion of the June alternatives appears in Attachment B.

Trawl catcher vessels

October Alternative 2A

Under October Alternative 2A,

- Trawl catcher vessel share holders are treated as a single sector.
- Eligible persons with trawl catcher vessel history would be allocated harvest shares based on that catch history.
- Exclusive annual allocations would be granted to all holders of shares regardless of cooperative membership (i.e., cooperatives are voluntary).
- Annual allocations of cooperative members would be made to the cooperative and would be fished in accordance with the rules of the cooperative. Individuals that are not cooperative members would receive and fish individual annual allocations.

[2] June alternative 3 also contained an option for "no fishing" for non-members of cooperatives that would exclude non-members from the fishery altogether.

- Share holders that do not join a cooperative would receive a reduced bycatch allocation to create an incentive for cooperative membership.
- Each cooperative would be required to deliver a specified percentage of its landings to processors that are members of a closed class. Class membership would be based on processing history.

The following elements and options would apply to trawl catcher vessels under October Alternative 2A:

- 2.5.3.1 - PSC allocation reduction for non-members of cooperatives (provision is a proposed addition to elements and options from October meeting)
- 3.1.1.1, Option 1, ii - a percentage of all deliveries are required to be made to closed class processors
- 3.1.2 - including all subsections is used to define closed class of processors and the rules governing those processors
- 4.1, Option 2 - voluntary cooperatives
- 4.2.1 - define sectors by vessel and gear type (trawl catcher vessel)
- 4.2.1.1 - either Option 1 (no cooperartive/processor associations) or Option 2 (cooperatives associate with any qualified closed class processing facility or qualified closed class processing company)
- 4.2.2 - Option 1 - A cooperative is required to have at least 4 distinct and separate harvesters - (other options may not apply since they would result in one cooperative for all trawl catcher vessel participants)
- 4.2.4 - may be included - defines cooperative/processor association
- 4.3.1, Option 1 - allocation of members is made to the cooperative - all bullets may be included
- 4.4 - may include all of these options concerning individual and vessel use caps
- 4.4 - may include all bullets
- 4.5.1 may include provisions concerning movement among cooperatives.

October Alternative 2B

Under October Alternative 2B,

- Trawl catcher vessel share holders are treated as a single sector.
- Eligible persons with trawl catcher vessel history would be allocated harvest shares based on that catch history.
- Exclusive annual allocations would be granted to all holders of shares regardless of cooperative membership (i.e., cooperatives are voluntary).
- Annual allocations of cooperative members would be made to the cooperative and would be fished in accordance with the rules of the cooperative. Individuals that are not cooperative members would receive and fish individual annual allocations.
- Share holders that do not join a cooperative would receive a reduced bycatch allocation to create an incentive for cooperative membership.
- Eligibility for cooperative membership would be based on landings, with each share holder eligible to join a single cooperative associated with the eligible processor to which it delivered the most fish during the qualifying period. The cooperative, in turn, would be required to deliver specific percentage of its landings to the associated processor.
- Movement of shares between cooperatives would be subject to a share reduction penalty.

The following elements and options would apply to trawl catcher vessels under October Alternative 2B:

- 2.5.3.1 - PSC allocation reduction for non-members of cooperatives (provision is a proposed addition to elements and options from October meeting)
- 3.1.1.1, Option 1, i - requires delivery to the linked closed class processor
- 3.1.1.2 - used to determine processor linkages
- 3.1.1.3 - specifies penalties for movement of linked shares between processors (Option 4 with open access penalty does not apply)
- 3.1.2 - including all subsections - used to define closed class of processors (needed for linkages)
- 4.1, Option 1 - voluntary cooperatives
- 4.2.1 - define sectors by vessel and gear type (trawl catcher vessel)
- 4.2.1.1, Option 2 - must associate with the linked closed class processing facility or company - (and Option 3, which is redundant with provisions in 3.1.1.2)
- 4.2.2 - Option 1 or Option 4 (cannot have a single cooperative for each sector in a program with multiple licensed processors)
- 4.2.3 - defines cooperative agreement duration
- 4.2.4 - may be included - defines cooperative/processor association
- 4.3.1 - Option 1 (cannot have a single cooperative for the sector in a program with multiple qualified processors) - also may include all bullets
- 4.4 - including all subsections - define individual and vessel use caps
- 4.4 - may include all bullets
- 4.5.1 - rules concerning movement between cooperatives
- 4.5.2 - rules defining effects of processor license transfers on cooperatives (note that this provision should be broadened to include share holders that are not cooperative members)

October Alternative 3

Under October Alternative 3,

- Trawl catcher vessels are treated as a single sector.
- Eligible persons with trawl catcher vessel history would be allocated harvest shares based on that catch history.
- To receive an exclusive annual allocation, the holder of shares would be required to join a cooperative.
- The annual allocation would be made to the cooperative and would be fished in accordance with the rules of the cooperative.
- Eligibility for cooperative membership would be based on landings, with each harvester eligible to join a single cooperative associated with the processor to which it delivered the most fish to during the qualifying period (i.e., processor linkage is required). The cooperative, in turn, would be required to deliver a specific percentage of its landings to the associated processor.
- If the holder of harvest shares failed to join a cooperative, the shares of that person would be allocated to an open access fishery, comprised of all non-members of cooperatives in the trawl catcher vessel sector.
- The bycatch allocation to the open access fishery would be reduced to create an incentive for cooperative membership.
- Movement of shares between cooperatives would be subject to a share reduction penalty or would require participation in the open access fishery for one year.

The following elements and options would apply to trawl catcher vessels under October Alternative 3:

- 2.5.3.1 - PSC allocation reduction for non-members of cooperatives (provision is a proposed addition to elements and options from October meeting)
- 3.1.1.1, Option 1, i - requires delivery to the linked closed class processor
- 3.1.1.2 - used to determine processor linkages
- 3.1.1.3 - specifies penalties for movement of linked shares between processors
- 3.1.2 - including all subsections - used to define closed class of processors (needed for linkages)
- 4.1, Option 2 - mandatory cooperatives
- 4.2.1, iii or iv. - defines sectors by vessel and gear type (trawl catcher vessel)
- 4.2.1.1, Option 2 - must associate with the linked closed class processing facility or company - (and Option 3, which is redundant with provisions of 3.1.1.2)
- 4.2.2 - Option 1 or Option 4 (cannot have a single cooperative for each sector in a program with multiple licensed processors)
- 4.2.3 - defines cooperative agreement duration
- 4.2.4 - may be included - defines cooperative/processor association
- 4.3.1 - Option 1 (cannot have a single cooperative for the sector in a program with multiple qualified processors) - also may include all bullets
- 4.4 - including all subsections - define individual and vessel use caps
- 4.4 - may include all bullets
- 4.5.1 - rules concerning movement between cooperatives
- 4.5.2 - rules defining affects of processor license transfers on cooperatives
- 4.6, Option 1 - non-members of cooperatives would fish in open access

Comparison of trawl catcher vessel alternatives

October Alternatives 2A and 2B would create a system of voluntary harvester cooperatives with different levels of processor protection. Under October Alternative 2A, each harvest share holder would be required to deliver a specified percentage of its harvests to a licensed closed class processor. The closed class licenses would be allocated to processors that met minimum processing requirements during a defined qualifying period. Under October Alternative 2B, harvests would be linked to processors based on landings histories. Under this approach, each initial allocation would be linked to the processor to which the recipient of the initial allocation delivered the most pounds of primary species during the qualifying period. The harvest share linkage could be severed, but would require the payment of a penalty in the form of reduction of the annual allocation associated with the shares for which the linkage is severed. Although the processor protections of October Alternatives 2A and 2B are similar processor protections in June Alternatives 2 and 3, the voluntary cooperative structure of the October alternatives contrasts substantially with the mandatory cooperative structure of June alternatives.

October Alternative 3 is a mandatory cooperative program with the same processor linkage as used in October Alternative 2B. In a mandatory cooperative program, a harvester will receive an exclusive annual allocation only by joining a cooperative. October Alternative 3 overlaps with both of the June alternatives.

October Alternative 3 is the same as June Alternative 2 with the option for processor linkages.[3] October Alternative 3 is also the same as June Alternative 3 with the option for a limited open access fishery for non-members of cooperatives.[4] Table 1 shows the different structures that can be constructed from the different alternatives for managing trawl catcher vessels.

Table 1. Management Structures of the Trawl Catcher Vessel Alternatives

		Cooperative type	
		voluntary	mandatory
Processor protection share holders are required to deliver some percentage of harvests to:	a closed class of processors	October Alternative 2A	June Alternative 2
	a specific processor that shares are linked to	October Alternative 2B	June Alternative 2 June Alternative 3 October Alternative 3

Although June Alternatives 2 and 3 and October Alternative 3 all can create mandatory cooperative programs with linkage to a specific processor, the Council could create differences in these alternatives by selecting different sets of options to defined the management programs. The most straightforward distinction could be created by varying the penalties for breaking the linkage. The implications of the "open access penalties" differ substantially from share reduction penalties (see Section 3.1.1.3 of the Council motion for different penalty options). A preliminary analysis of the penalty options is presented after the discussion of alternatives below.

Fixed gear catcher vessels

The October Alternatives 2 and 3 divide fixed gear vessels into differently. October Alternative 2 separates low producing fixed gear vessels and high producing fixed gear vessels. One alternative ("2 Low")applies to low producing fixed gear vessels under October Alternative 2. Two alternatives ("2 High A" and "2 High B") based on a similar underlying structure, would apply to high producing fixed gear vessels under October Alternative 2. October Alternative 3 divides fixed gear vessels by gear type.[5] Because of the differences in the way the two alternatives divide the fixed gear vessels, the discussion of the different management alternatives is structured slightly differently from the discussion of the catcher/processor and trawl catcher vessel alternatives above.

[3] June Alternative 2 also contains an option for a closed class of processors without linkages, as would be applied by October Alternative 2A.

[4] June Alternative 3 contains an option for non-cooperative members to either fish in limited open access fishery or be excluded from the fishery altogether. October Alternative 3 would maintain an limited open access fishery for non-members of cooperatives.

[5] June Alternatives 2 and 3 also divide the fixed gear fleet in the same manners as the October alternatives.

October Alternative 2

Under this alternative, fixed gear catcher vessel shares are divided into a high producing vessel sector and a low producing vessel sector based on the amount of history the person receiving the initial allocation.

October Alternative 2 Low

Under October Alternative 2 Low,

- Eligible persons with low producing fixed gear catcher vessel history would be allocated harvest shares based on that catch history.
- Share holders would be permitted to form voluntary cooperatives.
- For cooperative members, the allocation would be made to the cooperative and would be fished in accordance with the rules of the cooperative. For non-members of cooperatives, annual allocations of IFQs would be made to and fished by the individual.

The following elements and options would apply to <u>"low producing" fixed gear catcher vessels under October Alternative 2 Low</u>:

- 3.1.1.1, Option 2 exempts sector from closed class processor delivery requirements
- 3.1.1.4 defines the sector and provides for no processor delivery obligations
- 4.1, Option 1 - voluntary cooperatives
- 4.2.1 - proposed October revision to the motion would create an option that cooperatives can be formed between "low producing" fixed gear participants
- 4.2.1.1 - either Option 1 (no processor associations) or Option 2 (associate with any licensed processing facility or licensed processing company - not closed class)
- 4.2.2 - Option 1 - A cooperative is required to have at least 4 distinct and separate harvesters (only option that would work with this alternative)
- 4.2.3 - used to define duration of cooperative agreements
- 4.2.4 - may be included - defines cooperative/processor association
- 4.3.1, Option 1 - allocation of members is made to the cooperative - all bullets may be included
- 4.4 - may include all of these options concerning individual and vessel use caps
- 4.4 - may include all bullets
- 4.5.1 may include provisions concerning movement between cooperatives.

October Alternative 2 High A

Under October Alternative 2 High A,

- Eligible persons with high producing fixed gear catcher vessel history would be allocated harvest shares based on that catch history.
- Share holders would be permitted to form voluntary cooperatives.
- For cooperative members, the allocation would be made to the cooperative and would be fished in accordance with the rules of the cooperative. For non-members of cooperatives, annual allocations of IFQs would be made to and fished by the individual.
- Each cooperative and individual would be required to deliver a specified percentage of its landings to processors that are members of a closed class. Class membership would be based on processing history.

- The PSC allocation to the non-members of cooperatives would be reduced to create an incentive for cooperative membership.

The following elements and options would apply to "high producing" fixed gear catcher vessels under October Alternative 2 High A:

- 2.5.3.1 - PSC allocation reduction for non-members of cooperatives (provision is a proposed addition to elements and options from October meeting)
- 3.1.1.1, Option 1, ii - must define the closed processors to which the sector must deliver (i.e., fixed gear or any large or small closed class processor depending on the processor licensing scheme)
- 3.1.1.4 defines the low producing sector, effectively defining the "high producing" sector
- 3.1.2 - including all subsections is used to define closed class of processors and the rules governing those processors
- 4.1, Option 1 - voluntary cooperatives
- 4.2.1 - proposed October revision to the motion would include an option that cooperatives can be formed between "high producing" fixed gear participants
- 4.2.1.1 - either Option 1 (no processor associations) or Option 2 (associate with any qualified closed class processing facility or qualified closed class processing company)
- 4.2.2 - Option 1 - A cooperative is required to have at least 4 distinct and separate harvesters - (other options may not apply since they would result in one cooperative for all high producing fixed gear participants)
- 4.2.3 - defines duration of cooperative agreements
- 4.2.4 - may be included - defines cooperative/processor association
- 4.3.1, Option 1 - allocation of members is made to the cooperative - all bullets may be included
- 4.4 - may include all of these options concerning individual and vessel use caps
- 4.4 - may include all bullets
- 4.5.1 - may include provisions concerning movement among cooperatives.

October Alternative 2 High B

Under October Alternative 2 High B,

- Eligible persons with high producing fixed gear catcher vessel history would be allocated harvest shares based on that catch history.
- Each allocation of quota shares would be "linked" to the qualified processor to which the share holder delivered the most pounds of primary species during the qualifying years. Processor qualification would be based on landings during a processor qualification period.
- Share holders would be permitted to form voluntary cooperatives.
- For cooperative members, the allocation would be made to the cooperative and would be fished in accordance with the rules of the cooperative. For non-members of cooperatives, annual allocations of IFQs would be made to and fished by the individual.
- Each share holder is eligible to join a cooperative associated with the processor to which its shares are "linked".
- Each share holder and cooperative would be required to deliver a specific percentage of its landings to the "linked" processor.

- The PSC allocation to the non-members of cooperatives would be reduced to create an incentive for cooperative membership.
- Movement of shares between cooperatives would be subject to a share reduction penalty.

The following elements and options would apply to "high producing" fixed gear catcher vessels under October Alternative 2 High B:

- 2.5.3.1 - PSC allocation reduction for non-members of cooperatives (provision is a proposed addition to elements and options from October meeting)
- 3.1.1.1, Option 1, i - requires delivery to a linked closed class processor
- 3.1.1.2 - Used to define processor linkages
- 3.1.1.3 - used for determining penalty for moving shares between qualified processors.
- 3.1.1.4 - defines the low producing sector, effectively defining the "high producing" sector
- 3.1.2 - may include all subsections - used to define closed class of processors and the rules governing those processors
- 4.1, Option 1 - voluntary cooperatives
- 4.2.1 - proposed October revision to the motion would include an option that cooperatives can be formed between "high producing" fixed gear participants
- 4.2.1.1, Option 2 - must associate with the linked closed class processing facility or company - (and Option 3, which is redundant with provisions in 3.1.1.2)
- 4.2.2 - Option 1 or Option 4 (cannot have a single cooperative for each sector in a program with multiple licensed processors)
- 4.2.3 - defines duration of cooperative agreements
- 4.2.4 - may be included - defines cooperative/processor association
- 4.3.1, Option 1 - allocation of members is made to the cooperative - all bullets may be included
- 4.4 - may include all of these options concerning individual and vessel use caps
- 4.4 - may include all bullets
- 4.5.1 - may include provisions concerning movement among cooperatives.
- 4.5.2 - rules defining effects of processor license transfers on cooperatives (note that this provision should be broadened to include share holders that are not cooperative members)

October Alternative 3

Under October Alternative 3,

- Fixed gear catcher vessel share holders are divided into two sectors, pot vessels and longline vessels.
- Eligible persons with fixed gear catcher vessel history would be allocated harvest shares based on that catch history.
- To receive an exclusive annual allocation, the holder of shares would be required to join a
- cooperative.
- The annual allocation of cooperative members would be made to the cooperative and would be fished in accordance with the rules of the cooperative.
- Eligibility for cooperative membership would be based on landings, with each harvester eligible to join a single cooperative associated with the processor to which it delivered the most fish to during the qualifying period (i.e., processor linkage is required). The cooperative, in turn, would be required to deliver a specific percentage of its landings to the associated processor.

