

FEBRUARY 2004
Gulf of Alaska Rationalization
Discussion Paper

At its April 2003 meeting, the Council adopted a motion preliminarily defining alternatives for the rationalization of the Gulf of Alaska groundfish fisheries. Since that meeting, the Council has undertaken the process of refining the alternatives for analysis. This discussion paper and its attachments are intended to assist the Council in continuing that process.

This paper begins with a brief discussion of some of the general considerations that should guide the Council in the process of defining alternatives. Much of this brief discussion should be familiar to the Council from the past several meetings.

This paper also contains a discussion of the different provisions that the Council informed the public that it intended to consider at this meeting. These provisions concern:

- 1) Processing interests, including whether processing interests are defined at the company or plant level, whether processor licenses are community or region designated, and the caps that will limit processing.
- 2) Leasing and transfer of shares by harvesters.
- 3) catcher/processers, including the transfer of catcher processor shares to shore-based vessels and the delivery of harvests to catcher/processers by shore-based vessels.

As a part of the process of defining alternatives, the Council will also need to supplement the elements in alternative 2 to support alternative 2C, which would allocate harvest shares to processors. The last section of this paper lists various issues that the Council may wish to consider when developing the provisions to support the processor allocations proposed under alternative 2C.

An annotated copy of the Council's December 2003 motion (including the alternatives tables) is attached to this document as Attachment A. The annotation is intended to assist the Council in clarifying its intent and to ensure that staff and the public have a complete understanding of the motion. In addition, the Council could use the annotated motion to simplify the alternatives by selecting options that would more specifically define the alternatives. The Council's most recent motion is attached to this document as Attachment B.

In reviewing both the annotated motion and its motion from December, the Council should note that the numbering has been changed. At its December 2003 meeting the Council added the specific elements and options of alternative 3 to the motion. The proposed provisions of that alternative all begin with the number 3, creating a conflict with the existing numbering of the other elements and options which would be used for constructing the other rationalization alternatives. In the attached motions all provisions applicable to the alternatives 2, 2A, 2B, and 2C have been renumbered by putting a 2 in front of the number from the Council's December motion.

To aid the Council in developing its alternatives, its purpose and need statement is attached as Attachment C.

The need to more specifically define the alternatives

An adequate analysis must make clear the implications of each option available to the Council, including the interaction of the choice of one option with any other option that the Council might also choose for other provision. If an alternative has too many options, the implications of the interactions of different decisions cannot be fully explained or understood by the decision maker. Not all options must be decided for the EIS

analysis to be completed, as staff can analyze the alternatives with multiple options. Leaving several options in each alternative, however, creates an insurmountable analytical task. In this case, the complexity of the alternatives limits the ability of staff to provide an adequate analysis due to the many outstanding options. In addition, the Council's intention to be permitted to select different alternatives for different sectors complicates the analysis. An analysis that is sufficient for the Council to select different alternatives for different sectors must clearly describe the implications of these interacting choices. For example, the analysis might need to examine the implications of one sector being governed by a mandatory cooperative and another being governed by a voluntary cooperative program. If these different sectors are permitted to trade shares with one another, the analysis must examine the consequences of those trades as well. In the end, the ability of the analysts to accommodate these complexities along with the added complexity of options within an alternative is limited by the need to provide the Council with a document that clearly explains the consequences of these interacting choices. Given the complexity of the alternatives, staff will be unable to complete the EIS prior to the Council narrowing the options within each alternative.

Definition of Alternatives 2A, 2B, and 2C

The Council's motion identifies up to four rationalization alternatives for each sector. Alternative 3 is a stand alone alternative that is defined by the portion of the motion specifically developed for alternative 3. The other alternatives are currently contained in the motion for alternative 2. To define each of these alternatives, the Council must identify the provisions that apply exclusively to each of the alternatives. The alternatives for the different sectors and the provisions that must be identified and developed are:

Catcher/Processors and Low producing fixed gear catcher vessels	Alternative 2	contained and identified by the current provisions for Alternative 2
Trawl catcher vessels and high producing fixed gear catcher vessels	Alternative 2A	must identify the specific provisions used to develop processor limited license program
	Alternative 2B	must identify the specific provisions used to develop processor linkages
Trawl catcher vessels and all fixed gear catcher vessels	Alternative 2C	must develop the provisions used for allocation of harvest shares to processors and provisions concerning use of those shares program

The task of finalizing an alternative is clearly the greatest with respect to alternative 2C. The Council must develop provisions governing the allocation of harvest shares to processors. Among the issues that the Council will need to address in developing these provisions are:

- 1) how is eligible to receive an allocation determined
- 2) how is the allocation divided among eligible processors (i.e., what are the qualifying years)
- 3) is the allocation a separate class of harvest shares intended to remain with processing entities in the long run
- 4) who is permitted to use the shares (i.e., is leasing required)
- 5) who is permitted to receive the shares, either through a lease or permanent transfer
- 6) what caps will apply to share holdings
- 7) will vertical integration limits be applied
- 8) will the shares be regionalized

These provisions should be developed in consideration of the purpose of the allocation to processors. The specific provisions will determine the impact of the allocations on both harvesters and processors and could impact other interests, including communities, processing workers, and captains and crew.

The Council should take note of two issues in proceeding with the definition of the alternatives. First, by defining all of the 2 alternatives (2, 2A, 2B, and 2C) from a single listing of elements and options, it is assumed that these alternatives will differ in few ways. The base provisions of the different 2 alternatives will be common, with the differences arising from the provisions that formalize the differences identified in the simple table that the Council has used to identify alternatives. The Council should consider whether additional variation across alternatives is necessary or whether the significant differences between the base structures of the 2 alternatives provides adequate contrast for the analysis. Second, as noted above, all of the alternatives need further definition for staff to conduct the required analysis. **The Council must identify most of the elements of the 2 alternatives and alternative 3 for staff to produce a sufficient EIS analysis. If the Council is unable to identify specific elements applicable to each alternative at this meeting, staff anticipates producing additional preliminary analyses for that purpose at the next meeting.**

Analysis of options

Several issues and options could be addressed by the Council at this meeting. Staff has provided preliminary analyses of several issues to aid the Council in this process. The Council specifically notified the public and staff that it intends to take up the options concerning three aspects of the program. Since the Council intends to discuss these issues, staff analysis of options begins with provisions related to those three aspects. The paper then turns to other issues that the Council may wish to address at this time.

Provisions Affecting Processors

Processor licenses and linkages

Several different provisions affect the establishment of processor licenses and the linkage of harvest shares to processors. The following is a discussion of these issues at the most general level. After this discussion, the details of some of the regional and community bases for licenses are discussed including their implications for the processor licensing and processor/harvest share linkage issues.

The Council motion is ambiguous as to the level at which processors are determined. For the 2 alternatives, Section 2.3.1.2 provides for the issuance of processor licenses to processors that meet minimum processing requirements. The provisions of that section, however, do not specify whether these thresholds are applied at the company or plant level. **For clarity, the Council should add a provision 2.3.1.2 that states whether these license eligibility thresholds will be applied at the company or plant level.** Section 2.4.2.1.1 provides for catcher vessel cooperatives to associate with a processor either at the facility level or at the company level. Plant level associations would create an obligation for a harvester's cooperative to deliver a certain percentage of its harvesters to the plant. Company level associations would create an obligation for the harvester's cooperative to deliver those harvests to any plant of the company. Section 2.3.1.2.5 provides that processing caps are applied at either the facility or entity level. These two later provisions suggest that processor licenses could be established at the plant (or facility) level, rather than at the company (or entity) level.

For alternative 3, Section 3.3.9, Option 1 provides that cooperatives must be associated with either an eligible processing facility or processing company. This provision is interpreted as providing for the Council to choose whether cooperative/processor associations would be determined at the company or plant (facility) level. For all alternatives, the Council should clarify whether the intention is to define processors at either:

- 1) the company (or entity) level or

2) the plant (or facility) level.¹

Because of the different purposes served by these different provisions, the Council could choose to apply some provisions at the company level and others at the plant level.