- If the holder of harvest shares failed to join a cooperative, the shares of that person would be allocated to an open access fishery, comprised of all non-members of cooperatives of its gear catcher vessel sector.
- The PSC allocation to the open access fishery would be reduced to create an incentive for cooperative membership.
- Movement of shares between cooperatives would be subject to a share reduction penalty or would require participation in the open access fishery for one year.

The following elements and options would apply to fixed gear catcher vessels under October Alternative 3:

- 2.5.3.1 - PSC allocation reduction for non-members of cooperatives (provision is a proposed addition to elements and options from October meeting)
- 3.1.1.1, Option 1, i - requires delivery to the linked closed class processor
- 3.1.1.2 - used to determine processor linkages
- 3.1.1.3 - specifies penalties for movement of linked shares between processors
- 3.1.2 - including all subsections - used to define closed class of processors (needed for linkages)
- 4.1, Option 2 - mandatory cooperatives
- 4.2.1, iii or iv. - defines sectors by vessel and gear type (pot catcher vessel and longline catcher vessel)
- 4.2.1.1, Option 2 - must associate with the linked closed class processing facility or company - (and Option 3, which is redundant with provisions of 3.1.1.2)
- 4.2.2 - Option 1 or Option 4 (cannot have a single cooperative for each sector in a program with multiple licensed processors)
- 4.2.3 - defines cooperative agreement duration
- 4.2.4 - may be included - defines cooperative/processor association
- 4.3.1 - Option 1 (cannot have a single cooperative for each sector in a program with multiple licensed processors) - also may include all bullets
- 4.4 - including all subsections - define individual and vessel use caps
- 4.4 - may include all bullets
- 4.5.1 - rules concerning movement between cooperatives
- 4.5.2 - rules defining affects of processor license transfers on cooperatives
- 4.6 - Option 1, creates limited open access fishery form non-members of cooperatives

Comparison of fixed gear catcher vessel alternatives

The October alternatives for fixed gear catcher vessel participants differ substantively from the June alternatives in a few ways. The October alternatives follow the same division of the fixed gear sector, with fixed gear catcher vessel separated into a high producing sector and a low producing sector under October Alternative 2 and fixed gear catcher vessel participants are divided into two sectors by gear type, a longline catcher vessel sector and a pot catcher vessel sector, under October Alternative 3.[6]

[6] The division of the sector into "high producers" and "low producers" would not prevent establishment of rules that limit the transfer of shares across gear types. The transfer of shares among gear types could be governed by other rules.

Under October Alterative 2 Low, "low producing" fixed gear catcher vessel participants would be managed under a voluntary cooperative program with no direct processor protection that is not applicable to any other sector under either of the alternatives. October Alternative 2 Low and June Alternative 2 are the same.

Under both October Alternative 2 High A and October Alternative High B, high producing fixed gear catcher vessel participants would be subject to a voluntary cooperative program, under which harvesters would receive an exclusive share allocation but with a reduced PSC allocation. Under October alternative High A share holders and cooperatives would be required to deliver a specific portion of their harvests allocation to a closed class of processors. Under October alternative High B share holders and cooperatives would be required to deliver a specific portion of their harvests to a “linked” processor. Linkages would be initially determined based on landings during the qualifying period. Linkages, however, could be broken subject to a share reduction penalty. On breaking the linkage, a new linkage would be established with another qualified processor selected by the share holder. October Alternatives 2 High A and 2 High B have similar processor protections to those of June Alternative 2 (which has 2 options for processor protection). June Alternative 2, however, is a mandatory cooperative program, while October Alternatives 2 High A and 2 High B create a voluntary cooperative program. October Alternatives 2 High A and 2 High B differ from both of the June alternatives in this respect.

Under October Alternative 3, the fixed gear sector is subject to very similar management as under June Alternative 3. No distinction is made between high producing and low producing share holders. Instead, share holders are divided by gear type. Share holders would be subject to a mandatory cooperative program in which a cooperative would be required to delivery a specific percentage of its allocation to the processor to which its members delivered most of their catch historically (i.e., cooperative linkage would be required). October Alternative 3 would create an open access fishery for non-members of cooperatives, as does June Alternative 3. June Alternative 3 contains an additional option that would not permit non-members to participate in the fisheries. Table 2 shows the different structures that can be constructed from the different alternatives for managing fixed gear catcher vessels.

Table 2. Management Structures of the Fixed Gear Catcher Vessel Alternatives

		Cooperative type	
		voluntary	mandatory
Processor protection share holders are required to deliver some percentage of harvests to:	no direct processor protection	June Alternative 2 October Alternative 2 Low	
	a closed class of processors	October Alternative 2 High A	June Alternative 2
	the specific processor to which the shares are linked	October Alternative 2 High B	June Alternative 2 June Alternative 3 October Alternative 3

In reviewing the alternatives, the Council should note that under October Alternative 2 and June Alternative 2, "low producing" fixed gear catcher vessel participants would be governed by a voluntary cooperative alternative that would not be analyzed for any other sector. The Council provided its rationale for not applying this management to other participants at its June 2003 meeting.[7] It should be noted, however, that the closed class of processors alternative, which is included in Alternative 2 for the trawl catcher vessel sector and the high producing fixed gear catcher vessel sector, is not included in any alternative for the low producing fixed gear vessel sector. **The Council should provide its rationale for excluding a closed class of processors alternative for the low producing fixed gear vessel sector.** In doing so, the Council should explain the rationale for including both the less restrictive voluntary cooperative alternative without direct processor protection (in Alternative 2) and the more restrictive processor linkage alternative (in Alternative 3) for this sector.

Preliminary discussion

In June, staff provided the Council with preliminary analyses that could be used for refining elements and options. To aid the Council in assessing the selection of alternatives for analysis, staff has included portions of that analysis here, adapted to address the October alternatives. Finally, staff has also provided a brief discussion of legal issues related to certain aspects of two of the proposed community protection programs, specifically the Community Incentive Fisheries Trust and the Community Fisheries Quota Program. A legal opinion from NOAA General Counsel that describes the basis for those legal concerns is included as Attachment D.

[7] The record from the June 2003 meeting shows that the Council believes that the voluntary cooperative structure is not appropriate for other participants in the Gulf fisheries because it would jeopardize the stability of communities and the processing sector.

Rules Governing Cooperatives under the Alternatives

The general alternative structures, together with several provisions in the Council motion, define the rules for cooperative formation, movement among cooperatives, and participation in the fisheries inside and outside of cooperatives. These provisions together are likely to impact the internal rules of the cooperatives, which in turn will affect the return that different participants are able to realize from their allocations. If these provisions are not carefully developed, some participants may be inadvertently affected by differences in negotiating strength across members of a cooperative. For example, in a cooperative composed primarily of pollock fishermen, a cod fisherman could have little leverage for changing rules to reasonably accommodate cod fishing. In the extreme, share holders with little or no direct activity in fisheries could control the harvests of active participants, if the active participants have no reasonable alternative to joining the cooperative. In considering rules, the Council should be wary of rules that create incentives to modify share holdings. A rule that requires 90 percent of eligible share holders[8] for cooperative formation may create an incentive for a single share holder to subdivide holdings among his friends and family to impose his will on other eligible share holders. This section briefly reviews some of the rules that govern cooperatives and raises several questions concerning the interaction of different influences. In assessing the options, the Council should consider whether adequate information is provided here to make decisions concerning which rules should be advanced and whether additional provisions should be added that might enable the Council to better balance interests of participants.

In analyzing the rules governing cooperatives, it is necessary to consider the different alternatives under consideration. For catcher vessels, these include voluntary cooperatives with no direct processor protection (Fixed Gear October Alternative 2 Low and June Alternative 2), voluntary cooperatives with a closed class of processors (Fixed gear October Alternative 2 High A and Trawl October Alternative 2A), voluntary cooperatives with processor linkages (Fixed gear October Alternative 2 High B and Trawl October Alternative 2B), mandatory cooperatives with a closed class of processors (June Alternative 2), and mandatory cooperatives with processor linkages (Fixed gear October Alternative 3, Trawl October Alternative 3, and June Alternative 3). For catcher/processors the alternatives are voluntary cooperatives (October Alternative 2) and mandatory cooperatives (October Alternative 2, June Alternative 2, and June Alternative 3). Each of these structures is discussed in turn. Before examining the details of the different alternatives, development of a few general concepts help frame the discussion.

In general, the assessment of the relative power of participants in a cooperative depends on several factors. These determinants of negotiating strength can be generalized to two categories, internal and external. Internal effects are generated by the rules governing cooperatives, such as rules of cooperative formation and any rules that define membership. External effects, which are equally important, are generated by the outside options available to a harvester that chooses not to join a cooperative. For example, a person's negotiating leverage with respect to another is highly dependent on the ability to walk away from a transaction and pursue other opportunities. In the context of these cooperatives, the harvester's negotiating strength with respect to members of a particular cooperative depend on the ability of the harvester to choose not to join the cooperative and remain in the fishery. Penalties for choosing not to join a cooperative (such as share reductions for moving between cooperatives and PSC reductions for fishing IFQs) also affect the extent of those opportunities. In the discussion that follows, both internal and external affects are considered.

[8] Changing the wording from "the holders of 90 percent of eligible shares" to "90 percent of the holders of eligible shares" substantially changes the incentives.

Voluntary cooperatives without direct processor protections
(October fixed gear Alternative 2 low and low producing fixed gear vessels under June Alternative 2)

A voluntary cooperative program is one in which harvesters receive an exclusive allocation (i.e., IFQs) regardless of cooperative membership. Since a harvester may choose to fish IFQs in a voluntary cooperative program, the negotiating strength within a cooperative is of less concern, particularly if PSC shares are not reduced for those choosing to fish IFQs. If a cooperative arrangement is not in the harvester's interest, the harvester has several options, including joining another cooperative, forming another cooperative, and fishing IFQs. As a consequence, members of a cooperative derive little negotiating leverage with respect to others from the rules that govern cooperatives.

Voluntary cooperatives with a closed class of processors
(October trawl Alternative 2A, October fixed gear Alternative 2 High A)

Under this structure cooperative membership is voluntary, minimizing concerns that a disparity of negotiating leverage will exist across harvesters. Several cooperatives are likely to form based on different harvesting interests and practices, as harvesters will be obliged to deliver a portion of their landings to any of the closed class of processors (rather than to a particular linked processor). Since harvesters would be allowed to join one of several cooperatives the ability of any one cooperative's members to assert bargaining pressure on other harvesters interested in joining the cooperative would be limited. The reduction in PSC for share holders that choose to fish IFQs, rather than join a cooperative, could create a substantial incentive for cooperative membership. The extent of the incentive is likely to depend on the primary, secondary, and PSC holdings of participant, participants need for PSC shares to harvest primary and secondary shares, and the value of PSC shares on transfer.

Voluntary cooperatives with processor linkages
(October Alternative trawl 2B, October Alternative fixed gear 2 High B)

Although this alternative creates a voluntary cooperative structure, depending on the specific elements of the structure some bargaining leverage may be asserted by cooperative members that could not be asserted under the other voluntary structures. Under a program with processor linkages a harvester is required to deliver a specific portion of harvests to a specific processor. Depending on the specific cooperative formation rules, each "linked" processor might be allowed a single associated cooperative.[9] A harvester that did not wish to join the cooperative associated with the processor that its shares are linked to would have a few options. A harvester that does not wish to join the cooperative could choose to remain outside of the cooperative and fish IFQs. Under this structure, however, share holders that choose not to fish in a cooperative would be subject to a PSC share reduction. Although this share reduction might be intended to create an incentive for cooperative membership, it will also have the effect of providing leverage to majority members of a cooperative over share holders eligible to join the cooperative. A minority harvester could be faced with a

[9] Having a single cooperative associated with a processor could occur under either of the applicable options governing formation. Under the first applicable option, at least 50 percent of the shares eligible for a cooperative must be held by members for cooperative formation (Section 4.2.2, Option 4). Under this rule, only one cooperative could be formed in association with each processor. Under the second applicable option, four distinct harvest share holders wold be required for cooperative formation. Under this rule, some small processors might have a single cooperative. The other two rules governing formation of cooperatives are sectoral rules that do not apply to processor "linked" cooperative structures.

choice of a loss of PSC share or joining a cooperative on less than favorable terms should the cooperative majority wish to exploit the opportunity. Alternatively, if a separate cooperative associated with the processor cannot be formed, a harvester's outside option to participating in the cooperative would be to move to a cooperative associated with a different processor. These movements would be subject to a share reduction penalty, which also provides leverage to the cooperative's majority.

Penalties imposing a loss of shares (either through a penalty for moving or a PSC reduction for fishing IFQs) could provide a cooperative with substantial leverage in dealing with minority members, unless other aspects of the program provide minority members with negotiating strength.

One reasonable protection that could mitigate harm to minority cooperative members is to require that a cooperative accept membership of any eligible participant subject to the same terms and conditions that apply to other cooperative members (see proposed addition to 4.3.1 of the Council motion). A provision of this type is included in the AFA cooperative program.[10] This provision, in and of itself, may be inadequate for protecting minority interests particularly if participants have very different portfolios of harvest shares. For example, a cooperative agreement's rules may apply the same to cod fishermen and pollock fishermen, but the rules could favor one group of fishermen over the other.

The specific rules governing cooperative formation also could mitigate the potential for minority interests to be subsumed by a majority in a cooperative. Adoption of a rule that requires holders of 50 percent of the eligible harvest shares for cooperative formation would allow the creation of a cooperative by holder's of that majority subject to rules very favorable to that majority. The rules governing formation would prevent others eligible for the same cooperative from forming a separate cooperative associated with the same processor. On the other hand, if a cooperative is required to have 90 percent of the shares eligible for the cooperative for formation, the holders of the majority of shares would be unable to meet the threshold if they establish rules that are unacceptable to more than 10 percent of eligible shareholders. Although a high threshold for cooperative formation could protect minority members, setting a threshold too high could create difficulties. For example, a high threshold could prevent cooperative formation altogether, if some eligible members are determined to fish IFQs regardless of the terms of the cooperative agreement. Similarly, a high threshold could provide a small minority with excessive leverage in negotiating terms of the cooperative, if a large majority of members would require its consent for cooperative formation.

A potential ancillary effect of structures with processor linkages and penalties on share holders that do not join cooperatives is that the processors could be harmed by actions of their cooperatives. A processor associated with a cooperative that asserts leverage over minority members would be harmed, if minority members choose to move to a new linked processor. Such movements might occur under this structure in the long run, since the penalties for moving between linked processors are one time penalties, while the PSC reductions would occur every year that the share holder elected to fish IFQs independent of the cooperative. The specific effects will depend on the interaction of several factors, including the magnitude of the penalty for moving between cooperatives, the PSC reduction for fishing IFQs, and the extent to which a cooperative might benefit from additional members. These effects are all likely to differ depending on the circumstances of the participants involved.

[10] See AFA, section 210(B)(2).

Mandatory cooperatives with processor linkages
(October fixed gear Alternative 3, October trawl Alternative 3, high producing fixed gear catch vessels and trawl catcher vessels under June Alternative 2, and June Alternative 3)

In a mandatory cooperative structure, a harvester will receive an exclusive allocation only by joining a cooperative. In a mandatory cooperative structure with processor linkages, a harvester would receive an exclusive allocation only by joining a cooperative that is associated with a particular processor.

Under this structure, a harvester may have a few outside options to joining a cooperative. Depending on the specific provisions of the alternative, the harvester may be able to elect to participate an open access fishery. The harvester may also be able to change cooperatives. This change of cooperatives could have different consequences for the harvester depending on the specific provisions of the alternative and specific circumstances. If the Council chooses a cooperative formation rule that results in a single cooperative associated with a processor, movement between cooperatives would require changing processors. These movements would be subject to either a share reduction penalty or a penalty year in the open access fishery. As a result, the cooperative could have substantial leverage in dealing with minority members, unless other aspects of the program provide minority members with negotiating strength (see discussion of these penalties below).[11]

If the Council adopts a cooperative formation that allows multiple cooperatives to associate with a processor, eligible share holders that have difficulty reaching compromises concerning harvest of shares with a majority of a cooperative might be able to join a different cooperative without being subject to a penalty for moving to a different processor. Although efficiencies in harvesting and management could be sacrificed if many cooperatives are formed, the interests of the different share holders are less likely to be jeopardized by a cooperative majority. In the long run, losses of efficiency are likely to be minimal.

Mandatory cooperatives with a closed class of processors
(High producing fixed gear catcher vessels and trawl catcher vessels under June Alternative 2)

Under this alternative, a cooperative would receive an exclusive annual allocation based on its members harvest share holdings. Cooperatives would be required to deliver a specified percentage of harvests to processors in a closed class.

Depending on the specific elements defining this structure, participants could have a few outside options to joining a specific cooperative. First, to have a reasonable working system of cooperatives, this structure might best support several cooperatives. In the current options for cooperative formation, only the requirement of four distinct shareholders would allow multiple cooperatives in each sector (4.2.2, Option 1). Assuming that this criterion for formation is used, then several cooperatives could be formed in any sector. Since the only eligibility criterion would be share holdings, a harvester would be able to join one of

[11] As under the previously discussed alternative, processors that are associated with a cooperative that asserts this leverage over minority members could be harmed, if minority members move between cooperatives.

several cooperatives limiting the ability of any cooperative to impose unfair or onerous terms for cooperative members.[12]

Mandatory cooperative for catcher/processors
(October catcher/processor Alternative 3 and June Alternatives 2 and 3)

Under these alternatives catcher/processor share holders would be subject to a mandatory cooperative program that would require cooperative membership for an exclusive allocation. The ability of a majority in a cooperative to exert unfair negotiating leverage over minority members will vary with the rules adopted for cooperative formation and the rules governing the open access fishery. If a rule is adopted that requires a majority or more of the harvest share holders or harvest shares for cooperative formation, a harvester in this sector would not have the ability to move among cooperatives in the sector.[13] Depending on whether an open access fishery is available to the share holder and the participation in that open access fishery.

If the Council adopts a rule that requires 4 distinct share holders for cooperative formation, a catcher/processor may be able to join a different cooperative, if the rules of one cooperative are viewed as unfair. The extent of opportunities in this case could depend on whether catcher/processors are considered a single sector or separated into three sectors by gear type. Pot catcher/processors might have only one or two cooperatives because few catcher/processors participate with pots. In any case, additional opportunity for participation in a cooperative would result since each sector could support multiple cooperatives.

Voluntary cooperatives for catcher/processors
(October catcher/processor Alternative 2)

The ability of a cooperative to assert unfair negotiating leverage over other share holders is reduced under this alternative since share holders that choose not to join a cooperative would be able to fish IFQs. Depending on the specific elements of this program, however, a cooperative majority may have substantial leverage over share holders wishing to join the cooperative. If the PSC reduction for non-members of cooperative is large, a cooperative may be able to gain concessions from share holders interested in joining the cooperative to avoid the penalty. The ability to exact concessions would be limited, if the rules governing cooperative formation permit several catcher/processor cooperatives to form. Currently, the only the rule that requires four distinct share holders for cooperative formation would provision would permit multiple cooperatives to form.

Penalties for Moving Between Linked Processors

Several of the alternatives provide for a linkage that requires a portion of harvests made with shares to be delivered to a specific processor. The motion provides two potential types of penalties for the movement of

[12] A harvester would also have the ability fish in the open access fishery, although the bycatch reductions and uncertainties of the open access fishery limit its appeal.

[13] Depending on the alternatives defined by the Council, an alternative to cooperative membership could be participation in the open access fishery. As noted earlier, any bycatch reduction, the level of competition, and the circumstance of the individual harvester will determine the extent to which the open access fishery is a reasonable option for a harvester faced with an unreasonable cooperative agreement.

these shares between processors (or breaking the linkage with one processor and establishing a new linkage with another processor).[14] In addition, the motion contains provisions that would have no penalty for the movement of shares and a total prohibition on the movement of shares. The Council should consider whether the no penalty option and the no movement option are reasonable alternatives. In the case of the no penalty option, one may question whether the administrative burden of developing an elaborate system of linkages is appropriate, if the linkages are binding in no way. The option that would prevent any movement of shares might be considered unreasonable, if the Council intends any processor competition for landings of A shares or the development of efficiencies in A share landings under the program.

In considering the two different penalty provisions, the Council should consider its purpose for establishing penalty provisions and the potential effects of the different options. The share reduction penalty should provide a relatively clear and predictable indication to harvesters and processors of the cost of the movement of shares that will allow the harvest share holder and both of the processors involved to determine whether to bear the cost movement and the cost of preventing the movement. For example, if a harvester is faced with the opportunity to relocate to a different processor, the cost of a share reduction penalty would be its loss of returns on that year's of the penalty amount. For a harvester to make the move it must believe that the new processor will pay an ex vessel price that will compensate for the penalty. This may take a few years or could be accomplished by the processor paying a bonus in the first year to cover the cost of the penalty to the harvester. For the processor that is trying to attract the harvester, the cost of establishing the new linkage are payments (either ex vessel prices or a one year bonus) that are higher than that of its competitor by enough to cover the one-year penalty. To the processor that may lose the share linkage, the cost of keeping the harvester is the payment of an ex vessel price that is not so far below the price of the competitor's that the one-year penalty would be compensated for by the competitor.

The open access penalty has an entirely different structure that makes it far less predictable. If the open access fishery has several participants that are moderately successful in an open access fishery, a very good competitor in an open access fishery may face a very limited penalty for a year in the open access. Participants in the open access are likely to be less efficient, but it is possible that a competitive participant may be able to make up for the loss of efficiency through increasing harvests. On the other hand, if the open access fishery has many competitive participants, a harvester that is accustomed to working in a cooperative may perceive a large penalty for participating in the open access fishery. This participant is likely to suffer a loss of efficiency and a loss of catch to harvesters that are geared toward participation in an open access fishery. The reduction of the bycatch allocation to the open access will increase the penalty in fisheries that are constrained by their bycatch allocations. Bycatch could also be a much greater constraint on harvests in the open access fishery where harvesters race for catch during a potentially limited season. The penalty of requiring a year in an open access fishery, however, cannot be predicted and may vary over time and across sectors. In some years with few open access participants, the penalty could be minimal. In other years with several competitive participants, the penalty could be great. Participation and competitiveness of participants is likely to vary across sectors. In addition, the penalty is likely to vary substantially across share holders. Share holders that are able to effectively compete in the open access are likely to face a substantially lower penalty from an open access year than share holders that are less able to compete.

[14] Under the current alternatives, this would apply only to the movement of shares between cooperatives. The only provisions for an exclusive (or protected) share allocation is within a cooperative.

A second issue that arises in considering whether an open access penalty is workable and reasonable is whether some harvesters may be able to use gamesmanship to take advantage of the open access. For example, a harvester may choose to move small quantities of shares through the open access from year to year to enable participation in the open access. If any share holder that has shares in the open access is permitted to fish the open access, it is possible that some participants may use the open access in this manner. By moving shares a few shares through the open access, the harvester will have the right to participate to the detriment of those harvesters attempting to use the open access as intended. One alternative to overcome this problem is to require that a harvester move all of its shares through the open access. Under this approach, all of a harvester's shares would be effectively blocked, so that any movement or transfer of shares would be all-or-nothing.[15] Using this structure, however, is likely to prevent the realization of efficiencies under the program, as harvesters try to reconfigure from their initial allocations to develop a good working multispecies portfolio of shares. Since some of these trades may be required to be across cooperatives (and processors) a rule that prohibits division of initial allocations may be a hindrance to realizing benefits under the program.

Legal Concerns with Community Protection Options

NOAA GC has provided a legal opinion, dated October 3, 2003, on delegation of authority and the proposed Community Incentive Fisheries Trust (CIFT) Program that is currently included in the Council's options (Section 2.9.4) for Gulf Rationalization. NOAA GC advises that, as currently proposed, the CIFT Program may not be legally viable. This paper briefly outlines the legal opinion and potential application to both the CIFT and the Community Fisheries Quota (CFQ) Program. The legal opinion is provided as Attachment D.

The CIFT Program involves an initial allocation of a portion (10% - 30%) of the overall Gulf harvest shares to the CIFT organization. The CIFT organization holds the shares and reallocates them back to individual fishermen, subject to specific contract terms. The Board of Directors of the CIFT is intended to represent communities, processors, and crewmembers in the region, and its purpose (according to Section 2.9.4) is to direct the use of these shares such that it mitigates impacts directly associated with the implementation of a rationalization program. The majority of the issues associated with the CIFT Program have been deferred to a trailing amendment.

NOAA GC notes that the Secretary of Commerce (Secretary's) initial allocation of quota share (QS) to an organization representing one or more communities is relatively straightforward; it is the part of the CIFT proposal that calls for the annual reallocation of IFQ to individual fishermen that causes legal concern. The opinion states that the authority delegated to the community organization, in this case, a CIFT, cannot be unlimited: "Such sub-allocations of IFQ must be made subject to final approval by the Secretary. Any party aggrieved by such annual adjudications also would have a constitutional right to an agency appeal."

In essence, the legal opinion states that the Secretary could not approve and implement a program in which discretionary authority to reallocate annual IFQ is delegated to a separate entity, without Secretarial approval of those reallocations and a formal appeals process. (In order to have an appeals process, one must have Secretarial approval of the decision being appealed.) There are two elements to Secretarial responsibility that are relevant to this issue: 1) the Secretarial responsibility to determine that rulemaking meets the national standards in the Magnuson-Stevens Act, and 2) the Secretarial responsibility to apply that rulemaking to

[15] In the absence of blocking shares, harvesters may be able to use holding companies to create separate interests for portions of their allocation to qualify for the open access fishery.

individual situations. The Secretary cannot delegate these powers when they are considered discretionary, and, in the case of the CIFT, the reallocation of IFQ would require the CIFT to exercise discretion in its decisions. The Secretary can only delegate ministerial functions, or those that do not require judgment.

The opinion notes that the current structure of the CIFT Program creates a problem with both of the above Secretarial responsibilities. The current options do not include a set of standards that the CIFT would apply to determine how to reallocate IFQ to the individuals that will actually fish the shares. Absent such standards, the Secretary cannot know whether the rulemaking to implement the program would meet the requirements of the National Standards. Secondly, there is currently no mechanism for Secretarial review and approval of each and every reallocation from the CIFT to the individual fishermen. As stated above, without this review, there is no mechanism for an appeals process, which is required under the Administrative Procedure Act and the U.S. Constitution.

Based on this opinion, it appears that the details of the CIFT Program would need to be included in the overall Gulf Rationalization analysis prior to Secretarial approval of the entire program. Those details would need to include both the standards or contract terms the CIFT would use to determine how to reallocate shares among individual fishermen, and, should it remain a discretionary decision, a provision for Secretarial review and approval of each reallocation.

NOAA GC has advised staff that the legal concerns discussed in the context of the CIFT Program could likewise be applied to the Community Fisheries Quota (CFQ) Program under Section 2.9.2, as it is currently proposed. The CFQ Program would allow quota to be allocated to a nonprofit entity, which would hold the shares on behalf of a specified list of eligible communities. The primary purpose of the program appears to be for the nonprofit entity to hold the shares and lease the annual quota to eligible community residents in order to allow them an opportunity to participate in the Gulf groundfish fisheries. While a resident may lease CFQ at fair market value, it is also foreseeable that the nonprofit entity would lease quota at less than fair market value (or no cost) in order to meet the intent of providing opportunities and benefits to resident fishermen.

The structure of the program implies that the benefits of the CFQ allocation are intended not only for the nonprofit entity, but also for resident fishermen. In the sense that the nonprofit entity would be given discretionary authority under this program to determine how to further allocate the use of the shares, this triggers the same legal concerns as were discussed under the CIFT.

The program design could potentially be modified to mitigate these concerns. In brief, the CFQ and CIFT proposals would need to be redesigned to:

- Limit the decisionmaking authority of the community administrative entity to ministerial functions (those in which there is no personal discretion or judgment involved); and/or
- Incorporate a mechanism for Secretarial review and approval of each suballocation of annual IFQ from the community administrative entity to the individual fisherman (subject to an administrative appeals process).

The first type of modification would limit the community entity to administering an application process using objective criteria only, which would be established in Federal regulation. Secretarial review of this process would determine whether those objective criteria were applied correctly. By contrast, the community entity could use subjective criteria in the application process, and recommend to NMFS the recipients of the annual CFQs. NMFS would have to review and approve each of those decisions, which could significantly increase the administrative cost to the agency to implement this program.

As an alternative, the CFQ Program design could be modified as follows:

- Change the overall purpose of the program from allocating QS to a community entity to lease to individual residents of eligible communities, to allocating QS to a community entity for the purpose of deriving revenues from leasing the shares to support community development projects in the eligible communities.

This type of modification would revise the purpose of the program, so that the benefits generated from the CFQ would accrue to the community entity itself. The entity could use the shares to meet that intent, either by purchasing a vessel and fishing the shares, or leasing them to another harvester at fair market value. While this change may mitigate the legal concerns, it likely does not meet the goal of the original proponents of the program to increase fishing opportunity for individual community residents.

The result of the legal opinion is that both the CIFT and the CFQ Program may need to be redesigned to allay the legal concerns associated with the delegation of allocation authority (granting access to the resource) that is currently part of each program. Staff notes that program specifics, modifications, or related future proposals may need to be reviewed by NOAA GC to determine if there are similar legal implications.

December 2003
Gulf of Alaska Rationalization
Part 2

NORTH PACIFIC FISHERY MANAGEMENT COUNCIL
GULF OF ALASKA GROUNDFISH RATIONALIZATION
ELEMENTS AND OPTIONS

Staff Annotation for December 2003 Meeting

1 Status Quo (No Action Alternative)

2 Harvest Sector Provisions

2.1 Management Areas:
Areas are Western Gulf, Central Gulf, and West Yakutat—separate areas
For Pollock: 610 (Western Gulf), 620 and 630 (Central Gulf), 640 (West Yakutat (WY))

- Shortraker and rougheye (SR/RE) and thornyhead rockfishes will be divided between Southeast Outside (SEO) and WY
- The allocation of rockfish bycatch to the halibut IFQ fishery will be on a NMFS management area basis
- Non-SR/RE and thornyhead rockfish trawl catch history in SEO during 95-98 will be used in the calculation of WYAK allocation
- SEO is exempt except for SR/RE and thornyhead rockfishes as ~~bycatch~~ secondary species. Allocation will be based on target catch in sablefish, halibut, Demersal Shelf Rockfish and P. cod fishery

Gear: Applies to all gear except jig gear–
Option 1. The jig fishery would receive an allocation based on its historic landings in the qualifying years – the jig fishery would be conducted on an open access basis.
Option 2. Gear would be accounted for in a manner similar to sport halibut harvests in halibut IFQ fishery.
Suboption: Cap jig harvest at ___% of current harvest by species and area:
1. 125%
2. 150%
3. 200%

2.2 Qualifying periods and landing criteria (same for all gears in all areas)
(The analysis will assess AFA vessels as a group)
Option 1. 95-01 drop 1
Option 2. 95-02 drop 1
Option 3. 95-02 drop 2
Option 4. 98-02 drop 1

2.2.1 Qualifying landing criteria
Landings based on retained catch for all species (includes weekly processor report for Catcher/Processor sector)
NOTE: Total pounds landed will be used as the denominator.

Catch history determined based on the poundage of retained catch year (does not include meal)
Suboption: catch history for P. cod fisheries determined based on a percentage of retained catch per year (does not include meal)

2.2.2 Eligibility

LLP participation

Option 1. Eligibility to receive catch history is any person that holds a valid, permanent, fully transferable LLP license.

Suboption 1. Any person who held a valid interim LLP license as of January 1, 2003.

Suboption 2. Allow the award of retained incidental groundfish catch history arising from the halibut and sablefish IFQ fishery.

Basis for the distribution to the LLP license holder is: the catch history of the vessel on which the LLP license is based and shall be on a fishery-by-fishery basis. The underlying principle of this program is one history per license. In cases where the fishing privileges (i.e., moratorium qualification or LLP license) of an LLP qualifying vessel have been transferred, the distribution of harvest shares to the LLP shall be based on the aggregate catch histories of (1) the vessel on which LLP license was based up to the date of transfer, and (2) the vessel owned or controlled by the LLP license holder and identified by the license holder as having been operated under the fishing privileges of the LLP qualifying vessel after the date of transfer. (Only one catch history per LLP license.)

Option 2. Non-LLP (State water parallel fishery) participation

Suboption 1. Any individual who has imprinted a fish ticket making non-federally permitted legal landings during a State of Alaska fishery in a state waters parallel fisheries for species under the rationalized fisheries.

Suboption 2. Vessel owner at time of non-federally permitted legal landing during a State of Alaska fishery in a state waters parallel fisheries for species under the rationalized fisheries.