The specific provision concerning processor/cooperative associations under the alternative 2B is:

2.4.2.1.1	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

For purposes of issuing licenses, defining processors at the plant level would require that each plant that a processing company owns meet the minimum processing requirements to obtain a license. A license would then be usable at a single plant. An alternative is to determine licenses at a company level. Under this rule, a processor could run multiple plants based on a single license. If the Council chooses to issue licenses at a company level, allowing a processor to run multiple facilities using a single license, the Council should consider whether to limit the number of facilities that can be supported by a single license.

If a program that includes cooperative/processor linkages is established at the plant level, a harvester's allocation would be linked to the plant to which it delivered the most fish. If a harvester delivered to two plants owned by a single company, it is possible that the company could lose the harvest share association to another company that the harvester delivered less fish to, because associations would be determined based on landings at a single facility. On the other hand, if harvester/plant associations are considered more critical than harvester/company associations, use of a company basis for determining linkages could lead to a harvester association that does not include the plant to which the harvester delivered the most fish. In addition, if associations are determined at the company level, a company that chose to consolidate its processing from multiple facilities at a single facility, could compel a harvester whose shares are linked to the company because of its delivery to a single plant to deliver harvests to another of the company's plants, where the harvester has made no deliveries.

Regionalization of harvest shares and processing licenses

Section 3.7.1 contains the following provisions concerning the regionalization of GH:

If adopted, all GH will be categorized by region.

- GH that is regionally designated cannot be reassigned to another region.
- Catcher vessel GH is regionalized based on where the catch was processed, not where it was caught.
- Catcher processor GH is not subject to regionalization.
- Qualifying years to determine the distribution of shares between regions will be consistent with the qualifying period under cooperative formation.

These provisions, when taken together with the harvester/processor cooperative association provisions could create an inconsistency under which some of a harvester's shares could not be delivered to the associated

¹ Note that even if the Council decides to define processors at the facility level for most purposes, it may wish to define processors at the company level for purposes of establishing caps.

processor. Cooperative/processor associations are determined under Section 3.3.9 which links a harvester's to the processor to which the harvester delivered the most pounds during the qualifying years. Although no specific delivery obligation is stated in this alternative, it is assumed that the association is intended to preserve historic harvester/processor delivery associations. Since harvest histories would be regionalized based on the location of landings during the harvester qualifying years, a harvester with a substantial number of deliveries in two regions could have a substantial history that could not be delivered to its associated processor. The processor could be argued to have no stake in this history, since the harvester delivered the landings to a processor in another region. However, because the entry of the history is dependent on the processor's association with the cooperative, the processor will influence whether the harvester is able to use this history in the rationalized fishery. Since this alternative creates no specific processor delivery requirements, the processor and cooperative are free to determine any terms related to the delivery of landings arising from the cooperative's members' histories. This relatively undefined association not only provides the parties with latitude to find creative solutions to resolve any dispute, it also limits the ability to predict possible outcomes, which are likely to depend on the specific circumstances of the parties. A processor with a plant in only one region that is associated with a harvester with history in another region could either contract for the harvester to deliver to a specific processor in the other region under a custom processing arrangement or could decide to expand operations into that other region.

If the Council believes that the potential inconsistency between the region of a cooperative's history and the region of the associated processor should be remedied, the Council could regionalize the harvester history/processor associations. In that case, a harvester's history in a region would be associated with the processor in the region to which the harvester delivered the most pounds during the qualifying period. So, in the example, the harvester's South shares would be linked to the South processor and the harvester's North shares would be linked to the North processor. The regionalization of linkages could be included in the motion by adding the following provision to 3.7.1:

In the event harvest histories are regionalized, a harvester will be eligible to bring its history in a region to a cooperative associated with the processor in the region to which the harvester delivered the most pounds during the regionalization based period.

If the Council intends to address this potential inconsistency in some other manner, the Council should provide guidance.

Community-based, region-based, or Gulf-wide processing

Under the 2 alternatives, Section 2.3.1.2.3 would establish geographic restrictions on the transfer of processing licenses:

2.3.1.2.3	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
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Under this provision, the Council could limit the transfer of processing licenses to either the region or community of origin. Geographic limitations on the transfer of licenses will limit the ability of industry to realize efficiencies by consolidating activity. If licenses are designated for communities, it is likely that value and utility of a license will vary significantly by community. Some licenses in remote communities could be made obsolete by the concentration of landings in less remote areas.

Similarly, both the 2 alternatives and alternative 3 include a provision that severs the processor/harvester relationship if the processor leaves the community of origin. Specifically, the provisions are:

2.3.1.1.2	Option B:	If the processor with whom the harvester is associated with is no longer operating, the harvester is eligible to deliver to any qualified processor.
3.3.9	Option B:	If the processor with whom the harvester is eligible to form a co-op is no longer operating in the community, the harvester is eligible to join a co-op with any qualified processor (i.e. any processor eligible to participate in the initial formation of a co-op).

Using these provisions, processing can be defined at either the community or region level under the 2 alternatives and at either the community or Gulf-wide level for alternative 3. When combined with the provision for defining processing at the company or plant level, the provisions identify the following different approaches for defining processing:

	Alternatives 2A and 2B		Alternative 3	
	Company-based	Plant-based	Company-based	Plant-based
Gulf-wide	NA	NA	3.3.9, Option 1b	3.3.9, Option 1a
Regional	2.4.2.1.1, Option 2b 2.3.1.2.3, Option 2	2.4.2.1.1, Option 2a 2.3.1.2.3, Option 2	NA	NA
Community	2.4.2.1.1, Option 2b 2.3.1.1.2, Option B 2.3.1.2.3, Option 1	2.4.2.1.1, Option 2a 2.3.1.1.2, Option B 2.3.1.2.3, Option 1	3.3.9, Option 1b 3.3.9, Option B	3.3.9, Option 1a 3.3.9, Option B

Note: 2.4.2.1.1 and 3.3.9, Option provide for company/plant cooperative associations.
2.3.1.1.2, Option B and 3.3.9, Option B provide for community level associations.
2.3.1.2.3 provides for transfer of licenses in the community or region.

Application of these provisions under either alternative could be somewhat complex because processors can be defined at the company or plant level for purposes of determining the Gulf-wide, regional, or community level associations and linkages. For each combination, the Council will need to establish consistency between the Gulf-wide, regional, or community level associations and the company or entity level definition of processing. One way of coordinating each pairing of the provisions is proposed below. Other ways of coordinating the rules could be developed.

Company-based processing definition

Gulf-wide processing (currently alternative 3 only)

If a system of company-based processing is combined with a Gulf-wide system of determining harvester/processor associations, all of a harvester's activity would be considered in determining the processor association. Harvest history and allocations to cooperatives would be regionalized based on the region of harvest landings. So, each cooperative would be associated with a single processing company. The processing company may have plants in one or both regions. The cooperative also could hold shares in one or both regions. Since no explicit landing obligations or licenses exist under alternative 3, the possibility that a processor might not have a plant in a region that an associated harvester has history could be addressed to the extent necessary by contract. The implications of the geographical inconsistency in history and processing plants cannot be predicted because of the relatively liberal ability of the parties to contract under the alternative.

Regionalized processing (currently alternatives 2A and 2B only)

If a system of company-based processing is established, a processor would receive a single license. That license could be used in a region, only if the processor achieved the minimum thresholds in the region. If a system of harvest share linkages is established, each harvest share would be regionalized by region of landing that led to the share allocation. So, a harvester could have shares in multiple regions. A harvester with shares in multiple regions would be eligible to join a single cooperative in each region. Each cooperative would be associated with the processing company to which the harvester delivered the most landings in the region in the period used for determining linkages.