The Council requests NMFS RAM review LLP transfers and report on the frequency with which the transfers also include provisions governing catch history.

2.2.3 State Waters - Parallel Fisheries and State Groundfish Management

Option 1. Status Quo –Federal TAC taken in federal waters and in state waters, during a 'parallel' fishery, plus state-water fisheries exist for up to 25% of the TAC for Pacific cod.

Option 2. Direct allocation of portion of TAC to fisheries inside 3 nm.

No 'parallel' fishery designation, harvest of remaining federal TAC only occurs in federal zone (3 – 200 nm); and

Council allocates _____ % of the TAC, by species by FMP Amendment, to 0-3 nm state water fisheries representing a range of harvests that occurred in state waters. This could include harvest from the status quo parallel fishery and the state waters P. cod fisheries. State waters fisheries would be managed by ADF&G through authority of, and restrictions imposed by, the Board of Fisheries.

Area or species restrictions:

Suboption 1. Limited to Pollock, P. cod, flatfish, and/or pelagic shelf rockfish (light and dark dusky rockfishes).

Suboption 2. Limited to Western, Central GOA management areas and/or West Yakutat.

Option 3. Parallel fishery on a fixed percentage (____ %) allocation of the federal TAC, to be prosecuted within state waters with additional State restrictions (e.g., vessel size, gear restrictions, etc to be imposed by the BOF).

Fixed allocation for:
Suboption 1. P. cod
Suboption 2. Pollock
Suboption 3. All other GOA groundfish species

Council requests that staff provide an analysis of catch data showing harvest inside 3 nm by gear, species, vessel size and area The Council recommends that this issue be reviewed by the Joint Protocol Committee at its next meeting (tentatively identified as July 28/29 in Anchorage).

2.3 ~~Target~~ Primary Species Rationalization Plan

Primary ~~Target~~ Species by Gear

2.3.1 Initial Allocation of catch history
~~Option 1. Allocate catch history by sector and gear type~~ *Council Topic 1*
Option 2. Allocate catch history on an individual basis
a. Trawl CV and CP:
Pollock, Pacific cod, deepwater flatfish, rex sole, shallow water flatfish, flathead sole, Arrowtooth flounder, northern rockfish, Pacific ocean perch, Pelagic shelf rockfish
b. Longline CV and CP:
Pacific Cod, pelagic shelf rockfish, Pacific ocean perch, deep water flatfish (if turbot is targeted), northern rockfish, Arrowtooth flounder
c. Pot CV and CP:
Pacific Cod

The deletion of Option 1 would show that the Council intends to provide individual allocations rather than simple sector divisions, which do not credit individual history.

2.3.2 Harvest share (or QS/IFQ) Designations
2.3.2.1 Vessel Designation of low producers and high producers in the fixed gear class.
Low producing vessels are:
Option 1. less than average harvest shares initially allocated by gear, species and area
Option 2. less than the 75th percentile harvest shares initially allocated by gear, species and area
High producing vessels are the remainder.

2.3.2.2 Harvest share sector designations:
~~Option 1. No designation of harvest shares (or QS/IFQ) as CV or CP~~ *Council Topic 2*
Option 2. Designate harvest shares (or QS/IFQ) as CV or CP. Annual CV harvest share allocation (or IFQ) conveys a privilege to harvest a specified amount. Annual CP harvest share allocation (or IFQ) conveys the privilege to harvest and process a specified amount. Designation will be based on:
Actual amount of catch harvested and processed onboard a vessel by species.

Deletion of Option 1 would show that the Council intends to distinguish catcher vessel and catcher/processor shares. Catcher/processor shares would carry a processing privilege in addition to the harvest privilege.

2.3.2.3 Harvest share gear designations

~~Option 1. No gear designation~~

~~Option 2. Designate harvest shares as Longline, Pot, or Trawl~~

~~Option 3. Longline and pot gear harvest shares (or IFQ) may not be harvested using trawl gear.~~

~~Option 4. Pot gear harvest shares (or IFQ) may not be harvested using longline gear~~

Option 1: Designate CV harvest shares as Trawl, Longline, and Pot

Option 2: Designate harvest shares and high and low producer fixed gear

Option 3: Designate CP harvest shares as CP trawl, CP longline, CP pot.

2.3.2.4 Harvest Share Restrictions—Harvest restrictions apply to primary species only.

Harvest restrictions for primary harvest shares (or IFQ) may be used by other gear types except that:

Option 1: No restrictions

Option 2: Fixed gear harvest share (or IFQ) may not be harvested using trawl gear

Option 3: Pot gear harvest shares may not be harvested by longline or trawl gear

Option 4: Pot and longline harvest shares may not be harvested by trawl gear

Council Topic 3

The first of the above two sections (2.3.2.3) would establish the different sectors specified by alternatives in the Council alternatives table. Options 1 and 3 would be used to distinguish shares by gear type, which is likely necessary for the TAC setting process. Option 2 would establish the low producer/high producer distinction for fixed gear vessels that is used in Alternative 2.

The second of the sections (2.3.2.4) would establish restrictions on the use of primary species allocations of one gear designation by another gear type.

The proposed changes can be used to clarify the intention to establish gear designations and the limitations arising out of those designations.

2.3.2.5 ~~2.3.2.4~~ If a closed class of processor alternative is chosen, CV harvest shares will be issued in two classes. Class A shares will be deliverable to a qualified processor or processor shareholder (as applicable). Class B shares will be deliverable to any processor as authorized under this program.

Option. Only the annual allocations will be subject to the Class A/Class B distinction. All long term shares or history will be of a single class.

2.3.3 Transferability and Restrictions on Ownership of Harvest shares (or QS/IFQ)

2.3.3.1 Persons eligible to receive harvest shares by transfer must be (not mutually exclusive):

~~Option 1. US citizens who have had at least 150 days of sea time~~

~~Option 2. Entities that have a U. S. citizen with 20% or more ownership and at least 150 days of sea time~~

~~Option 3. Entities that have a US citizenship with 20% or more ownership~~

~~Option 4. Initial recipients of CV or C/P harvest share~~

~~Option 5. US Citizens eligible to document a vessel.~~

~~Option 6. Communities would be eligible to receive harvest shares by transfer (this provision would be applicable if certain provisions of 2.9 are adopted.)~~

Option 1: Individuals eligible to document a vessel with at least 150 days of sea time (apply to CV shares).

Option 2: Entities eligible to document a vessel that have a US citizen with 20% ownership and with at least 150 days of sea time (apply to CV shares).

Option 3: Entities eligible to document a vessel (apply to CP).

Option 4: Initial recipients of CV or C/P harvest share.
Option 5: Community administrative entities would be eligible to receive harvest shares by transfer.

Definition of sea time:
Sea time in any of the U.S. commercial fisheries in a harvesting capacity.
Council Topic 5

The above section defines eligibility for purchase of harvest shares. The proposed changes address staff's request for clarification concerning US citizenship requirements. The Council should state whether these are intended to be options or if the Council has identified these as the preferred provisions concerning eligibility for share purchase. If these are the preferred provisions, the term "option" should be deleted from each provision.

2.3.3.2 Restrictions on transferability of CP harvest shares

~~Option 1. CP harvest shares maintain their designation upon transfer.~~
~~Option 2. CP harvest shares maintain their designation when transferred to persons who continue to catch and process CP harvest shares at sea, if CP harvest shares are processed onshore after transfer, CP harvest shares converts to CV harvest shares.~~
~~Option 3. CP harvest shares maintain their designation after transfer for 5 years following implementation, after which time any transfer of CP shares convert to CV shares.~~

Option 1: CP harvest shares maintain their designation when transferred to persons who continue to catch and process CP harvest shares at sea, if CP harvest shares are processed onshore after transfer, CP harvest shares convert to CV harvest shares.

Option 2: Redesignate CP shares as CV shares upon transfer to a person who is not an initial issuee of CP shares.
Council Topic 6

The above provisions identify two options for the redesignation of CP shares as CV shares. The two options as revised are clear. The Council should clarify whether it intends to select one of the two or both of the options as a preferred option.

2.3.3.3 ~~Redesignate CP shares as CV shares upon transfer to a person who is not an initial issuee of CP shares:~~

~~Option 1. all CP shares~~
~~Option 2. trawl CP shares~~
~~Option 3. longline CP shares~~

When CP shares are redesignated as CV shares;
CP harvest shares retain their gear designation upon transfer.
Purchaser must further identify which processing provision and regionalization provision apply to the shares, consistent with the gear type.
Council Topic 6

The above provisions clarify the Council's intent for the redesignation of CP shares as CV shares. If adopted, this would be the Council's preferred option for applying CV designations. The provision would retain gear designations and allow the share holder to choose the designation that determines processor landing requirements and region.

2.3.3.4 Vertical integration

Harvest shares initial recipients with more than 10% limited threshold ownership by any processor are capped at:

Option 1. initial allocation of harvest CV and CP shares.

Option 2. 115-150% of initial allocation of harvest CV shares.

Option 3. 115-150% of initial allocation of harvest CP shares.

~~2.3.3.5 Definition of sea time~~

~~Sea time in any of the U.S. commercial fisheries in a harvesting capacity.~~

Council Topic 5

This provision is moved into 2.3.3.1 above.

2.3.3.6 Leasing of QS ("leasing of QS" is defined as the transfer of annual IFQ permit to a person who is not the holder of the underlying QS for use on any vessel and use of IFQ by an individual designated by the QS holder on a vessel which the QS holder owns less that 20% -- same as "hired skipper" requirement in halibut/sablefish program).

Option 1. No leasing of CV QS (QS holder must be on board or own at least 20% of the vessel upon which a designated skipper fishes the IFQ).

Option 2. No leasing of CP QS (QS holder must be on board or own at least 20% of the vessel upon which a designated skipper fishes the IFQ).

Option 3. Allow leasing of CV QS, but only to individuals eligible to receive QS/IFQ by transfer.

Option 4. Allow leasing of CP QS, but only to individuals eligible to receive QS/IFQ by transfer.

Option 5. Sunset [CP – CV] QS leasing provisions [3 – 5 – 10] years after program implementation.

Option 6. No leasing restrictions for the first three years. After this grace period, leasing will be allowed if the entity which also owns 100% of a vessel which made X landings or X% of the primary species shares held by the entity in at least 2 of the most recent 4 years.

Council Topic 21

Option 6 would create a new limited leasing provision. This provision would allow leasing in the first three years of the program. Thereafter, leasing would be allowed on a limited basis for shareholders that used shares on a vessel owned by the shareholder.

2.3.3.7 Separate and distinct harvest share use caps

~~Vessel use caps on harvest shares harvested on any given vessel shall be set at two times the individual use cap for each species. Initial issuees that exceed the use cap are grandfathered at their current level as of a control date of April 3, 2003; including transfers by contract entered into as of that date.~~ Caps apply to all harvesting categories by species with the following provisions:

1. Apply individually and collectively to all harvest share holders in each sector and fishery.
2. Percentage-caps by species are as follows (a different percentage cap may be chosen for each fishery):
   i. Trawl CV and~~/or~~ CP (can be different caps):

   Use cap based at the following percentile of catch history for the following species:
   (i.e., 75th percentile represents the amount of harvest shares that is greater than the amount of harvest shares for which 75% of the fleet will qualify.)

   pollock, Pacific cod, deepwater flatfish, rex sole, shallow water flatfish, flathead sole, Arrowtooth flounder, northern rockfish, Pacific ocean perch, pelagic shelf rockfish

   Suboption 1. 75 %

   Suboption 2. 85%

   Suboption 3. 95 %

ii. Longline and Pot CV and/or CP (can be different caps)
based on the following percentiles of catch history for the following species:
Pacific cod, pelagic shelf rockfish, Pacific ocean perch, deep water flatfish (if Greenland turbot is targeted), northern rockfish
Suboption 1. 75 %
Suboption 2. 85%
Suboption 3. 95 %

3. Conversion of CP shares:
   i. CP shares converted to CV shares
   Option 1. will count toward CV caps
   Option 2. will not count toward CV caps at the time of conversion.
   ii. Caps will be applied to prohibit acquisition of shares in excess of the cap. Conversion of CP shares to CV shares alone will not require a CP shareholder to divest CP shares for exceeding the CP share cap.

Vessel use caps on harvest shares harvested on any given vessel shall be set at two times the individual use cap for each species. Initial issuees that exceed the individual or vessel use caps are grandfathered at their current level as of a control date of April 3, 2003, including transfers by contract entered into as of that date. *Topic 17*

Changes are in response to staff request for clarification of the provision. The Council might also consider whether ii. should be adapted to apply "high producing fixed gear" and "low producing fixed gear" caps. The deletion of "/or" clarifies that caps will be applied to both catcher vessels and catcher processors.

2.3.3.8 Owner On Board Provisions
Provisions may vary depending on the sector or fishery under consideration (this provision may be applied differently pending data analysis)

i. All initial issues (individuals and corporations) would be grandfathered as not being required to be aboard the vessel to fish shares initially issued as "owner on board" shares. This exemption applies only to those initially issued harvest share units.
   Suboption 1. No owner on board restrictions.
   Suboption 2. A portion (range of 5-100%) of the quota shares initially issued to fishers/ harvesters would be designated as "owner on board."
   Suboption 3. All initial issuees (individual and corporate) would be grandfathered as not being required to be aboard the vessel to fish shares initially issued as "owner on board" shares for a period of 5 years after implementation.
   Suboption 4. Shares acquired in the first five years by original issuee shall:
   a) retain owner on board designation, and
   b) be exempt from owner on board provisions as long as original issuee holds these shares
   ~~Suboption 4. Shares transferred to initial issuees in the first 5 years of the program would be considered the same as shares initially issued (range of 5 - 100% of the quota shares). See above NOTE~~
   ~~Suboption 5. "Owner on board" shares transferred by initial issuees, after the grace period, would require the recipient to be aboard the vessel to harvest the IFQ.~~
   Suboption 5~~6~~. In cases of hardship (injury, medical incapacity, loss of vessel, etc.) a holder of "owner on board" quota shares may, upon documentation and approval, transfer/lease his or her shares a maximum period of (Range 1-3 years) out of any 10 year period.

~~ii. Vessel categories for owner on board requirements~~

~~Option 1. No Categories~~
~~Option 2. Vessel Categories as follows~~
~~Vessels < 60'~~
~~Vessels >= 60' and < 125'~~
~~Vessels >= 125'~~

Topic 20

Revisions to i. are clarifications requested by staff. If remaining provisions are intended to be two options, the Council could clarify that by combining Suboptions 2, 3, 4, and 5 into a single option, while re-labeling Suboption 1 as a single option. Council should clarify which provisions would be combined to make a single working provision.

The deletion of ii. is in response to a staff request for clarification on how and whether the Council intended to apply vessel length categories.

2.3.3.9 Overage Provisions

i. Trawl CV and CP:

Suboption 1. Overages up to 15% or 20% of the last trip will be allowed— greater than a 15% or 20% overage result in forfeiture and civil penalties. An overage of 15% or 20% or less, results in the reduction of the subsequent year's annual allocation or IFQ. Underages up to 10% of last trip harvest shares (or IFQ) will be allowed with an increase in the subsequent year's annual allocation (or IFQ).

Suboption 2. Overage provisions would not be applicable in fisheries where there is an incentive fishery that has not been fully utilized for the year. (i.e., no overages would be charged if a harvest share (or IFQ) holder goes over his/her annual allocation (or IFQ) when incentive fisheries are still available).

ii. Longline and pot CV and CP:

Overages up to 10% of the last trip will be allowed with rollover provisions for underages— greater than a 10% overage results in forfeiture and civil penalties. An overage of less than 10% results in the reduction of the subsequent year's annual allocation or IFQ. This provision is similar to that currently in place for the Halibut and Sablefish IFQ Program (CFR 679.40(d)).

Suboption. Overages would not be applicable in fisheries where there is an incentive fishery that has not been fully utilized for the year. (i.e., no overages would be allowed if a harvest share (or IFQ) holder goes over his/her annual allocation (or IFQ) when incentive fisheries are still available).

2.3.3.10 Retention requirements for rockfish, sablefish and Atka mackerel:

Option 1. no retention requirements.

Option 2. require retention (all species) until the annual allocation (or IFQ) for that species is taken with discards allowed for overages

Option 3. require 100% retention (all species) until the annual allocation (or IFQ) for that species is taken and then stop fishing.

2.3.3.11 Limited processing for CVs

Option 1. No limited processing

Option 2. Limited processing of rockfish species by owners of CV harvest shares is allowed up to 1 mt of round weight equivalent of rockfish per day on a vessel less than or equal to 60ft LOA.

2.3.3.12 Processing Restrictions

Option 1. CPs may buy CV fish

Suboption. 3 year sunset

Option 2. CPs would be prohibited from buying CV fish

Option 3. CPs are not permitted to buy fully utilized species (cod, pollock, rockfish, sablefish, and allocated portion of flatfish) from CVs.

Suboption. Exempt bycatch amounts of these species delivered with flatfish.

2.4 Allocation of Secondary ~~Bycatch~~ Species

Thornyhead, rougheye, shortraker, other slope rockfish, Atka mackerel, and trawl sablefish

Includes SEO shortraker, rougheye, and thornyhead rockfish.

i. Allocation of shares

Option 1. Allocate shares to all fishermen (including sablefish & halibut QS fishermen) based on fleet bycatch rates by gear:

Suboption 1. based on average catch history by area and target fishery

Suboption 2. based on 75th percentile by area by target fishery

Option 2. Allocation of shares will be adjusted pro rata to allocate 100% of the annual TAC for each bycatch species.

Suboption 1. Other slope rockfish in the Western Gulf will not be allocated, but will be managed by MRB and will go to PSC status when the TAC is reached.

~~Suboption 2. Pro rata bycatch reduction allowances in open access fisheries reduced from historical bycatch rates at :~~

~~i. 5%~~

~~ii. 10%~~

~~iii. 15%~~

Topic 26

Deletion of suboption 2 would remove the secondary species reductions in the open access fishery under mandatory cooperative alternatives. This revision could be intended to recognize that secondary species have a landed value and are likely to be retained. PSC reductions would be made under the mandatory cooperative alternatives.

Option 3. Bycatch allocations will be awarded to the owners of sablefish and halibut QS, rather than the LLP holders.

ii. Include these species for one gear type only (e.g., trawl). Deduct the ~~bycatch~~ secondary species catch from gear types from TAC. If deduction is not adequate to cover ~~bycatch~~ secondary species catch in other gear types, on a seasonal basis, place that species on PSC status until overfishing is reached.

iii. Retain these species on bycatch status for all gear types with current MRAs.

iv. Allow trawl sablefish catch history to be issued as a new category of sablefish harvest shares ("T" shares) by area. "T" shares would be fully leasable, exempt from vessel size and block restrictions, and retain sector designation upon sale.

Suboption. These shares may be used with either fixed gear or trawl gear.

v. Permit transfer of ~~bycatch~~ secondary species QS

Option 1. ~~Groundfish harvest~~ Primary species shares and secondary species ~~bycatch~~ shares are non-separable and must be transferred as a unit.

Option 2. ~~Groundfish harvest~~ Primary species shares and secondary species ~~bycatch~~ shares are separable and may be transferred separately

2.5 PSC Species

2.5.1 Accounting of Halibut Bycatch

Pot vessels continue their exemption from halibut PSC caps.

Hook and line ~~and trawl entities~~

~~Option 1. Same as that under IFQ sablefish and halibut programs~~

~~Option 2. Cooperatives would be responsible for ensuring the collective halibut bycatch cap was not exceeded~~

~~Option 3. Individual share or catch history owners would be responsible to ensure that their halibut bycatch allotment was not exceeded~~

Option 1: Modeled after sablefish IFQ program (no direct inseason accounting of halibut PSC. Holders of halibut IFQ are required to land legal halibut. Estimates of sub-legal and legal size incidental mortality are accounted for when setting annual CEY.

Option 2: Halibut PSC will be managed through harvest share allocations.

Option 3: Holders of halibut IFQ are required to land legal halibut. Halibut bycatch occurring without sufficient IFQs would count against PSC harvest share allocations.

Option 4: Continue to fish under PSC caps.

Trawl Entities:

Option 1: Halibut PSC will be managed through harvest share allocations.

Option 2: Continue to fish under PSC caps.

Topic 18

Revisions to this section are in response to staff requests for clarification. The changes to the hook and line provisions would create four options for management of halibut bycatch. Under the first option, management would be patterned after the current management of halibut bycatch in the sablefish fishery. The option would not limit halibut bycatch for hook and line participants, but would account for halibut bycatch using an estimate based on previous years' bycatch rates. It is assumed that estimated mortality from the bycatch would be deducted from the allocations to other fisheries, including the halibut longline fishery. The provision may create little or no incentive for hook and line participants that are not IFQ holders to control halibut bycatch. Halibut IFQ holders would have an incentive to reduce bycatch to the extent that they perceive that excessive bycatch results in a reduction of IFQ allocations in future years.

Under the option 2, hook and line fishermen would be allocated PSC shares, which would be used to manage halibut bycatch. Harvest of primary and secondary species would be limited to those holding unused halibut PSC shares.

Option 4 would apply PSC caps to hook and line participants, as are currently used for managing hook and line halibut PSC harvests.

Option 3 is a suboption that would apply under option 2. The Council could also require that any holder of halibut IFQ land legal halibut under options 1 and 3; however, the second sentence, only applies to a program with PSC share allocations and may be deleted if option 1 is selected and modified if option 4 is selected.

The provisions concerning trawl vessels would either maintain current management under PSC cap provisions or would move those vessels to a PSC share program.

2.5.2 Halibut PSC Allocation

Each recipient of fishing history would receive an allocation of halibut mortality (harvest shares) based on their allocation of the ~~directed fishery harvest~~ primary species shares. Secondary species ~~Bycatch only species~~ would receive no halibut allocation.

Initial allocation based on average halibut bycatch by directed primary ~~target~~ species during the qualifying years. Allocations will be adjusted pro rata to equal the existing PSC cap.

By sector average bycatch rates by area by gear:

Option 1. Both sectors

Option 2. Catcher Processor/Catcher Vessel

2.5.3 Annual transfer/Leasing of Trawl or Fixed Gear Halibut PSC mortality

Halibut PSC harvest shares are separable from primary ~~target~~ groundfish harvest shares and may be transferred independently within sectors. When transferred separately, the amount of Halibut PSC allocation would be reduced, for that year, by:

Option 1. 0%

Option 2. 5%

Option 3. 7%

Option 4. 10%

~~Option 5. Exclude any halibut PSC transferred for participation in the incentive fisheries~~

Option 5: Exclude any halibut PSC transferred for participation in the incentive fisheries (includes transfers outside the cooperative).

Option 6: Exclude any halibut PSC transferred within a cooperative.

Topic 18

Option 5 is similar to the existing Option 5, but clarifies that transfers outside a cooperative would not be subject to the reduction. Option 6 would be used to clarify that no reduction would be made for transfers within a cooperative, if the Council should elect to make any reductions in shares for transfers outside of cooperatives.

2.5.3.1 PSC Reduction for Non-Members of Cooperatives

Non-members of cooperatives would have PSC reduced by:

i 5%

ii 15%

iii 30%

PSC reduction will not apply to low-producing fixed gear participants.

Topic 26

This provision would be used to apply PSC reductions for non-members of cooperatives. The exemption of low producing fixed gear participants could be applied, if the Council believes that there is a reason not to penalize these participants for not joining a cooperative and a reason for penalizing others.

2.5.4 Permanent transfer of Halibut PSC harvest share mortality

Option 1. Groundfish harvest shares and Halibut PSC harvest shares are non-separable and must be transferred as a unit

Suboption. exempt Pacific cod

Option 2. Groundfish harvest shares and Halibut PSC harvest shares are separable and may be transferred separately

2.5.5 Retention of halibut bycatch by ~~longline~~ fixed gear vessels

~~Halibut bycatch may be retained outside the halibut season from Jan 30 to start of commercial fishery, and from end of commercial fishery through December 15.~~

~~Option 1. retention is limited to (range 10-20%) of target species~~

~~Option 2. permit holder must have sufficient harvest shares (or IFQ) to cover landing~~

Halibut bycatch may be retained outside the halibut season from Jan. 1 to start of commercial fishery, and from end of commercial fishery through Nov. 15. Any person retaining halibut must have adequate halibut IFQ to cover the landing. Retention is limited to (range 10-20%) of primary species.

Option 1: In all GOA areas.

Option 2: Limited to Areas 3A, 3B, and 4A.

Topic 18

The revisions respond to requests for clarification of provisions by staff. The provision clarifies that halibut retention will require IFQ and will be permitted for a limited period outside of the halibut season. Retention of halibut would also be limited to a specified percentage of primary species. The options would allow for consideration of two areas in which the provisions could be applied. IPHC approval will be required for any retention of halibut outside of the standard halibut season.

2.6 Incentive species

Arrowtooth flounder, deepwater flatfish, flathead sole, rex sole, shallow water flatfish.

Owners of shares must utilize all their shares for an incentive species before participating in incentive fishery for that species.

Option. The portion of historic unharvested West Yakutat TAC will be made available as an incentive fishery, subject to provision of incentive fisheries

2.6.1 Eligibility to fish in the incentive fisheries

A. The unallocated QS for the incentive fisheries are available for harvest, providing the vessel has adequate PSC and ~~bycatch~~ secondary species and the vessel is a member of a GOA fishing cooperative.

~~B. Any quota holder qualified to be in a coop.~~

B. Open access participants will be permitted to harvest incentive species as long as the open access fishery remains open and NMFS determines that the secondary and PSC allocations remaining in the open access fishery are adequate to support prosecution of incentive species.

C. Any holder of halibut or sablefish IFQ that has adequate IFQ or PSC and secondary species. The AP requests the Council task the IFQ Implementation Team with developing options for accessing incentive species and managing halibut bycatch.

Topic 23

The additional provisions respond to staff requests for clarification of whether incentive species could be retained by participants in an open access fishery in a mandatory cooperative program and by halibut and sablefish IFQ holders.

2.6.2 Catch accounting for the incentive fisheries – Allocated QS and Incentive fishery quota

Option 1. The individual coop member's apportionment of the allocated incentive species QS must be used prior to the individual gaining access to the incentive fishery unallocated portion. The coop will notify NMFS when a vessel enters the incentive fishery quota pool.

Option 2. The coop's allocation of incentive species QS must be fished before gaining access to the unallocated portion of the incentive species quotas. The coop members through a contractual coop agreement will address catch accounting amongst the coop members.

Option 3. For vessels not participating in a sector coop, the unallocated incentive species are available for harvest once the non-coop sector's allocation of the incentive species has been used or individual IFQ holder's allocation of the incentive species has been used.

Option 4. For open access participants, the harvest of incentive species quota allocated to open access participants must be fished prior to gaining access to the unallocated portion of the incentive species quota.

Topic 24

Option 4 provides that the allocated shares of incentive species must be harvested prior to the deduction of open access harvests of incentive species from the unallocated portion of those quotas. The provision parallels requirements for harvest of incentive species by cooperatives and individuals.

2.7 Preserving entry level opportunities for P. cod

~~2.7.1 P. cod harvest share for H&L and pot lowest producer would remain "tied" to a block of quota and could only be permanently sold or transferred as a block.~~

Each initial allocation of P.cod harvest shares based on the final year of the qualifying period to fixed gear catcher vessels below the block threshold size would be a block of quota and could only be permanently sold or transferred as a block.

Option 1. 10,000 pounds constitutes one block

Option 2. 20,000 pounds constitutes one block

Option 3 No Block Program

Topic 27

2.7.2 Eligible participants would be allowed to hold a maximum of:

Option 1, 1 block

Option 2. 2 blocks and any amount of unblocked shares

Option 3. 4 blocks

Suboption. Lowest producer harvest shares earned as a bycatch in the halibut sablefish ITQ program would be exempt from the block program

Topic 27

Modifications to 2.7 clarify the block program provisions. The provision from the June motion does not clearly identify shares that would be subject to the program. The change to 2.7.2 would allow a person to hold both unblocked shares and blocks. This provision may aid persons developing holdings to transition from holders of blocked shares to holders of larger allocations.

2.8 Skipper/Crew

A skipper is defined as the individual owning the Commercial Fishery Entry Permit and signing the fish ticket.

Option 1. No skipper and/or crew provisions

Option 2. Allocate to skippers and/or crew

Suboption 1. Initial allocation of 5% shall be reserved for captains and/or crew

Suboption 2. Initial allocation of 10% shall be reserved for captains and/or crew

Suboption 3. Initial allocation of 15% shall be reserved for captains and/or crew

Option 3. Establish license program for certified skippers. For initial allocation Certified Skippers are either:

i. Vessel owners receiving initial QS or harvest privileges; or

ii. Hired skippers who have demonstrated fishing experience in Federal or State groundfish fisheries in the BSAI or GOA for 3 out of the past 5 years as documented by a CFEC permit and signed fish tickets and/or appropriate NMFS documentation (starting date for five years is 2003).

Suboption 1. include crew in the license program.

Suboption 2. require that new Certified Skippers licenses accrue to individuals with demonstrated fishing experience (Groundfish – BSAI/GOA, state or federal waters) similar to halibut/sablefish program.

Under any alternative that establishes QS and annual harvest privileges, access to those annual harvest privileges is allowed only when fishing with a Certified Skipper onboard. Certified Skipper Licenses are non-transferable. They accrue to an individual and may not be sold, leased, bartered, traded, or otherwise used by any other individual.

Defer remaining issues to a trailing amendment and assumes simultaneous implementation with rationalization program.

2.9 Communities

Revisions to this section are in response to staff requests for clarification on specific proposed changes to the community protection options. Note, however, that several broad policy questions remain at issue and will need to be addressed in order to prepare a comprehensive analysis of the community protection options under Section 2.9 and their integration with the general rationalization alternatives and options.

Note: Bering Sea/Aleutian Islands communities (CDQ or otherwise) and communities adjacent to the Eastern GOA regulatory area Southeast Outside District (except Yakutat) will not be included in any Gulf rationalization community protection programs.

2.9.1 Regionalization

Regionalization options may be selected under any of the proposed alternatives for Gulf rationalization.

If adopted, all processing licenses (for shorebased and floating processors) will be categorized by region.

- Processing licenses that are regionally designated cannot be reassigned to another region.
- Catcher vessel harvest shares are regionalized based on where the catch was processed, not where it was caught.
- Catcher processor shares, incentive fisheries <u>and secondary species</u> are not subject to regionalization.
- Qualifying years to determine the distribution of shares between regions will be:

  Option 1. consistent with the preferred alternative under "Section 2.2 Qualifying Periods."

  <u>Option 2. 1999 – 2002</u>

- <u>In the event harvest shares are regionalized and the processor linkage option is chosen, a harvester's shares in a region will be linked to the processor entity in the region to which the harvester delivered the most pounds during the qualifying years.</u>

Central Gulf: Two regions are proposed to classify harvesting shares: North - South line at 58 51.10' North Latitude (Cape Douglas corner for Cook Inlet bottom trawl ban area) extending west to east to the intersection with 140º W long, and then southerly along 140° W long.).

The following fisheries will be regionalized for shorebased (including floating) catch and subject to the North - South distribution: Pollock in Area 630; CGOA flatfish (excludes arrowtooth flounder); CGOA Pacific ocean perch; CGOA northern rockfish and pelagic shelf rockfish (combined); CGOA Pacific cod (inshore); GOA sablefish (trawl); WY pollock

There are three proposed changes to the regionalization provisions in Section 2.9.1.

Secondary species are not subject to regionalization

The first change would exclude 'secondary species' from regionalization, as is proposed for catcher processor shares and incentive fisheries. The allocation of secondary species is addressed in Section 2.4. Secondary species are those species that are typically harvested incidentally by fishermen targeting other (primary) species. However, secondary species are also frequently landed and processed, whether they were targeted or harvested incidentally.

Because it will be necessary to have secondary species shares in order to effectively use primary species shares, there is a concern that making secondary species shares subject to both a regionalization designation and a processor linkage could impede transfers and thereby constrain harvest of the primary species. If the intent of secondary species shares is at least partially to support incidental catch of these species in other target fisheries, there exists a contention that these shares must be easily transferable, without regionalization and processor linkages. This may enable harvest of more of the TACs in these multi-species fisheries. In addition, the operations of the fishery and the incidental catch needs would be expected to change under a rationalized system, when individuals have more flexibility in when and where they fish. To the extent that secondary shares are used for incidental catch, the need for these shares may vary and evolve among individual fishermen. This may provide further rationale for developing a flexible, transferable system for secondary species shares.

Linking the secondary species shares to both a specific region and an individual processor may inhibit the ability of fishermen to effectively trade shares where they are needed, as fishermen will likely want to find secondary species shares that 'match' the designations of their primary species shares.[1] This is necessary for the harvester to be associated with only one processor, and to avoid the added costs of delivering primary species and secondary species to different processors in possibly different regions.