Community processing (currently alternatives 2A, 2B, and 3)

Use of a company basis and a community basis for defining processing could affect outcomes if companies have multiple plants in a single community. Under alternatives 2A and 2B, if a system of company-based processing licenses is established, a processor would receive a single license. That license could be used in a community, only if the processor achieved the minimum thresholds in the community.² The license might not be severable. Under this interpretation, licensing would differ from a plant-based community licensing scheme only if a processor had two plants in one community that do not meet the threshold independently but meet the threshold collectively.

Similarly, in a program with harvester/processor linkages or associations, a difference between plant-based and company-based community level associations would only exist if a single company owned two plants neither of which independently received most of a harvester's landings, but which collectively received the most of a harvester's landings. Under alternatives 2B and 3, a system of harvester/processor linkages or associations is established. All harvest shares or history would be linked to a processor based on landing histories.³

Plant-based processing definition

Gulf-wide processing (currently alternative 3 only)

Under this approach, harvester/processor associations would be determined at a plant level, but no licensing of processors would take place. A processor's choice of locality would be unrestricted, so a processor could choose to operate in one or more communities, including the plant that is responsible for the development of the association. Harvest histories would still be regionally restricted, so a processor could not contract with a harvester for deliveries outside of the region of the history. A processor, however, could establish a new plant or custom processing arrangement to take advantage of the association in a region that the processor did not historically operate in.

Regionalized processing (currently alternatives 2A and 2B)

Under alternatives 2A and 2B, a system of plant-based processing licenses could be established under which a processor would receive a license for each plant at which the processor met the threshold processing requirements. Each license could be used in any location in the region of origin and could be transferred independently of any other license held by a company. If a system of harvest share linkages is established, each harvest share would be regionalized by region of landing that led to the share allocation. So, a harvester could have shares in multiple regions. A harvester with shares in multiple regions would be eligible to join a single cooperative in each region. Each cooperative would be associated with the plant to which the harvester delivered the most landings in the period used for defining linkages.

² If a processor meets the threshold in total harvesting, but does not meet the threshold in any community, the processor could be issued a license for the community in which it processed the most landings.

³ Under alternative 2B, those linkages would be established only on a regional level, so a harvester's shares in a region would be linked to a processor in that region. A harvester's could have shares in multiple regions.

Community processing (currently under alternatives 2A, 2B, and 3)

If a system of plant-based processing is established, processor/harvester associations would be based on deliveries to a single plant, with that association dependent on the processor remaining in the community that the association is based on. Under alternatives 2A and 2B, a processor would receive a license for each plant that meets the threshold processing requirements. That license could be used only in the community of origin.⁴ If a system of regionalized harvest share linkages is established, each harvest share would be regionalized by region of landing that led to the share allocation. Under Alternatives 2A and 2B, a harvester could have shares in multiple regions. A harvester with shares in multiple regions would be eligible to join a cooperative in each region. Under alternative 2B, the cooperative would be associated with the processing plant to which the harvester delivered the most landings in the region in the period used to define associations. This would effectively create a community linkage for cooperatives with an associated delivery obligation to the processor in the community. A provision could be adopted that would free the harvester to deliver to any processor, if the processor chose not to operate in the community or accept all of the obliged deliveries in the community.

Under alternative 3, the association would be created with the plant to which the harvester delivered the most pounds during the period used for defining associations. The association would be binding on the harvester, as long as the processor continued to operate in the community. The undefined association, however, does not establish any specific delivery requirement. As a result, the harvester would remain linked to the processor as long as the processor's plant in the community continued to accept groundfish. Whether the harvester or community are effectively protected by this provision is questionable because the alternative does not specify the association (i.e., the alternative does not create any delivery obligation or other specific relationship but leaves the association to be defined by contract). Whether the parties could negotiate for some or all deliveries to take place in another community is uncertain since the terms of the relationship is left to negotiation. Whether an effective provision that serves the intended purpose of this provision (or establishes a specific community basis for processing) could be developed for this alternative is uncertain.

Crediting of processing history

The Council motion contains the following provisions concerning the crediting of processing history:

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| 2.3.1.2.2 | 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 |
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Confidentiality protections, aggregation of data across fisheries, and the unavailability of ownership records limit the ability of staff to provide any detailed quantitative analysis of this provision. Consequently, the Council should consider making a decisions on these provisions at this time.

Under the first provision, the Council would have the choice of crediting processing to either the owner of the facility or its operator. The provision would apply only if the owner of a processing facility differs from the operator. The provision could affect either processing licensing (which requires processing in excess of

⁴ If a processor meets the threshold in total harvesting, but does not meet the threshold in a single community, the processor could be issued a license for the community in which it processed the most landings.

a threshold amount) or harvester/processor associations (which are dependent on the processor receiving the majority of a harvester's landings). Licensing could be affected if a processor does not meet the threshold for licensing because of the crediting of history to another entity during the period of a lease. The implications of the provision on both licensing and processor/harvester associations depend on whether licenses and associations are determined at the facility level or company level and also on the specific circumstances of the lease and the operation of the facility.

Arguments can be made for crediting either the owner or operator of a facility with the facility's processing history. From the standpoint of the operator of the facility, the operator could be argued to have taken a more active role in processing during the lease of a facility. In addition, if the Council chooses to establish processor linkages (or associations) at the company level, landings at a leased facility could affect the establishment of linkages. An operator of a leased facility that also owns another facility may collectively have enough history to establish additional linkages when it is credited with processing at the leased facility. On the other hand, from the owner's standpoint crediting history to the operator could deprive an owner (who acquired substantial history in the facility purchase) of a license for the facility. In addition, linkages with vessels that have a long history of deliveries to a plant could be lost, if landings are credit to the lessee. In the end, the decision of whether to credit history to a facility owner or operator is policy driven. Both the owner and operator can be argued to have made a significant investment in fish processing; one through the ownership of a facility, the other through the active purchase, processing, and sale of fish.

A similar issue is whether the processing history arising out of custom processing is credited to the person that purchased the fish or the person that processes fish. Both entities can be argued to have made an investment in the processing industry and the fishery. The interests of these participants, however, differ. One operates the plant undertaking the processing of the fish; the other purchases the fish and sells the product onward. Specific implications of this provision cannot be estimated because of the aggregation of data in processing reports. As with the decision of whether to credit history to the owner or operator of a facility, the decision of whether to credit landings to the purchaser or processor of fish is a matter of policy.

Processing Caps

Under alternative 2, section **2.3.1.2.4** would establish caps that would limit a single processor's activity to a specific portion of the TAC for each species. Section **2.3.1.2.5** provides options for applying those caps on a company or plant basis as follows:

2.3.1.2.5 Processing Caps may apply at:	
Option 1.	the facility level
Option 2.	the entity level

Choice of the level at which to apply use caps involves different policy implications than licensing and processor associations. Plant level application of the caps could lead to caps being illusory, if multi-plant processors spread landings across several plants to avoid the caps. Company level administration of caps would prevent companies from distributing landings across several plants to avoid the caps.

In considering the issue of processing caps, the Council should consider its purpose for establishing the caps. Caps could be intended to ensure several plants operate to support a more widely distributed labor force or could be intended to support competition among processors for harvest landings. The purpose that caps are intended to serve could also differ under the different programs. These different objectives and circumstances under the different alternatives could justify different caps. For example, a program with no processor protections, such as the IFQ alternative for low producing fixed gear catcher vessels (2 Low A), may require lenient or no processor caps, if caps are intended only to preserve processor competition because each harvester is able to deliver landings to the processor of choice at any time. On the other hand, if caps are

intended to ensure a number of plants operate in an alternative that provides explicit processor protections (such as harvest share/processor linkages) more stringent caps may be justified since a processor could use linkages to limit competition from other processors. If caps are intended to preserve competition among processors, the Council might consider whether a cap on the number of licenses that a processor can hold is appropriate under any of the alternatives. Existing processors might find that consolidating relatively inexpensive latent licenses is an effective means of limiting competition from entering processors. A cap on the number of licenses that a processor can hold could limit this activity.

Alternative 3 contains no caps that would apply to a processing. Since this program involves no licenses, limits on licenses would not apply. The absence of use caps under this alternative might be justified since the processor associations are established at the outset of the program and are not intended to be perpetuated beyond a harvester's first cooperative. **Unless processing caps are developed for alternative 3, the Council should provide a rationale for not applying processing caps to that alternative.**

Harvester/processor linkages and associations

Alternative 3 of the Council motion contains provisions for establishing a linkage or association between harvesters and processors. These linkages would be based on historic delivery patterns, with a harvester linked to the processor to which it delivered the most pounds during a specified period. The provisions contain options for the establishment of either a single linkage for a harvester based on landings of all primary species or the establishment of several linkages, one for each primary species based on the landings of each species. The specific provisions concerning these linkages are:

3.3.5 Catcher Vessel Coops.

During the initial Coop formation period Catcher Vessel coops may be established within sectors between eligible harvesters and the processor the harvester delivered the most pounds of primary species to during the qualifying period.

Suboption 1. On a species by species basis

Suboption 2. In the aggregate

The establishment of separate linkages for each species could create substantial challenges and complicate contractual relationships between harvesters and processors under the program. For example, consider a harvester with substantial history in both the cod and flatfish fisheries. The harvester could be associated with one processor for cod and another for flatfish based on landings history. A portion of the cod history is likely from incidental catch of cod in the flatfish fishery, but under the rules of the alternative that entire cod allocation would be associated with the cod processor. The fisherman may successfully negotiate a cooperative agreement with other flatfish participants and the flatfish processor concerning the flatfish allocation. To target flatfish the fisherman will need an allocation of cod. The fisherman's entire allocation of cod, however, is dependent on reaching an agreement with a cod cooperative and the cod processor that specifies the harvest of all of the harvester's cod history.⁵ So, if the harvester cannot successfully negotiate agreements with both the cod cooperative and flatfish cooperative and the two associated processors, which includes the cod cooperative allowing the harvest of a portion of the fisherman's cod allocation by the flatfish cooperative, the fisherman will be unable to enter the rationalized flatfish fishery. The interconnectedness of the different primary species is likely to make any system of separate species linkages very challenging. It could be possible to develop a system for allocating a portion of the fisherman's cod to the flatfish cooperative. Determining the appropriate level of these different allocations is likely to be very analytically

⁵ Recall that under this alternative, entry to the rationalized fishery is contingent on a cooperative agreement that specifies the harvest of all a fisherman's allocation. In the species-by-species option, this would include all of the harvester's cod and any secondary species and PSC associated with that cod allocation.

challenging and could result in inadequate allocations in some instances. Applying a single linkage or association to all of a harvester's history or allocation based on landings of all primary species is likely to simplify cooperative negotiations and fishing plans.

Share leasing and transfers

Eligibility to acquire shares or history

The Council motion that pertains to the 2 alternatives contains the following general provisions concerning persons eligible to receive shares on transfer:

2.2.3.3.1 Persons eligible to receive harvest shares by transfer must be (not mutually exclusive):
Entities eligible to document a vessel (apply to CP).
Initial recipients of CV or C/P harvest share.
Community administrative entities would be eligible to receive harvest shares by transfer.
Suboption 1: Individuals eligible to document a vessel with at least 150 days of sea time (apply to CV shares).
Suboption 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).
Definition of sea time:
Sea time in any of the U.S. commercial fisheries in a harvesting capacity.

Each of the provisions is clear. The Council, however, has yet to decide whether to include either or both of the suboptions in any of the 2 alternatives. The two suboptions are the only method for entry of private entities to the fishery. The first would allow persons eligible to document a vessel and meeting a sea time requirement to receive shares. The second provision would allow corporations and partnerships that can document a vessel and that have a 20 percent US citizen owner that meets the sea time requirement to receive shares. Since these provisions are the only provisions that allow entry, the Council should consider incorporating one, the other, both, or a substitute provision into each alternative.

With respect to alternative 3, the Council motion contains the following provision defining persons permitted to acquire GH:

3.4.2.1 Qualified Persons.
Persons qualified to receive GH, enter existing Coops following the initial Coop formation period, or harvest GH under a new Coop (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. U.S. citizens eligible 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 7. Initial Coop members.
3.4.2.2 Definition of sea time
Sea time in any of the U.S. commercial fisheries in a harvesting capacity.

Although these provisions are based on the same provisions used to develop the transfer eligibility provisions for the 2 alternatives, the Council has not specified any provisions for certain inclusion in the alternative. In addition, the provisions of alternative 2 have been modified to address ambiguities that arise under some of these provisions. For example, under Option 5 a U.S. citizen eligible to document a vessel would be able to acquire GH. Since any US citizen can document a vessel this provision is redundant. Similarly, Option 4 would allow entities with 20 percent US citizen ownership to acquire GH. Since vessel documentation requires 75 percent US ownership, this provision would permit entities unable to document a vessel to enter the fisheries to acquire history. Staff recommends that the Council identify the elements defining eligibility to acquire GH under alternative 3 from those identified for the 2 alternatives.

Leasing provisions and owner-on-board requirements

The 2 alternative provisions contain several general provisions that could be applied to restrict leasing of shares. Alternative 3 contains no similar general provisions concerning leasing and owner-on-board requirements. Since these provisions are generally directed toward the same end - preventing absentee ownership of the fishery - the Council should coordinate its selection of leasing and owner-on-board provisions to ensure that the array of options selected for inclusion in the alternative effectively serve its purposes. In addition, the Council should consider whether certain provisions are more appropriate for some sectors than others. For example, owner-on-board requirements may be more appropriate for small scale participants such as the low producing fixed gear sector than other sectors, such as the catcher processor sector that is typically dominated by larger, corporate interests. Section 2.2.3.3.6 of the Council motion contains the following provision concerning the leasing of shares:

- 2.2.3.3.5 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 than 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. Allow leasing of CV QS, but only to individuals eligible to receive QS/IFQ by transfer.
- Option 3. Allow leasing of CP QS, but only to individuals eligible to receive QS/IFQ by transfer.
- Option 4. No leasing restrictions for the first three years. After this grace period, leasing will be allowed if the QS holder owns 20% or greater of a vessel which made 3, 5, or 10 landings or 30% of the primary species shares held by the QS holder in at least 2 of the most recent 4 years.

Option 1 is a simple prohibition on all leasing of all catcher vessel shares. Options 2 and 3 would allow leasing of catcher vessel shares and catcher processor shares, respectively. Option 4 would allow free leasing in the first three years of the program, after which leasing would be permitted under certain circumstances. **If selected, the Council should make clear whether Option 4 applies to catcher vessels and/or catcher/processors.** One option would allow leasing of shares provided a vessel that the QS holder owns at least 20 percent of makes a threshold number of landings. Whether these landing requirements could be subverted by writing several fish tickets for a single landing that would be counted as a single landing is uncertain. If that practice is a concern, the provision could be modified to require the vessel to make landings on a minimum number of days. Alternatively, a person could be required to own at least 20 percent a vessel that harvests a minimum percentage of the person's primary species share holdings in 2 of the most recent 4 years. Both approaches are intended to ensure that persons holding QS remain actively in the fishery and could be used to achieve that end. The Council should take care in developing these provisions in a cooperative program since cooperatives shares under a cooperative agreement. If the provisions are applied

to sectors that are governed by cooperative programs, the application of the provisions to shares fished by cooperatives should be specified. Specifically, the Council should clearly state whether cooperative members are exempt from these requirements.

The Council motion also contains the following provisions that would establish owner-on-board requirements under the 2 alternatives:

2.2.3.3.7 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."

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.