The relationship between primary and secondary species shares was discussed at the October Council meeting, however, the proposed change to exclude secondary shares from regionalization may have no effect if the secondary shares are subject to processor linkages. The current processor linkage provisions in Section 3.1 appear to link both primary and secondary species shares to one specific processor. Under the alternatives that include processor linkages, a harvester's processor-linked shares are associated with the processor to which the harvester delivered the most pounds of all groundfish during a specified time period. Because the primary and secondary shares would be linked to the same processor, they would necessarily be delivered in the same region. Thus, even if secondary shares were not 'regionalized' upon allocation, they may still carry a processor linkage in a specific region under several alternatives, which has the same effect as regionalization.

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[1]Note that this argument is only applicable if the Council chooses an option under Section 2.4 that would allow primary and secondary species shares to be transferred separately.

Add option for years 1999 – 2002

The second proposed change would add an option to use 1999 – 2002 as the series of years to determine the distribution of shares between regions. This option was proposed in recognition that delivery patterns likely changed in 1999, with the implementation of Steller sea lion protection measures. This option thus would regionalize the harvest shares based on the location of processing during the first four years the Steller sea lion protection measures were in place, assuming that those patterns better represent preferable delivery patterns under future protection measures than an earlier series of years.

As currently proposed, this option would mean that the regionalization designation would be based on a different set of qualifying years than the harvester allocations and processor linkages.[2] First, a harvester's initial allocation would be determined, using the harvester qualifying years selected in Section 2.2. Then the shares would be regionalized, based on the processing location during 1999 – 2002. Finally, the processor linkages would be applied, again using the harvester qualifying years selected under Section 2.2.

Shares within a region will be linked to the processor entity in the region

The third proposed change would remedy a potential inconsistency should the Council select both the regionalization option and a processor linkage option. The following language was proposed to avoid a situation in which the regional designation conflicts with the processor linkage provisions, preventing a harvester from being able to use his/her shares:

> ***In the event harvest shares are regionalized and the processor linkage option is chosen, a harvester's shares in a region will be linked to the processor entity in the region to which the harvester delivered the most pounds during the qualifying years.***

Depending on the delivery pattern of the individual harvester, a typical harvester could hold shares in both the north and the south regions. The processor linkage provisions in Section 3.1, however, would require a harvester to deliver to the one processor to which he/she delivered the most pounds during the qualifying period. Absent the proposed language, a harvester could hold shares in one region but have an obligation to deliver those shares to a processor in the other region.

In the event both the regionalization and the processor linkage options are chosen, the proposed language resolves the potential conflict by linking a harvester's shares to a processor within each region. Under the proposed provision, a harvester's north region shares would be linked to the processor in the north to which the harvester delivered the most pounds, while the harvester's south region shares would be linked to the processor in the south to which it delivered the most pounds.

Note also that, as written, the provision above suggests that the processor linkage would be applied at the 'entity' (or company) level as opposed to the individual 'facility' level. This is a separate decision point for the Council under Section 3.1.

2.9.2Community Fisheries Quota (CFQ)

Staff notes that the fundamental concept supporting the proposed CFQ Program is that CFQ would be allocated to the administrative entity to benefit and be used by eligible community residents. It is assumed that the long-term quota share is held by the administrative entity, and is not permanently transferred to an eligible community, resident, or any other person. The benefit of the quota share, however, is derived by using the shares, either through leasing to community residents (proposed in 2.9.2.5) or to another harvester that may pay a royalty fee for use of the shares. Thus, under this structure, the administrative

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[2] Option 4 (1998 – 2002, drop 1 year) is the most similar option under consideration in Section 2.2 for qualifying periods.

entity must make a decision (through an application process and criteria) as to the individual residents that may harvest the shares. NOAA GC has indicated that legal concerns exist with extending the discretionary authority of the agency to allocate shares to a separate nonprofit organization. This concept is included in both the CIFT and the CFQ Program. Please see the NOAA GC legal opinion on the CIFT Program (Attachment D) and the resulting staff discussion paper (included in Part I) for further details.

The purpose of the Community Fisheries Quota Program and the Community Quota Purchase Program is to mitigate economic impacts from rationalization on smaller, isolated, Gulf of Alaska fisheries dependent communities. Community fishing quota will provide for the sustained participation of the qualifying communities in the rationalized fisheries and acknowledges the importance of fisheries resources to these communities.

The purpose statement above was proposed as specific guidance, beyond that provided in the goal and purpose statement for the entire Gulf Rationalization EIS, for the CFQ and Community Quota Purchase Program options. It is assumed, if not always stated, that the policy objectives drive the development of appropriate options and program elements to meet the stated goal.

The proposed purpose statement for the CFQ and Community Purchase Program is sufficiently broad to encompass almost any community fisheries policy objective, and will not likely serve to significantly restrict or shape the program elements. 'Providing for the sustained participation of the qualifying communities' may mean protecting the current level of participation by local resident fleets of eligible Gulf communities. It could also mean providing new or increased access to the Gulf fisheries by community residents, or providing benefits, in the form of royalties, investments, or other fisheries-related activities, to the eligible communities. Each of these example goals would facilitate development of a different program.

Note that NOAA GC's legal opinion on the CIFT program identifies potential legal concerns due to the intent that the CIFT program allows the CIFT (and not the Secretary of Commerce) to use its discretion and reallocate IFQs to individual fishermen. NOAA GC has advised Council staff that this same problem arises within the CFQ Program. The program's intent to allow the administrative entity to distribute annual IFQs to community residents has spurred legal concerns regarding a sub-allocation of quota share without Secretarial approval, and thus, without an appeals process.

2.9.2.1 Administrative Entity

The administrative entity representing a community or communities must be a non-profit entity qualified by NMFS.

Option 1. Gulf wide administrative entity

~~Option 2. Regional administrative entities (Western Gulf, Central Gulf, Eastern Gulf)~~

~~Option 3. Multi-community administrative entities~~

~~Option 4. The administrative entity representing a community or communities must be a non-profit entity qualified by NMFS.~~

The first proposed change in this section is to move the language from Option 4 under the section heading of 2.9.2.1. This effectively requires that the administrative entity representing eligible communities be a non-profit entity qualified by NMFS. This qualification requirement is similar to other existing and proposed community programs, such as the CDQ Program and the halibut/sablefish community QS purchase program.[3] The qualification process would need to be developed and included in Federal regulations.

[3]Under the requirements of the halibut/sablefish community quota share purchase program, the non-profit entity must submit the following information to NMFS in order to become qualified: 1) articles of incorporation as a non-profit; 2) statement designating the communities represented by the non-profit; 3) management organization; 4)

The second series of proposed changes would eliminate Options 2 – 4, effectively requiring that the CFQ Program have one Gulf-wide administrative entity to hold quota share on behalf of all eligible communities. Should the Council recommend that only one administrative entity be approved, it negates the need to develop an allocation process by which NMFS would distribute CFQ among several administrative entities. As discussed in October, a competitive allocation process among multiple administrative entities in the Gulf groundfish fisheries may prove overly costly and burdensome to participants relative to the level of anticipated benefits generated by the allocation.[4]

While having one administrative entity simplifies the allocation process between NMFS and the administrative entity, there must also be a method to determine the distribution of that quota among eligible communities. The options to determine the amount of quota share 'designated' to residents of each eligible community are proposed under Section 2.9.2.6.

2.9.2.2 Eligible Communities

Option 1. Population (based on 2000 Census):

a. Less than 1,500
b. Less than 2,500
c. Less than 5,000

d.Less than 7,500

Option 2. Geography

a. Coastal Communities without road connections to larger community highway network
b. Coastal communities adjacent to salt water
c. Communities within 10 nautical miles of the Gulf Coast
d. Communities on the south side of the Alaska Peninsula that are adjacent to Central and Western GOA management areas (including Yakutat) within 5 nautical miles from the water, but not to include Bering Sea communities included under the Western Alaska CDQ program.

Option 3. Historic Participation in Groundfish Fisheries

a. Communities with residents having <u>any</u> commercial permit and fishing activity as documented by CFEC in the last ten years (1993 - 2002)
~~b. Communities determined by the State of Alaska to have met the customary and traditional use threshold for halibut~~

Option 4. Government Structure

a. Communities recognized by the State of Alaska as a first class, second class, or home rule municipality
b. All other eligible communities

The proposed change under Option 3(a) specifies that the qualifying commercial permit and fishing activity is not limited to the Gulf groundfish fisheries. Communities could have landings of <u>any</u> species, whether crab, halibut, herring, salmon, groundfish, etc., during 1993 – 2002 in order to qualify under this

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statement describing the procedures that will be used to determine the distribution of IFQ to eligible community residents; and 5) statement of support from the governing body of the represented communities (68 FR 59564).

[4]***There may be varying levels of scope and anticipated revenues that exist between the CDQ Program and the proposed CFQ Program. The 2002 total revenues and royalties from the six CDQ groups combined are about $70 million and $46 million, respectively (from the 4th quarter 2002 reports, unaudited). By comparison, the value generated by all Gulf groundfish fisheries (excluding sablefish) in 2002 was less than $80 million in ex-vessel revenues (SAFE Report: Economic Status of the Groundfish Fisheries off Alaska, 2002). Thus, The total ex-vessel revenues generated from 5% - 15% of the Gulf groundfish TACs (proposed to be allocated to the CFQ Program) could be roughly valued at $4 - $12 million. Note that the administrative entity or entities would receive less than the ex-vessel values, however, as they would only receive the lease price from the quota.***

option.[5] Should the Council approve the proposed change, it may consider modifying the title of Option 3 to "Historic Fisheries Participation," as clarification that it is not limited only to groundfish fisheries participation. Note also that Option 3(a) specifies that it is necessary to both hold a commercial permit and use that permit to generate fishing activity in order to qualify under this option.

The deletion of Option 3(b) means that the Council would not take into account whether a community was determined by the State of Alaska to have customary and traditional use of halibut in order to become eligible for the CFQ program in the Gulf groundfish fisheries. The customary and traditional use finding is related to whether a community qualifies for the Council's halibut subsistence program, and may not be as relevant a criterion to determine participation in a commercial fisheries program. Under the remaining Option 3(a), a community's historic participation would be based on actual commercial permit and fishing activity as documented by CFEC during the proposed time period.

Preliminary analysis indicates that four communities (Aleneva, Kodiak Station, Women's Bay, Susitna) do not have documented commercial landings during 1993 – 2002 nor do they have a customary and traditional use finding for halibut. Thus, these communities would not be eligible for the program, should either of the historic participation criteria be selected. Should the Council choose to apply Option 3(a), as modified above, no additional communities would be excluded beyond the four identified. All other potentially eligible communities appear to have commercial landings during the specified time period.

Staff notes that Option 1 indicates that the population criterion be based on the 2000 U.S. Census. The U.S. Census is considered to be the most accurate and recent demographic data available, and its use is consistent with similar programs. Should the Council select a maximum population criterion for this program, the implementing regulations would likely also establish a minimum population threshold and require that a community be defined as a Census Designated Place (CDP) under the U.S. Census.[6] Establishing a minimum population standard reduces the potential for future petitions for inclusion in the program by an individual or small group of individuals living in a place solely for the purpose of participating in the program. In addition, a community must be defined as a Census Designated Place (or a city) in the U.S. Census in order to be included in the Census. Thus, no Census data will exist for communities without this designation.

2.9.2.3 Species

Option 1. All rationalized groundfish species

Option 2. Limited to species that can be caught without (hard on) bottom trawling

2.9.2.4 Allocation

Option 1. 5% of annual TAC

Option 2. 10% of annual TAC

Option 3. 15% of annual TAC

2.9.2.5 Harvesting of Shares

~~Option 1. Limited to residents of eligible communities that own their vessels~~

Option 2. Limited to residents of any eligible community

~~Option 3. No limitations on who harvests shares~~

~~Option 4. No offshore leases to CPs.~~

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[5] ***Should the Council choose not to modify Option 3(a) and require that only groundfish landings count toward eligibility, preliminary analysis indicates that six communities with non-groundfish commercial landings would be affected: Akhiok, Cold Bay, Karluk, Nanwalek, Port Graham, and Tyonek. Each of these communities, except Tyonek, also have a customary and traditional use finding for halibut.***

[6] ***The proposed rule for the halibut/sablefish community QS purchase program (Gulf Am. 66) requires that a community be a Census Designated Place under the U.S. Census and have not less than 20 persons and not more than 1,500 persons.***

This proposed change would require that the harvest of CFQ shares be restricted to residents of the eligible communities. In effect, a resident of an eligible community could lease quota share from any administrative entity representing any of the eligible communities. This provides for a limited number of persons that could potentially participate in the program, without restricting the administrative entity to leasing quota share only to the residents of the community or communities it represents. It is assumed that this provision is proposed in order to provide flexibility in the event that an eligible community does not have a qualified resident to harvest its shares in a given year. In that case, the shares could be used by a resident of another eligible community and reduce the risk that the shares remain unharvested.

This issue spurs the question of whether a priority would need to be established to ensure that the residents of the represented community have priority over residents of other eligible communities. If only one administrative entity is designated to hold all of the CFQ for every eligible community, the entity would need to monitor the use of the shares and ensure that the residents of each community have the opportunity to fish their 'designated' shares. Note that in order to be eligible to harvest CFQ, a person would have to be a resident of an eligible community (under the proposed change) and also meet the eligibility criteria selected to receive harvest shares by transfer under Section 2.3.3.1.

Note that this issue applies regardless of the entity (administrative nonprofit or NMFS) that is leasing the shares to community residents. This section should be considered in the context of NOAA GC's legal opinion on the CIFT Program, which has similar applicability to the CFQ Program structure. The program's design to allow the administrative entity to distribute annual IFQs to community residents has spurred legal concerns regarding a sub-allocation of quota share without Secretarial approval, and thus, without an appeals process.

~~2.9.2.6 Use of Revenue~~

~~Option 1. Community development projects that tie directly to fisheries or fishery related projects and education.~~

~~Option 2. Community development projects that tie directly to fisheries and fisheries related projects, education and government functions.~~

~~Option 3. Education, social and capital projects within eligible communities as well as governmental functions~~.

The proposed change would eliminate the options to restrict the use of revenue generated by the use (leasing) of CFQs to specific types of projects. This means that the administrative entity would not be limited in how it could spend revenues resulting from the leasing of CFQ.

<u>If the primary intent of the program is to lease quota to eligible community residents</u> in order to allow them an opportunity to participate in the Gulf groundfish fisheries, it is unlikely that a significant amount of revenue would be generated. The allocations and benefits associated with each eligible community may remain relatively small, due to the smaller, area-specific TACs in the Gulf of Alaska and the number of communities that may be determined eligible. In addition, while a resident may lease CFQ at fair market value, it is also foreseeable that the administrative entity would lease quota at less than fair market value (or no cost) in order to meet the intent of providing opportunities and benefits to resident fishermen. The overall intent of the program appears to be to lease quota to fishermen in rural communities that would not otherwise have the financial means to purchase QS – if so, this may negate the need to regulate the use of revenue generated from that process.

<u>If, however, the intent is for the administrative entity to derive revenues from the allocations</u> to support community development projects, it may be appropriate to restrict the use of revenues. However, any restriction on the use of revenues would necessitate a significant increase in the level of administrative oversight necessary for the program, in that NMFS would be required to review and approve each

proposed project to ensure that the use of the revenue complies with the restriction. The cost of increased administrative oversight would have to be weighed against the level of anticipated benefits or revenues derived from the program to determine whether revenue use restrictions are appropriate.

2.9.2.6 Allocation Basis

The initial allocation (harvest shares) of CFQ would be made to the administrative entity representing eligible communities.

Option 1. There would be equal distribution amongst qualified communities of 50% of the Gulf CFQ. There would be pro rata distribution by population amongst qualified communities of 50% of the Gulf CFQ.

The current options propose that the Secretary allocate 5% - 15% of the overall Gulf quota share to the CFQ Program. The options under 2.9.2.1 propose that the quota share be allocated to one Gulf-wide administrative entity representing all eligible communities. However, a method or criteria for determining how much CFQ is associated with each eligible community must also be developed. Option 1 under Section 2.9.2.6 provides one method for determining the distribution of quota share among eligible communities.

Option 1 would allocate half of the CFQ based on being an eligible community and the other half based on population. The implications of this formula are shown in Table 1, based on a preliminary estimate of the number of communities that may be eligible for the program under a specified set of criteria. Table 1 applies a population criterion of less than 7,500 persons, which results in a range of communities from 22 persons to 6,334 persons (based on the 2000 U.S. Census). This table by no means presupposes the actual list of eligible communities or the eligibility criteria that would be selected by the Council. It is only used as an example, to show the distribution of CFQ that would result under the formula in Option 1.