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

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.

The base suboptions would either provide no owner-on-board requirements or would designate a portion of each initial allocation as owner-on-board, which would require the owner of the QS to be on board the harvest vessel at the time of harvest.

Two provision would apply exemptions to initial recipients of QS. The first would provide a permanent exemption. The second would limit the exemption to a period of five years after implementation. A separate provision could create a further exemption that would apply to any shares acquired by the recipient of an initial allocation in the first 5 years of the program for as long as that person holds the shares.

Lastly, a provision could be applied that would create a hardship exemption to the owner-on-board requirements for a period of years (1 to 3) in the case of a verified hardship. Although hardships can be difficult to administer, this limited exemption cannot be exploited for long periods.

In determining whether owner-on-board or leasing limitations are appropriate, the Council should consider the nature of the different fleets that would be subject to these provisions. Typically, the Council has adopted these provisions to preserve the owner-on-board nature of particular fisheries. Limited data exist for determining levels of direct owner participation in harvesting and are unavailable at this time.

Catcher/processor provisions

Several provisions in the motion are directed to the use and transfer of catcher/processor shares. These provisions together define the privilege embodied in those shares. Alternatives 2 and 3 have different options that would govern the catcher/processor history and shares. To help the Council develop coherent alternatives, all of the options under alternative 2 are discussed first, after which all of the options under alternative 3 are discussed.

Alternative 2 catcher/processor provisions

Designation of catcher/processor shares on transfer

Sections 2.2.3.3.2 and 2.2.3.3.3 of the Council motion contains the following provision concerning the designation of catcher/processor shares on transfer of those shares:

2.2.3.3.2	Restrictions on transferability of CP harvest 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 converts 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.

These options would determine whether catcher/processor shares are redesignated as catcher vessel shares on the occurrence of some event. The decision of whether to redesignate catcher/processor shares as catcher vessel shares is a policy choice that could be made at this time. Any provision that compels the redesignation of these shares is likely to diminish their value. The value of the shares will be highest under any option that provides the holder with greater ability to avoid the redesignation. Under option 1, catcher/processor shares would maintain their designation on transfer, unless the harvest from the shares were landed and processed on shore, at which time the shares would be designated catcher vessel shares thereafter. Although the intention of this option is to allow continued use of catcher/processor shares as long as the holder has a continuous catcher/processor operation, it is possible that a catcher/processor could lose its shares, if for some reason it is unable to process its shares on board some year. Cooperative members are unlikely to have shares subject to this redesignation, since a cooperative is likely to be able to move shares quickly from vessel to vessel. Under option 2, any transfer of catcher/processor shares to a person that was not an initial issuee would result in the redesignation of the shares as catcher vessel shares. This provisions would create a skewed market for catcher/processor shares, as the number of initial issuees declines. As a result, the value of catcher/processor shares could be expected to decline as the number of initial issuees declines over time.

If the Council adopts a provision that results in the redesignation of catcher/processor shares, the Council will also need to provide for the designation of the resulting catcher vessel shares. For example, the Council should state whether the resulting catcher vessel shares would be subject to regional and processing landing requirements. The requirements will likely vary depending on the program that the Council chooses for harvest shares. One possible way that the redesignation could be simplified is to allow the purchaser of the shares to define their designation at the time of purchase. The share purchaser would have the choice of redesignating the shares as any type of catcher vessel shares.⁶ Making share designations will be necessary to avoid creating a new class of harvest shares or leaving the share designation uncertain, which would further complicate administration of the program.

⁶ The Council could limit the ability of the purchaser to change gear designations, if desired.

Section 2.2.3.3.12 of the Council motion provides:

- | | |
|------------|--|
| 2.2.3.3.12 | 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. |

The Council should clarify its intent in this provision. Specifically, the Council should clarify whether the provision applies to deliveries of harvest with A shares (designated for delivery to a licensed or linked processor) and/or B shares (which can be delivered to any processor). If the Council elects to limit deliveries to catcher/processors that might prevent catcher/processors that have historically accepted deliveries from catcher vessels from continuing that practice. The extent of catcher vessel deliveries to catcher/processors is not known at this time. **The Council should clarify whether Option 3 would apply only to incentive fishery harvests or some other portion of the groundfish fisheries.** Also, the Council should clarify whether deliveries of “low producing” fixed gear catcher vessels can be made to catcher/processors under alternative 2. The Council should maintain consistency with section 2.3.1.1.1 of the Council motion, which provides for rules governing the delivery of B share landings (which can be delivered to any processor). That section provides:

- | | |
|---|--|
| 2.3.1.1.1 | Closed class delivery requirements |
| 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 (or) |
| ii. | 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 |

The second part of option 1 contains options that would prohibit or permit the delivery of B shares to catcher/processors. In choosing appropriate options for this provision, the Council should be clear as to whether “low producing” fixed gear catcher vessels would be permitted to deliver harvest to catcher/processors.

Application of any rule that limits processing by catcher/processors will require that catcher/processors be defined. Definition of this sector can be problematic because vessels used as catcher/processors may also be used as floating processors. For purposes of implementing this provision, the Council must decide when a vessel is acting as a floating processor, as opposed to a catcher/processor. The current regulations that define catcher/processors and define the inshore and offshore components of the GOA groundfish fisheries may be useful in developing an appropriate rule. Under the regulations, a catcher/processor is a vessel that is used for catching fish and processing that fish. The regulations also separate the TAC in the GOA groundfish fisheries between an inshore sector and an offshore sector. Processing in the inshore sector is limited to shore plants, stationary floating processors (which must operate within State waters in a single geographic location during a season when processing pollock or Pacific cod), and small processing vessels (including catcher/processors and processors which are less than 125 feet LOA

and process less than 18 metric tons of pollock and Pacific cod per day). Vessels may not participate in both the inshore and offshore components in a single year, so the offshore component is defined as processors not in the inshore component. The Council may wish to modify this definition if it intends to limit processing by catcher/processors under the rationalization program.

Alternative 3 catcher/processor provisions

Identification catcher/processor allocations

For purposes of determining whether harvests are credited as catcher/processor harvests, alternative 3 would require that 90 percent of a harvester's qualified harvests be processed on board. The provision that would apply this threshold requirement specifically provides:

- | | |
|-----------|---|
| 3.2 | To be determined as a CP a vessel must process no less than 90% of its qualifying catch processed on-board on average over the qualifying period. |
| Option 1: | determined on a species by species basis |
| Option 2: | determined by the aggregate of all species |

Applying the catcher/processor threshold on a species-by-species basis could severely limit the ability of participants that meet the threshold for one species but not others to make use of the catch history. Drawing on the example concerning the creation of harvester/processor associations, consider a vessel that is determined to be a catcher/processor for purposes of flatfish (because it processed in excess of 90 percent of its flatfish on board) but is determined to be a catcher vessel for purposes of cod (because it processed less than 90 percent of its cod on board). This vessel would receive flatfish history that qualifies it for a catcher/processor cooperative and cod that qualifies it for a catcher vessel cooperative. Since the catcher/processor cooperative would receive no allocation of flatfish and the catcher vessel cod cooperative would receive no allocation of flatfish, the harvester would be unable to bring a fishable allocation to either cooperative. Depending on the options selected to define this alternative, it might be possible to develop a fishable allocation by moving history from the catcher/processor sector to the catcher vessel sector, but that solution may not be viewed as workable for a few reasons.⁷ First, the allocation of catcher/processor history for flatfish would be illusory, since it would not be a usable catcher/processor history allocation. If the Council intends the catcher/processor allocation of flatfish to be a workable allocation of catcher/processor history, it has not accomplished that end. Second, GH is not created until a qualified harvester joins a cooperative. So, any attempt by the individual to rectify the problem by moving history from the catcher/processor sector to the catcher vessel sector would require the approval of the catcher/processor cooperative. This substantially changes the negotiating position of the holder of history in both sectors, since both allocations are involved with the competing cooperatives. It is not clear whether the catcher/processor flatfish cooperative could demand that the individual leave behind a portion of the flatfish GH in return for the cooperative letting the individual join and leave the catcher/processor cooperative. Third, movement of GH between cooperatives is not permitted during the initial cooperative formation period. So, even if the catcher/processor cooperative were amenable to the change, the consolidation of holdings into a single cooperative could not be accomplished until the initial cooperative formation period lapsed.

⁷ Option 2 of 3.4.7 would permit catcher/processor GH to be transferred to catcher vessel cooperatives. No option currently under consideration would allow the individual to move catcher vessel history to the catcher/processor cooperative.

Transfer of catcher/processor shares

Alternative 3 contains the following provisions concerning the transfer of catcher/processor shares:

3.4.7 Restrictions on transferability of CP harvest shares:

- Option 1. CP GH may only be transferred to other CP Coops.
- Option 2. CP GH may be transferred to CV Coops. CP harvest shares maintain their designation when transferred to persons who continue to catch and process CP harvest shares at sea pursuant to a CP Coop, if CP harvest shares are transferred to a CV Coop, CP harvest shares convert to CV harvest shares.
- Option 3. CP harvest shares maintain their designation after transfer for 5 years following date of implementation, after which time any transfer of CP shares convert to CV shares.

3.4.7.1 Re-designate CP shares (GH) as CV shares (GH) 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

Under option 1 of 3.4.7, catcher/processor history would be transferrable only to other holders of catcher/processor history. This option would effectively limit transfers to the initial issuees. Under option 2, catcher processor history would be transferrable to any eligible person. The history would be converted to catcher vessel history, if it is not used by a catcher processor cooperative. So, if the harvests are landed with a shore based processor for processing or are harvested in the open access, the history would be transformed to catcher vessel history. Under option 3, catcher processor history would retain its designation for the first 5 years of the program. If the history is transferred after 5 years, the history would be transformed to catcher vessel history. These three options all reflect different views concerning the longevity of catcher processor history. The choice of provisions should be based on the policy implications and equity considerations that arise from limiting the transferability of catcher processor history.

Section 3.4.7.1 overlaps with section 3.4.7 in that it provides for the redesignation of catcher/processor history as catcher vessel history on transfer to a person that did not receive an initial allocation. Implicitly, this would limit the transfer of catcher/processor history to recipients of an initial allocation, as provided under Option 1 of 4.7.1, with redesignation of history upon transfer to any person that did not receive an initial allocation. The council should take care in selecting elements from sections 3.4.7 and 3.4.7.1 to ensure that provisions do not conflict. Option 1 would apply the redesignation to all catcher/processor shares. Options 2 and 3 provide for the redesignation for trawl and longline history.

The Council motion contains the following provisions concerning leases of catcher/processor GH:

3.4.7.2 Leases of CP annual harvest allocations (GQ):

- Option 1. Allow leasing pursuant to an inter-Coop agreement within CP sectors (no CP leases allowed across gear types).
- Option 2. No leasing of CP GQ allowed
 - Suboption: Allow for the first 3 years after program implementation.
- Option 3. Allow leasing within a cooperative

Under option 1, leasing would be allowed among cooperatives (but not between cooperatives of different gear types). Under option 2, no leasing would be permitted. Under the suboption, leasing would be permitted for only the first 3 years of the program. Under option 3, leasing would be allowed within a cooperative. Since these provisions overlap, the Council might be able to select more than one option. For example, the

Council could choose both option 1 and option 3 to permit leasing both in a cooperative and between cooperatives. In any case, the Council should take care to express its intentions clearly because of the ambiguity in option 2 concerning whether leasing is prohibited entirely or only between cooperatives. In addition, the Council should consider whether requiring cooperative membership for an allocation is appropriate, if the Council elects to adopt a provision that prohibits leasing in a cooperative. The essence of a cooperative is that multiple participants coordinate their harvest activity. Prohibiting leasing in a cooperative would prevent that coordination.

Section 3.4.7.3 defines the application of caps in the event that catcher/processor GH is converted to catcher vessel GH. That section provides:

3.4.7.3 Conversion of CP shares:

Option 1. CP shares converted to CV shares

Suboption 1. will count toward CV caps

Suboption 2. will not count toward CV caps at the time of conversion.

Option 2. 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.

Under option 1, suboption 1 any catcher processor GH converted to catcher vessel GH would be counted toward the cap of the person acquiring that history. Under suboption 2, the acquired GH would not count toward the cap at the time of the conversion. The history is assumed to count toward the cap if any additional history is acquired after the conversion. If selected, the Council should provide its rationale for exempting these acquisitions from the cap. Under option 2, acquired history would count toward the cap of the person acquiring the history. This option, however, provides that a person that retains catcher/processor history could not be determined to have exceeded the cap, if the conversion of history by someone else decreases the pool of catcher/processor history to a degree that results in a person holding catcher processor GH exceeding the cap. This second provision is intended to allow persons that retain GH from being put over the cap by others converting their history to catcher vessel history. Since the person's share holdings did not change, allowing an exemption from the cap as the catch/processor history pool changes may be justified.

Policy questions and legal concerns related to community protection options

There are several policy and legal questions remaining relative to the Community Fisheries Quota (CFQ) Program and the Community Purchase Program that need to be addressed prior to developing an EIS analysis. Recall that both programs are currently options under Alternative 2, while only the CFQ Program is proposed under Alternative 3.

The details of the Community Incentive Fisheries Trust (CIFT) Program also must be developed, in order for final approval by the Secretary of Commerce. The majority of the elements of the CIFT Program are currently relegated to a trailing amendment, although it is uncertain whether the Council and the agency would feel comfortable approving the program in concept, without the relevant details, at the time it selects a preferred alternative for Gulf Rationalization. Because the whole of the CIFT Program is currently deferred to a trailing amendment, the policy questions identified in this section apply only to the CFQ Program and the Community Purchase Program. The CIFT Program is proposed only under Alternative 2.

The primary policy questions that need to be addressed in the CFQ Program and Community Purchase Program are related to their integration with general rationalization alternatives. It is unclear in the current Council motion whether the CFQ Program is truly a stand-alone program, participants of which are not subject to any of the overall rationalization provisions proposed for individual harvesters. At the same time, it is unclear whether and how to apply all of the general rationalization options to the

Community Purchase Program. Identifying how the community programs will integrate with the general rationalization options will help to place the proposed community programs in context for the public as well as streamline the existing alternatives for EIS analysis.

While some legal concerns have been identified regarding the design of the CFQ Program (and the CIFT Program, see discussion below), the current proposed options for the program could be retained under various program designs. Thus, while additional effort needs to be undertaken to further develop the proposed CFQ Program to make it both complete and legally viable, the proposed options to date are not made inappropriate due to the legal opinion. The following list is comprised of preliminary questions that will be necessary to resolve prior to completing a comprehensive and meaningful analysis of the CFQ Program and the Community Purchase Program:

Community Fisheries Quota (CFQ) Program (applicable under Alternative 2 and Alternative 3)

- Will community entities in the CFQ Program be allocated PSC species? The current motion provides an option to include all rationalized groundfish species (primary and secondary), but does not make explicit whether PSC species (halibut) are included in the initial allocation to community entities (2.2.9.2.3).
- If secondary species and PSC allocations are awarded to community entities, on what basis would the shares be calculated? If not, how will PSC species be accounted for?
- Can a community entity permanently transfer (sell) its CFQ shares? There are currently no provisions included that would prohibit the community entity from selling its CFQ.
- Will harvest share designations (area, blocked/unblocked, CP/CV, trawl/fixed gear/pot, high producer/low producer) apply to CFQ (2.2.3.2)? How would initial harvest designations be determined? If transfer of CFQ is allowed, what terms or harvest designations will apply to the shares once sold to an entity that does not represent a community?
- Will shares held by community entities be subject to processor linkages (2.3.1.1)? If so, how would the linkages initially be determined (i.e., there is no harvester history from which to establish the link).
- Under Alternative 3, cooperative membership is required in order to receive harvest shares. Would harvesters leasing CFQ from the community entity also be required to be in a cooperative?
- Would community-held harvest shares be subject to regionalization (2.2.9.1)? If so, how would CFQ be regionally designated (i.e., there is no historical harvest by a community entity to establish the region in which processing occurred).
- How will the Gulf-wide community entity be structured? Would there be requirements for Board formation (election, appointment) and membership?
- What process would the community entity use to determine which residents receive the annual CFQ associated with each individual community? Could the entity lease the CFQ on a multi-year basis to the same individuals? Need to mitigate legal concerns associated with the allocation issue.
- Will communities receive CFQ in each Gulf management area (e.g., communities located in the Western Gulf (Area 610) receive CFQs for species in the Western Gulf, Central Gulf, and Western Yakutat)?