The formula for distributing CFQ under Option 1 would clearly benefit the larger of the eligible Gulf communities in terms of total quota, as half of the quota would be allocated based on population. The example list of eligible communities in Table 1 indicates that the smallest communities would receive less than 2% of the total annual CFQ allocated to the program, and the largest community would receive 21%. The vast majority of communities would receive 2% - 4%, with the three largest communities receiving approximately 7% (Larsen Bay), 9% (Cordova), and 21% (Kodiak).

Whether this formula is appropriate for the program is a policy decision for the Council. The option clearly favors the larger communities in terms of total CFQ allocated, but may still favor some of the smaller communities in terms of the amount of CFQ per individual resident. Recognizing these differences, and the fact that a community's total population does not represent its number of resident fishermen, the Council may want to consider additional formulas for analysis.

2.9.2.7 Qualification of Administrative Entity

The administrative entity must submit a detailed statement of eligibility to NMFS and the State prior to being qualified. The State may comment on the statement of eligibility but does not have a formal role. The required elements of the eligibility statement will be in regulation.

2.9.2.8 Administrative Oversight

A report submitted to NMFS detailing the use of QS by the administrative entity. The required elements and timing of the report will be outlined in regulation.

Table 1: Draft list of WY, CG, and WG communities (Census Designated Places) that meet the following criteria: 1) population[1] of fewer than 7,500; 2) no road connections to larger community highway network; and 3) within 10 nm of the Gulf coast. No governance criteria or fisheries participation (permit holding/fishing activity) were used to develop this list.

	NAME	CLASS	POP	AREA	% of CFQ[2]
1	Akhiok	Second Class City	80	CG	2.0%
2	Aleneva	Unincorporated	68	CG	1.9%
3	Chenega Bay	Unincorporated	86	CG	2.0%
4	Chignik	Second Class City	79	CG	2.0%
5	Chignik Lagoon	Unincorporated	103	CG	2.0%
6	Chignik Lake	Unincorporated	145	CG	2.2%
7	Chiniak	Unincorporated	50	CG	1.9%
8	Cold Bay	Second Class City	88	WG	2.0%
9	Cordova[2]	Home Rule City	2,454	WY	9.2%
10	Halibut Cove	Unincorporated	35	CG	1.8%
11	Ivanof Bay	Unincorporated	22	WG	1.8%
12	Karluk	Unincorporated	27	CG	1.8%
13	King Cove	First Class City	792	WG	4.1%
14	Kodiak	Home Rule City	6,334	CG	21.0%
15	Kodiak Station	Unincorporated	1,840	CG	7.3%
16	Larsen Bay	Second Class City	115	CG	2.1%
17	Nanwalek	Unincorporated	177	CG	2.3%
18	Old Harbor	Second Class City	237	CG	2.4%
19	Ouzinkie	Second Class City	225	CG	2.4%
20	Perryville	Unincorporated	107	WG	2.0%
21	Port Graham	Unincorporated	171	CG	2.2%
22	Port Lions	Second Class City	256	CG	2.5%
23	Sand Point	First Class City	952	WG	4.6%
24	Seldovia	First Class City	286	CG	2.6%
25	Susitna	Unincorporated	37	CG	1.8%
26	Tatitlek[3]	Unincorporated	107	WY	2.0%
27	Tyonek	Unincorporated	193	CG	2.3%
28	Womens Bay	Unincorporated	690	CG	3.8%
29	Yakutat[4]	First Class City	680	WY/SEO	3.8%
		TOTAL POPULATION	16,436		100.0%

[1]Population is based on the 2000 U.S. Census.

[2]This column denotes how much of the total CFQ would be designated to each community under the proposed Option 1 in Section 2.9.2.6 (Allocation Basis): 50% of CFQ allocated based on equal distribution and 50% based on population.

[3]Cordova and Tatitlek are considered located in the West Yakutat area. Though located within PWS (Area 649), these communities are inside the longitudinal line used to designate the WY (Area 640) and CG (Area 630) boundary.

[4]Yakutat is located on the boundary of WY and SEO, but is technically located within SEO (Gulf Area 650). Staff has included Yakutat in this list based on the Council's expressed preference to include Yakutat in community options for the Gulf rationalization program.

2.9.3 Community Purchase Program

The purpose of the Community Fisheries Quota Program and the Community Quota Purchase Program is to mitigate economic impacts from rationalization on smaller, isolated, Gulf of Alaska fisheries dependent communities. Community fishing quota will provide for the sustained participation of the qualifying communities in the rationalized fisheries and acknowledges the importance of fisheries resources to these communities.

The purpose statement above was proposed as specific guidance for both the CFQ Program and the Community Purchase Program. Please see Section 2.9.2 for further discussion. Note, however, that the comments under Section 2.9.2 regarding NOAA GCs legal opinion on the CIFT and CFQ Program do not apply under the Community Purchase Program. The Community Purchase Program does not involve a delegation of Secretarial authority to an organization representing a community; by contrast, its purpose is to allow for a new category of QS holder that is eligible to purchase quota share on the open market.

2.9.3.1 Administrative Entity

Option. The administrative entity representing a community or communities must be a non-profit entity qualified by NMFS.

2.9.3.2 Eligible communities

Option 1. Population (based on 2000 Census):

a. Less than 1,500
b. Less than 2,500
c. Less than 5,000
d. Less than 7,500

Option 2. Geography

a. Coastal Communities without road connections to larger community highway network
b. Coastal communities adjacent to salt water
c. Communities within 10 nautical miles of the Gulf Coast
d. Communities on the south side of the Alaska Peninsula that are adjacent to Central and Western GOA management areas (including Yakutat) within 5 nautical miles from the water, but not to include Bering Sea communities included under the Western Alaska CDQ program.

Option 3. Historic Participation in Groundfish Fisheries

a. Communities with residents having any commercial permit and fishing activity as documented by CFEC in the last ten years (1993 – 2002)
~~b. Communities determined by the State of Alaska to have met the customary and traditional use threshold for halibut~~

The proposed changes above are the same as the proposed changes for the eligibility criteria in the CFQ Program. Please see Section 2.9.2.2 for a discussion of these issues.

Option 4. Government Structure

a. Communities recognized by the State of Alaska as a first class, second class, or home rule municipality
b. All other eligible communities

2.9.3.3 Qualification of Administrative Entity

The administrative entity must submit a detailed statement of eligibility to NMFS and the State prior to being qualified. The State may comment on the statement of eligibility but does not have a formal role. The required elements of the eligibility statement will be in regulation.

2.9.3.4 Administrative Oversight

A report submitted to NMFS detailing the use of QS by the administrative entity. The required elements and timing of the report will be outlined in regulation.

2.9.4 Community Incentive Fisheries Trust (CIFT)

The CIFT has full ownership of CIFT harvest shares and holds these shares in trust for the communities, processors and crewmembers in the region to use as leverage to mitigate impacts directly associated with implementation of a rationalization program.

2.9.4.1 Harvest Share Distribution

10-30 % of harvest shares shall be originally reserved for GOA CIFT associations. These harvest shares will be a pool off the top before individual distribution of harvest shares.

2.9.4.2 CIFT Designation

Option 1. One CV CIFT for entire GOA (exclude SEO)

Option 2. Regional CV CIFTs:

Suboption 1. Central GOA (Kodiak, Chignik)

Suboption 2. Western GOA

Suboption 3. North Gulf Coast (Homer to Yakutat)

Option 3. CP-based CIFT

Defer remaining issues to a trailing amendment

The Council did not propose any changes to the options under the CIFT Program in October. However, staff has provided a separate discussion paper on this program (see Part I), due to a recent legal opinion by NOAA GC (Attachment D). Please refer to this paper for a discussion of the CIFT Program and potential legal implications identified by NOAA GC.

Defer remaining issues to a trailing amendment

2.10 PSC for Crab and Salmon

~~The Council requests that staff prepare a discussion paper showing historical data for the bycatch of salmon and crab by species, area, and year for areas subject to the GOA rationalization program. The Council intends to review these data and develop bycatch measures for salmon and crab which will be implemented as part of this rationalization program. The Council intends to develop options for analysis that could be incorporated no later than the October 2003 meeting.~~

Staff comments on this proposed analysis will be provided at the February 2004 meeting.

Proposed staff analysis on Salmon and Crab bycatch measures

The Council recommends that the alternatives on p.5 of the Salmon and Crab Bycatch Measures for GOA Groundfish Fisheries paper not be adopted at this time and that the analysis be expanded to include, to the extent practical, a discussion of the following:

A comparison of salmon bycatch with hatchery salmon releases (in Alaska, Japan and Canada) and regional salmon run strength and catch of foreign origin salmon.

Red king crab and Bairdi bycatch data relative to population estimates for all gear types.

Use of observer data. The discussion would include a table of the % of observed catch by region by season and methods of extrapolation for unobserved vessels (smaller long line fleet), conversion of observer data to identify catch in State waters, and any known problems with the use of observer data.

Other fisheries in which salmon and crab bycatch occurs — ie. pot codfish and pollock bottom trawl.

The reasons for the high bycatch of the "other salmon" category between 1993-95 and provide salmon bycatch data by month by area.

Description of gear specific salmon and crab mortality rates.

Bairdi bycatch in the pacific cod pot fishery - extrapolate as needed to provide numbers for state waters fishery.

Inclusion in the draft alternatives of a BSAI style bycatch pool hotspot management alternative, an alternative that provides for red king crab bycatch protections and an "other salmon" bycatch protections alternative.

Changes in the regulatory requirements for observer coverage in the pot cod fishery.

Discussion of how crab and salmon bycatch limits integrate with Gulf Rationalization.

Distribution and population information on Tanner and king crab will be provided from survey data.

2.11 Review and Evaluation

2.11.1 Data collection.

A mandatory data collection program would be developed and implemented. The program would collect cost, revenue, ownership and employment data on a periodic basis to provide the information necessary to study the impacts of the program. Details of this program will be developed in the analysis of the alternatives.

2.11.2 Review and Sunset

Option 1. The program would sunset unless the Council decides to continue or amend the program. The decision of whether to continue or amend would be based on a written review and evaluation of the program's performance compared to its objectives.

- Suboption 1. 5 years after fishing under the program
- Suboption 2. 7 years after fishing under the program
- Suboption 3. 10 year schedule after fishing under the program
- Suboption 4. No sunset provision.

Option 2. Formal program review at the first Council Meeting in the 5th year after implementation to objectively measure the success of the program, including benefits and impacts to harvesters (including vessel owners, skippers and crew), processors and communities, by addressing concerns, goals and objectives identified in the problem statement and the Magnuson Stevens Act standards. This review shall include analysis of post-rationalization impacts to coastal communities, harvesters and processors in terms of economic impacts and options for mitigating those impacts. Subsequent reviews are required every 5 years.

2.12 Sideboards

GOA Groundfish sideboards under the crab rationalization plan and under the AFA would be superceded by the GOA rationalization program allocations upon implementation.

~~Participants in the GOA rationalized fisheries are limited to their historical participation based on GOA rationalized qualifying years in BSAI and SEO groundfish fisheries.~~

Vessels (Steel) and LLPs used to generate harvest shares used in a co-op may not participate in other federally managed open access fisheries in excess of sideboard allotments.

Participants in the GOA rationalized fisheries are limited to their aggregate historical participation based on GOA rationalized qualifying years in BSAI and SEO groundfish fisheries.

The Council should consider adding sideboards for the GOA jig fishery, which will not be included in the rationalization program.
Topic 19

The deleted provision is redundant and creates ambiguity of whether sideboards will be applied on an aggregate basis, which is significantly more workable and less costly than application on an individual basis. The added provision clarifies that sideboards for the jig fisheries will be considered.

The Council noted its intent to further develop sideboard measures for analysis.

3 Processing Sector Provisions
3.1 Provisions for a Closed Class of Processors
3.1.1 Harvester Delivery requirements
3.1.1.1 Closed class delivery requirements
3.1.1.1 Option 1. 50-100% of CV harvest share allocation will be reserved for delivery to:
i. the linked qualified closed trawl or fixed class processor.
i. any qualified closed trawl or fixed or large or small class processor
The remaining (50 -0%) CV harvest share allocation can be delivered to:
i. any processor excluding CPs
ii. any processor including CPs
Option 2. Low producing vessels are exempt from closed class delivery requirements
3.1.1.2 Linkage:
Option 1. A harvester's processor linked shares are associated with the qualified fixed or trawl closed class large or small processor to which the harvester delivered the most pounds of groundfish during
Option 2. the last ___ years of the harvester allocation base period.
i. 1
ii. 2
iii. 3
If the processor with whom the harvester is associated with is no longer operating, the harvester is eligible to deliver to any qualified processor.

The Council requests that staff provide a discussion paper addressing the effect of a use cap on the number of processors in a region.

3.1.1.3 Penalties for moving between linked processors

Option 1. No share reduction for moving between processor year to year

Option 2. Share reductions of 10-20% each time a harvester moves to a different linked processor for:

i. 1 year
ii. 2 years
iii. 4 years

The share reduction shall be redistributed to:

i. The shareholders in association with that processor that the shareholder left (if it continues to exist).
ii. To all cooperatives in the sector on a pro rata basis. (applies if mandatory cooperatives)

Option 3. Penalty to move depends on the amount of open access B share fish. Vessel leaves A share for one year.

Suboption 1: Penalty applies to both A and B shares.

Suboption 2: Full penalty applies to first move, subsequent moves are penalized at half of that rate.

Council Topic 13

Closed A share class	Open B share class	Penalty on total amount of A and B shares	Ratio of penalty on A shares to B shares
90%	10%	10%	9:1 (9%)
80%	20%	20%	4:1 16%)
70%	30%	30%	7:3 (21%)
60%	40%	40%	3:2 (24%)
50%	50%	50%	1:1 (25%)

Option 4. One year penalty in open access. Harvester's shares must move as a block with all shares subject to the one-year open access penalty. No open access penalty required if an agreement between coop members and the affiliated processor could be struck.

Council Topic 13

The addition to Option 4 would apply only if the Council adopted an alternative with an open access penalty (Alternative 2 or 3 from the June 2003 table or Alternative 3 from the October tables). The first sentence could be intended to limit the ability of harvesters to take advantage of the open access penalty structure by moving a few shares through the open access to compete with other participants that were using the open access to change cooperative and processor affiliations. If the Council intends to adopt this provision, the limitation should be incorporated into Section 4.6 as well. The second provision provides that no penalty would be applied if a harvester's share move was agreed to by the cooperative and affiliated processor. The Council should also clarify whether this proposed change is intended to create inseparable blocks of all initial allocations. Doing so could reduce long term efficiency gains that could be realized through the division of initial allocations.

Option 5. No penalty. Movement allowed only upon agreement between Coop members and affiliated processor.

3.1.1.4 Low producing vessel provisions

i. Low producing vessels are defined as:

Option 1. H&L or pot CVs receiving less than average QS initially allocated by gear, species and area

Option 2. H&L or pot CVs receiving less than the 75th percentile QS initially allocated by gear, species and area

ii. Provisions for low producing vessels
Option 1. Low producing vessels are exempt from closed class delivery provisions
Option 2. Subject to block program.

3.1.2. Closed Class Processor Qualifications

3.1.2.1 To purchase groundfish required to be delivered to a qualified processor must have purchased and processed a minimum amount of groundfish as described below in at least 4 of the following years:
Option 1. 1995-99.
Option 2. 1995-01
Option 3. 1995-02

Option 1. a. Trawl eligible Processors
Suboption 1. 2000 mt
Suboption 2. 1000 mt
Suboption 3. 500 mt
b. Fixed gear eligible Processors
Suboption 1. 500 mt
Suboption 2. 200 mt
Suboption 3. 50 mt
c. Trawl and Fixed gear eligible processors
Meet criteria for both the closed class trawl process catch and closed class fixed gear process catch as described above

Option 2. a. Large closed class processor
Suboption 1. 2000 MT
Suboption 2. 1000 MT
Suboption 3. 500 MT

b. Small closed class processor
Suboption 1. 500 MT
Suboption 2. 200 MT
Suboption 3. 50 MT

c. Open class processor – no groundfish landing qualifications – can purchase any amount of open class B share QS.

3.1.2.2 Processor history would be credited to (and licenses would be issued to):
Option 1. Operator – must hold a federal or state processor permit.
Option 2. Facility owner
Suboption. Custom processing history would be credited to:
i. the processor that physically processes the fish
ii. the processor that purchases the fish and pays for processing

3.1.2.3 Transferability of eligible processor licenses
Processor licenses can be sold, leased, or transferred.
Option 1. Within the same community
Option 2. Within the same region

3.1.2.4 Processing Use caps by closed class processor type (trawl, fixed or trawl and fixed (low or large), by CGOA and WGOA regulatory areas:
Option 1. Range 70% to 130% of TAC processed for all groundfish species for the largest closed class processor

Option 2. Processing use caps for small closed class processors

i. 1000 to 2000 MT

ii. 2000 to 3000 MT

(Note: There is no limit on the amount of fish either a small or large closed class processor can buy from the open B share classed fish)

3.1.2.5 Processing Caps may apply at:

Option 1. the facility level

Option 2. the entity level

3.1.2.6 Closed class license ownership restrictions on processors

Option 1. No restrictions

Option 2. Trawl/fixed license holders cannot hold any additional fixed gear only licenses.