Community Purchase Program (applicable under Alternative 2)

- Can a community entity transfer (sell) its shares without restriction?
- Will harvest share designations, processor linkages, regionalization tags, and block limits apply to shares when held by community entities (2.3.2)? Upon transfer from a community back to an individual holder, it is assumed that original harvest designations would apply.
- Would community entities be allowed to purchase all types of shares, regardless of designation (species, area, blocked/unblocked, CP/CV, trawl/fixed gear/pot, high producer/low producer)?
- Can community entities purchase shares from a cooperative member? If so, do they retain the option to join the cooperative or must they operate as individuals?
- Would community entities eligible to purchase harvest shares be subject to the same use caps as individual holders (2.2.3.3.6)?
- How will the community entity be structured? Would there be requirements for Board formation (election, appointment) and membership?

Note also that the Council was apprised of a potential legal concern in December regarding concepts inherent in both the CFQ Program and the CIFT Program (NOAA GC legal opinion, 10/2/03). The legal opinion and resulting staff discussion paper are 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 the annual harvest privilege 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 2.2.9.4) is to direct the use of these shares such that it mitigates the impacts directly associated with the implementation of a rationalization program. The element of the CIFT program design that poses legal concern is the annual reallocation of IFQ to individual fishermen, in which the CIFT would exercise discretion in its decisions to allow individual harvesters to use the IFQ. (Upon consultation with NOAA GC, it appears that this concern remains regardless of whether the long-term harvest shares remain held by the CIFT.)

A similar concern exists with the allocation process of the proposed CFQ Program. The CFQ Program involves an initial allocation of a portion (5% - 15%) of the overall Gulf harvest shares to a Gulf-wide administrative entity representing eligible communities. The administrative entity holds the shares and reallocates the annual harvest privilege to qualified residents of eligible communities. The legal concern again involves the allocation from the administrative entity to individual resident fishermen: the administrative entity would exercise discretion in its decisions to allow particular individual harvesters to use the IFQ. In sum, the legal opinion issued by NOAA Fisheries states that the Secretary could not approve and implement a program in which discretionary authority to allocate annual IFQ is delegated to a separate entity (e.g., a community administrative entity or CIFT organization), without Secretarial approval of those allocations and a formal appeals process.

There are likely several potential modifications to the overall program design that could accommodate the legal concerns identified. However, any changes to the program structure will likely also change the goal of the original proponents of the program and may have significant effects on the impact and/or effectiveness of the program. Staff notes that program specifics, modifications, or related future proposals will need to be reviewed by NOAA GC to determine if there are similar legal implications.

Modified GOA Groundfish Rationalization Alternatives

Fixed gear catcher vessels

Because of the number, diversity, and complexity of the fisheries in the GOA, no single alternative below will be appropriate for all fisheries. Mixing and matching should be expected by sector upon further analysis.

Alternative 1	Alternative 2 Low	Alternative 2 High A	Alternative 2 High B	Alternative 2C	Alternative 3
No Action	<u>Harvester IFQ/cooperative</u>	Harvester IFQ/voluntary-cooperative with closed class of license limitation for processors	Harvester IFQ/voluntary-cooperative with closed class of license limitation for processors and processor linkage	Harvester IFQ/voluntary-cooperative with processor allocation	Sector allocations with closed class of processors and processor linkage
	Shares allocated to individuals	Shares allocated to individuals	Shares allocated to individuals	Shares allocated to individuals	Harvest histories shares allocated to individuals in cooperatives and annual harvest allocations to cooperatives within sector
	low producing fixed gear CV	high producing fixed gear CV	high producing fixed gear CV	fixed gear CV	Longline CV, Pot CV
	Voluntary-Cooperative	Voluntary-Cooperative	Voluntary-Cooperative	Voluntary-Cooperative	Mandatory-Cooperative
	no processor delivery obligation	closed class of license limitation for processors with X% delivery obligation	closed class of license limitation for processors with specific processor linkages with X% delivery obligation and share reduction penalty to move between cooperatives (see section 3.1.1.3 Option 4)	allocation of 10, 20, or 30% of harvest shares to qualified processors	closed class of processors with specific processor linkages with X% delivery obligation and share reduction penalty to move between cooperatives
	those that do not join co-ops fish IFQs	those that do not join co-ops fish IFQs subject to closed class delivery requirement with option for PSC reduction	those that do not join co-ops fish IFQs subject to processor linkage delivery requirement with option for PSC reduction	those that do not join co-ops fish IFQs	those that do not join co-ops fish open access with option for PSC reduction

Modified GOA Groundfish Rationalization Alternatives

Catcher Processors

Because of the number, diversity, and complexity of the fisheries in the GOA, no single alternative below will be appropriate for all fisheries. Mixing and matching should be expected by sector upon further analysis.

Alternative 1	Alternative 2	Alternative 3
No Action	Harvester IFQ/ voluntary -cooperative	Sector Allocations
	Shares allocated to individuals by gear type	Harvest histories shares allocated to individuals in <u>cooperatives and annual harvest allocations to cooperatives within sector</u>
	All Catcher Processors	Sectors: CP Trawl, CP Longline, CP Pot
	Voluntary -Cooperative	Mandatory -Cooperative
	CP Provisions	CP Provisions
	No Processor Provisions	No Processor Provisions
	those that do not join cooperatives fish IFQs with option for PSC reduction	those that do not join co-ops fish open access with option for PSC reduction

Modified GOA Groundfish Rationalization Alternatives

Trawl catcher vessels

Because of the number, diversity, and complexity of the fisheries in the GOA, no single alternative below will be appropriate for all fisheries.
Mixing and matching should be expected by sector upon further analysis.

Alternative 1	Alternative 2A	Alternative 2B	Alternative 2C	Alternative 3
No Action	Harvester IFQ/voluntary-cooperative with closed class of license limitation for processors	Harvester IFQ/voluntary-cooperative with closed class of license limitation for processors and processor linkage	Harvester IFQ/voluntary-cooperative with processor allocation	Sector allocations with closed class of processors and processor linkage
	Shares allocated to individuals	Shares allocated to individuals	Shares allocated to individuals	Harvest histories shares allocated to individuals <u>in cooperatives and annual harvest allocations to cooperatives within sector</u>
	Trawl CV	Trawl CV	Trawl CV	Trawl CV
	Voluntary Cooperative	Voluntary Cooperative	Voluntary Cooperative	Mandatory Cooperative
	closed class of license limitation for processors with X% delivery obligation	closed class of license limitation for processors with specific processor linkages with X% delivery obligation and share reduction penalty to move between cooperatives (see section 3.1.1.3 Option 4)	allocation of 10, 20, or 30% of harvest shares to qualified processors	closed class of processors with specific processor linkages with X% delivery obligation and share reduction penalty to move between cooperatives
	those that do not join co-ops fish IFQs subject to closed class delivery requirement with option for PSC reduction	those that do not join co-ops fish IFQs subject to processor linkage delivery requirement with option for PSC reduction	those that do not join co-ops fish IFQs	those that do not join co-ops fish open access with option for PSC reductions

North Pacific Fishery Management Council
GULF OF ALASKA GROUND FISH RATIONALIZATION
STAFF ANNOTATED ELEMENTS AND OPTIONS
February 2003

The following provisions apply to Alternative 2 only:

2.2 Harvest Sector Provisions

2.2.1 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 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%

2.2.2 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

Suboption: For Pacific cod under Options 2, 3, and 4, consider only A season harvests for 2001 and 2002.