Option 3. Large closed class processors cannot hold small closed class processors licenses.

4 Cooperative Provisions

4.1 Cooperative type (voluntary or mandatory)

Option 1. Cooperative membership will be voluntary (i.e., harvest shares (IFQ) will be allocated to non-members)

Option 2. Cooperative membership will be mandatory (i.e., harvest shares will be allocated only to cooperatives)

4.2 Cooperative formation

4.2.1 Co-ops can be formed between holders of harvest shares or history of:

~~i. any type~~

~~ii. the same area, gear, vessel type (CV or C/P), and/or vessel length class.~~

~~iii. the following classes of shares/history~~

~~CV trawl~~

~~CV longline~~

~~CV pot~~

~~C/P trawl~~

~~C/P longline~~

~~C/P pot~~

~~iv. All CV in the same area (WGOA and CGOA & WY combined)~~

~~CV trawl~~

~~CV fixed gear~~

~~CV longline~~

~~CV pot~~

Within Alternative 2 in Matrix Table:

Catcher/processors

Trawl catcher vessels

"High producing" fixed gear catcher vessels

"Low producing" fixed gear catcher vessels

Within Alternative 3 in Matrix Table:

Trawl Catcher/processors

Longline catcher/processors

Pot catcher/processors

Trawl catcher vessels

Longline catcher vessels

Pot catcher vessels

Council Topic 4

Each group of share/history holders of a defined class that may form cooperatives is defined as a "sector."

The proposed change clarifies the designation of sectors for cooperative formation as requested by staff. The result of the change is generally consistent with the provisions in the Council, but may need slight modification for the alternatives proposed at the Council's October 2003 meeting.

4.2.1.1 Coop/processor affiliations

Option 1. No association required between processors and coops

Option 2. CV cooperatives must be associated with

a) a processing facility
b) a processing company

The associated processor must be:

a) a licensed processor
b) a qualified processor (if closed processor class is selected)
c) a closed class processor to which the share holder's shares are linked
d) any processing share holder (if processor shares are selected) ***(note: should be deleted)***

Option 3. A harvester is eligible to join a cooperative associated with the qualified fixed or trawl closed class large or small processor to which the harvester delivered the most pounds of groundfish during the last [1, 2, or 3] years of the harvester allocation base period. If the processor with whom the harvester is eligible to form a coop is no longer operating, the harvester is eligible to join a coop with any qualified processor.

Suboption 1. Processors can associate with more than one co-op
Suboption 2. Processors are limited to 1 co-op per plant for each sector.
Suboption 3. Processor affiliated vessels may join coops. (*moved from header*)

Note: A processor association will not be required for a C/P cooperative.

4.2.2 Cooperatives are required to have at least:

Option 1. 4 distinct and separate harvesters (using the 10% threshold rule)
Option 2. 50-100 percent of the harvest shares (or catch history) of its sector (may choose different percentages for different sectors)
Option 3. 50-100% of shareholder entities belonging to its sector. Council may choose different percentages for different sector.
Option 4. 50-75 percent of the harvest shares (or catch history) of the eligible harvest share (or catch history) for each coop associated with its processor

Note: Requirements may differ across sectors (or for CV and CP cooperatives)

4.2.3 Duration of cooperative agreements:

Option 1. 1 year
Option 2. 3 years
Option 3. 5 years

4.2.4 Allocation Prerequisites

Allocations to CV co-ops will only be made under the following conditions:

Required Co-op agreement elements:

Harvesters and processors are both concerned that rationalization will diminish their current respective bargaining positions. Therefore, a pre-season co-op agreement between eligible,

willing harvesters and an eligible, and willing processor is a pre-requisite The co-op agreement must contain a fishing plan for the harvest of all co-op fish.

4.3 Rules Governing Cooperatives

4.3.1 Annual Allocations

Option 1. Annual allocations of cooperative members would be issued to the cooperative.

Option 2. Annual allocation of the sector would be issued to the sector cooperative (if "true" sector cooperative alternative is selected)

- Co-op members may internally allocate and manage the co-op's allocation per the co-op membership agreement. Subject to any harvesting caps that may be adopted, member allocations may be transferred and consolidated within the co-op to the extent permitted under the membership agreement.
- Monitoring and enforcement requirements would be at the co-op level. Co-op members are jointly and severally responsible for co-op vessels harvesting in the aggregate no more than their co-op's allocation of ~~target~~ primary species, ~~non-target~~ secondary species and halibut mortality, as may be adjusted by interco-op transfers.
- Co-ops may adopt and enforce fishing practice codes of conduct as part of their membership agreement. Co-ops may penalize or expel members who fail to comply with their membership agreement.
  Processor affiliates cannot participate in price setting negotiations except as permitted by general antitrust law.
- Co-ops may engage in inter-cooperative transfers to the extent permitted by rules governing transfers of shares among sectors (e.g., gear groups, vessel types).
- Require that a cooperative accept membership of any eligible participant subject to the same terms and conditions that apply to other cooperative members.

Council Topic 14

The change is consistent with a staff suggestion that is intended to limit the ability of a majority of a cooperative to exert excessive bargaining power over persons eligible for membership. This provision alone may not be sufficient to address all issues of bargaining power in a mandatory cooperative program (see discussion of cooperative rules in the alternative descriptions above).

4.4 Ownership and Use Caps and Underages

4.4.1 Set co-op use caps at 25 to 100% of total TAC by species (must choose 100 percent for a "true" sector cooperative)

4.4.2 Coop use caps for harvest shares on any given vessel shall be:

Option 1. Set at the same level as the individual vessel level.

Option 2. 3 times individual vessel use cap.

Option 3. No use caps

- To effectively apply individual ownership caps, the number of shares or history that each cooperative member could hold and bring to cooperatives would be subject to the individual ownership caps (with initial allocations grandfathered). Transfers between cooperatives would be undertaken by the members individually, subject to individual ownership caps.

- Underage limits would be applied in the aggregate at the co-op level

4.5 Movement between cooperatives

4.5.1 Harvesters may move between cooperatives at:

Option 1. the end of each year.

Option 2. the expiration of the cooperative agreement.

Option 3. No movement in the first two years

4.5.2 License Transfers Among Processors (applies only if closed class of processors)

Option 1. any cooperative association with that license will transfer to the processor receiving the license. All harvest share/history holders will be subject to any share reduction on departing the cooperative, as would have been made in the absence of the transfer.

Option 2. any cooperatives associated with the license will be free to associate with any qualified processor. Harvest share/history holders in the cooperative will be free to move among cooperatives without share/history reduction.

4.6 Non-Members of Cooperatives (applies only if mandatory cooperatives)

4.6.1 Harvest share/history holders that do not choose to join a co-op

Option 1. May fish in open access, provided NMFS determines that the non-cooperative allocation is sufficient to conduct an open access fishery. The open access fishery will be comprised of all shares of harvesters that are not cooperative members of the same sector (i.e., area, vessel type (CV or C/P), and/or gear). NMFS will have the discretion to determine the distribution of bycatch among target species open access fisheries from shares of harvesters <u>in the open access fishery</u> ~~holding bycatch~~ ~~shares for multiple target fisher~~ies.

Option 2. Are not allowed to participate in the rationalized fisheries until they join a co-op.

The change clarifies that only the shares of participants in the open access are intended to be used in the open access fishery.

<u>Sections 5 and 6 concerning the halibut and sablefish IFQ program and SEO fisheries</u>

Sections 5 and 6 are possible responses to staff's request that the Council clarify the interaction of the program with the halibut and sablefish IFQ program and the application of the program in Southeast Outside, where only secondary species will be allocated. Staff's initial comments on the provisions are included in the text below. These comments are preliminary and may be addressed as the provisions of these sections are developed.

Sections 5 and 6 are a starting place for developing a program for the partial inclusion of halibut and sablefish IFQ holders and SEO in the rationalization program. Both sets of provision will need further attention and development. Assuming the Council accepts these proposals, the IFQ implementation team would develop provisions for IFQ holders. No similar provisions for further development exists for section 6.

Additional information should be available to assist with the development of these sections, once the analysis has progressed. The Council, however, will need to more clearly describe the management of halibut and sablefish IFQ fisheries and SEO fisheries, if the Council chooses to partially incorporate those fisheries into the rationalization program.

5- Provisions relating to the IFQ halibut/sablefish fishery.

5.1 Management areas:

Applies to Sablefish areas SE, WY, CG, WG. Applies to halibut areas 2C, 3A, 3B, 4A.

5.2 Primary species include: P.cod, Greenland turbot, POP,

A) QS will be issued to the halibut/sablefish owner at the time of landing while harvesting halibut or sablefish IFQ during the qualifying period. Any QS/IFQ issues for these primary species will not be subject to regionalization, mandatory coop, closed class processor, or processor linkage provisions of GOA rationalization.

This provision clarifies the species for which shares will be awarded based on retained catch. One issue that will arise with respect to analysis (and more importantly administration) of this provision is that harvest records do not identify the specific IFQ that authorize the landing of any groundfish necessary to allocate shares based on landings related to an IFQ. In some cases, a relationship may be inferred using the date of landing and permit holder, but the specific relationship cannot be determined with any certainty and in some cases may be impossible to infer. So, the initial allocation of shares based on specific harvest history records as proposed is not possible.

Another aspect of this provision should be clarified. The provision states that the allocation would be made to the "owner at the time of landing". The provision is assumed to refer to the holder of the QS at the time the qualified landing occurred. Although this provision might be intended to award shares based on history, it is unclear why the allocation should not be made to the share holder at the time of the allocation. If allocations of these groundfish species are intended to support incidental catch by halibut and sablefish IFQ holders, awarding shares to persons that have sold their shares may not satisfy that need. In other words, as drafted the provision would allocate groundfish to persons who sold all of their halibut and sablefish IFQ based on any landings they made of groundfish. Allocations to the holder of the shares at the time of the landing suggest that the allocation has a broader purpose than to support the use of halibut and sablefish IFQ, but is instead intended to support direct participation in the groundfish fisheries by IFQ holders. Arguably, a person that transfers halibut QS forsakes the right not only to harvest halibut, but also the ancillary harvests of other species that are made along with the IFQ harvests. Otherwise, the Council should clarify that participants in the halibut fishery have a direct interest in the halibut fishery that is independent of their interests in the halibut IFQ.

There is likely no perfectly clean solution to this allocation issue. Some halibut IFQ participants that hold LLPs target groundfish and record those landings on groundfish tickets, while others record all groundfish landings on halibut fish tickets.

5.3 Secondary species include RE/SR, Thornyheads, Pelagic **shelf**, Other Slope, Northern, and Other rockfish. Allocation to the halibut/sablefish IFQ fishery shall be determined by:

A) Sablefish: Allocation based on the average rate and 75th percentile of observed bycatch rates, by area (the rate which 75% of observed sets did not exceed)

B) Halibut: Allocation based on the average rate and 75th percentile of bycatch rates experienced in IPHC surveys by area (the rate which 75% of survey sets did not exceed).

The IPHC survey data will look at the years 1995-2002 and 1998-2002.

This provision provides for the allocation of rougheye/shortraker, thronyhead, pelagic rockfish, other slope rockfish, northern rockfish, and other rockfish as secondary species based on observed bycatch rates. The provision is similar to the provisions for the allocation of secondary species to groundfish participants except:

1) pelagic shelf rockfish and northern rockfish are allocated as target species for groundfish participants. The Council should clarify its rationale for not using the same allocation method for all participants. If halibut and sablefish QS holders receive an allocation based on average incidental catch rates, the allocation of these species will favor IFQ participants over groundfish participants, who will receive an allocation based only on retained catch. The provision would result in relatively larger allocations to participants (including IFQ holders) with higher discard rates and smaller allocations to those with lower discard rates.

5.3.1 Management provisions for secondary species

A) Management of RE/SR, Thornyheads, Pelagic, Other Slope, Northern, and Other rockfish shall be

Option 1: Managed in aggregate on an area basis using current MRA regulations.

Option 2: Allocated to individual sablefish or halibut QS owners proportional to their QS holdings. Secondary species QS can only be permanently transferred with the underlying parent QS, but IFQ may be leased across vessel categories and species within the halibut and sablefish IFQ program.

Suboption 1: Allow an individual to choose, on an annual basis, individual allocations or to participate in the common pool.

Suboption 2: Allow a 7 day grace period after an overage occurs for the owner to lease sufficient Secondary species IFQ to cover the overage. Failure to secure sufficient IFQ would result in forfeiture of the overage and fines.

B) An estimate of non commercial use of secondary species will be made based on observer and IPHC data. Non commercial use of secondary species for gurdy bait will not require QS/IFQ.

C) Require full retention of Secondary species listed under A.

Further, the Council requests the IFQ implementation team review these options once the observer and IPHC data becomes available

Under option 1, secondary species would remain under current management, including MRA regulations, for halibut and sablefish IFQ holders.

Option 2 would allocate shares in these species to halibut and sablefish IFQ holders base on their QS holdings. Shares of secondary species would be leasable among participants in the IFQ program, but could not be permanently transferred independent of the QS that gave rise the secondary species allocation. These shares also could not be transferred outside of the IFQ program, to support groundfish harvests.

Suboption 1, appears to create a common pool alternative for IFQ holders. This provision would create a pool of secondary species shares that would support the IFQ harvests of any IFQ holders that elected to join the pool. All secondary species shares of persons joining the pool would be allocated to the pool.

Suboption 2 would allow a 7-day adjustment period during which an IFQ holder that exceeded share holdings would be permitted to acquire shares to cover the overage. As written, this provision applies only to secondary species and to halibut and sablefish IFQ holders. The Council might consider whether this provision is appropriate for other species and participants.

Option B would require that NOAA Fisheries estimate the use of secondary species for non-commercial use (bait). The second sentence would allow the use of secondary species for gurdy bait without shares. Although the provisions are not clear, it is assumed that the estimated non-commercial use would be accounted for in setting TACs for share allocations in the fisheries. The Council should consider whether this provision should apply only to halibut and sablefish IFQ holders and only secondary species.

Option C would require full retention of secondary species listed in option A. The Council should also consider whether this provision should apply only to the species listed in A and only to halibut and sablefish IFQ holders.

6: Provisions relating to the SEO Area.

6.1 SEO is exempt from GOA rationalization program except for the management of RE/SR, Thornyheads, and Other Slope as secondary species

6.2 Management provisions for secondary species

A) Any QS/IFQ issued for these secondary species will not be subject to regionalization, mandatory coop, closed class processor, or processor linkage provisions of GOA rationalization

B) Management of RE/SR, Thornyheads, and Other Slope rockfish shall be:

Option 1: Managed in aggregate on an area basis using current MRA regulations.

Option 2: Allocated to the vessel owner or qualified lease holder at time of landing during the qualifying period based on retained catch. Secondary species QS can only be permanently transferred to an individual with 150 days of sea time in a U.S. fishery. Secondary species IFQ may be leased.

Suboption 1: Allow an individual to choose, on an annual basis, individual allocations or to participate in the common pool.

Suboption 2: Allow a 7 day grace period after an overage occurs for the owner to lease sufficient Secondary species IFQ to cover the overage. Failure to secure sufficient IFQ would result in forfeiture of the overage and fines.

C) Non commercial use of secondary species for gurdy bait will not require QS/IFQ.

The provisions of section 6 mirror those of section 5, but apply in Southeast Outside (rather than only to halibut and sablefish IFQ holders). These provisions are clearly a starting point for the development of a management program for SEO. The provisions differ from those of section 5 in a few ways. First, the species governed by these allocations are fewer that those governed by section 5. Second, no provision for allocation of the species is stated. The Council will need to develop an allocation scheme for any SEO allocations. Notably, the species to be allocated are secondary species, which are allocated at standard rates relative to primary species allocations in the rationalization program. Since no primary species allocations are proposed for SEO, an allocation scheme will need to be developed. The provisions seem a starting point for developing a program for management of SEO, but most of the program has yet to be defined.

TRAILING AMENDMENTS

The Council intent is for these trailing amendments to be implemented simultaneously with the main rationalization program.

1.Fee and Loan Program
2.Skipper/Crew Share Program issues
3.Remaining issues of CIFT program