2.2.2.1 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)

2.2.2.2 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.

2.2.2.3 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).

2.2.3 Primary Species Rationalization Plan

Primary Species by Gear

2.2.3.1 Initial Allocation of catch history

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

2.2.3.2 Harvest share (or QS/IFQ) Designations

2.2.3.2.1 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, **primary** species and area

Option 2. less than the 75th percentile harvest shares initially allocated by gear, **primary** species and area

High producing vessels are the remainder.

Note that under this provision a share holder is defined as a low producer on a gear, area, species basis. The Council might consider whether only “primary species” should be considered for determining the low/high producer distinction.

Also, the Council should consider whether it is appropriate to construct provisions under which the allocation to a license could be a low producer for some species, gears, and areas and a high producer for others. An alternative approach would determine the designation based on total allocation in pounds of primary species (using a given year as a base year) so that all of the allocation to a license is classified as high or low producer. To make this change the Council could change the provisions to read:

“Option 1: less than average primary species harvest shares initially allocated by gear and area”.

“Option 2: less than the 75th percentile primary species harvest shares initially allocated by gear and area.”

2.2.3.2.2 Harvest share sector designations:

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.

2.2.3.2.3 Harvest share gear designations

Designate CV harvest shares as Trawl, Longline, and Pot

Designate CP harvest shares as CP trawl, CP longline, CP pot.

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

2.2.3.2.4 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~~

Options 2 and 4 are the same. Option 4 may be deleted.

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

Option 1. A shares be at the QS level and separable from B shares.

Suboption: Processor affiliated vessels would receive their entire allocation as A shares.

Option.2.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.

The proposed change would have no substantive effect, but is intended to clarify the nature of the program.

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

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

Entities eligible to document a vessel (apply to CP).

Initial recipients of CV or C/P harvest share.

Community administrative entities would be eligible to receive harvest shares by transfer.

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

Suboption 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).

Definition of sea time:

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

The Council should consider selecting its preferred provisions. The provisions operate similarly, but Suboption 1 applies to individual share holdings, while Suboption 2 applies to corporations and partnerships. One or both of the remaining suboptions could be selected. If only one is selected, the only individuals or corporations would be permitted to acquire shares.

2.2.3.3.2 Restrictions on transferability of CP harvest 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.

The Council should consider selecting a preferred option.

2.2.3.3.3 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.

2.2.3.3.4 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.

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

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

Option 4. No leasing restrictions for the first three years. After this grace period, leasing will be allowed if the QS holder owns 20% or greater of a vessel which made 3, 5, or 10 landings or 30% of the primary species shares held by the QS holder in at least 2 of the most recent 4 years.

The Council should consider selecting a preferred leasing provision.

2.2.3.3.6 Separate and distinct harvest share use caps

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 and management area are as follows (a different percentage cap may be chosen for each fishery):
 - i. Trawl CV and 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.

2.2.3.3.7 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."
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.
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
 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.

The Council should consider selecting a preferred owner on board option.

2.2.3.3.8 Overage Provisions

A 7 day grace period after an overage occurs for the owner to lease sufficient IFQ to cover the overage. Failure to secure sufficient IFQ would result in forfeiture of the overages and fines.

i. Trawl CV and CP:

Suboption 1. Overage 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 harvest shares (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 up to 10% of harvest shares (or IFQ).

Suboption. Overage 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).

2.2.3.3.9 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.

2.2.3.3.10 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.

2.2.3.3.11 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.

If the Council intends to restrict the purchase of CV harvests by CPs, the Council will need to define “catcher processors”. The attached discussion paper addresses this issue at page 17. The Council should consider selecting a preferred option under this section.

2.2.4 Allocation of Secondary 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.

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

Selection of option 3 would make clear that QS holders in the halibut and sablefish fisheries would receive allocation. These allocations are not in place of allocations to LLP holders, but in addition to the allocations to LLP holders.

ii. Include these species for one gear type only (e.g., trawl). Deduct the secondary species catch from gear types from TAC. If deduction is not adequate to cover 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 secondary species QS

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

Option 2. Primary species shares and secondary species shares are separable and may be transferred separately

2.2.5 PSC Species

2.2.5.1 Accounting of Halibut Bycatch

Pot vessels continue their exemption from halibut PSC caps.

Hook and line

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: Continue to fish under PSC caps.

Suboption (to all options): Holders of halibut IFQ are required to land legal halibut. Halibut bycatch occurring without sufficient IFQs would count against PSC allocations.

Trawl Entities:

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

Option 2: Continue to fish under PSC caps.

2.2.5.2 Halibut PSC Allocation

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

Initial allocation based on average halibut bycatch by directed primary 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

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

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

Suboption 1. 0%

Suboption 2. 5%

Suboption 3. 7%

Suboption 4. 10%

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

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

Option B: No leasing/annual transfer of PSC outside of cooperatives.

All PSC reductions under this section will remain unfished (in the water).

2.2.5.3.1 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.

All PSC reductions under this section will remain unfished (in the water).

2.2.5.4 Permanent transfer of Halibut PSC harvest share mortality

Option 1. Groundfish **primary species** harvest shares (**QS**) and Halibut PSC harvest shares (**QS**) are non-separable and must be transferred as a unit
Suboption. exempt Pacific cod

Option 2. Groundfish **primary species** harvest shares (**QS**) and Halibut PSC harvest shares (**QS**) are separable and may be transferred separately

2.2.5.5 Retention of halibut incidentally caught by fixed gear vessels

~~Retention of h~~ Halibut incidentally caught may be retained outside the halibut season from Jan. 1 to start of commercial fishery. 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.

The Council requests that staff notify the IPHC concerning these provisions.

2.2.6 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

2.2.6.1 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 secondary species and the vessel is a member of a GOA fishing cooperative.

~~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.~~

Since no open access exists under Alternative 2, provision B cannot apply.

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

Option 1. The individual co-op 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 co-op will notify NMFS when a vessel enters the incentive fishery quota pool.

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

Option 3. For vessels not participating in a sector co-op, 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.~~

Option 4 and the stricken portions of Option 3 do not apply under any of the alternatives, since non-members of cooperatives would receive IFQ with no open access fishery.

2.2.7 Preserving entry level opportunities for P. cod

2.2.7.1 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

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

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

- Option 1, 1 block
- Option 2. 2 blocks
- Option 3. 4 blocks

2.2.7.3 Any person may hold: (Alternatives 2 ~~and 3~~)

- Option 1. One block and any amount of unblocked shares
- Option 2. Two blocks and any amount of unblocked shares
- Option 3. Four blocks and any amount of unblocked shares

If the Council intends to include the block program in Alternative 3, provisions establishing the program should be included in that alternative.

2.2.8 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.

2.2.9 Communities

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.

2.2.9.1 Regionalization

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

If adopted, all processing licenses (for shore-based 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 and incentive fisheries are not subject to regionalization.
 - Option: Secondary species shares 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 2.2.2 Qualifying Periods.”
 - Option 2. 1999 – 2002
- 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 **used for determining linkages under 2.3.1.1.2.**

Staff suggests adding the above language to clarify the set of qualifying years that would be used to determine the processor linkage in each region.

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 140° 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.

Staff notes that the only harvester shares that are subject to regionalization are the ones explicitly identified above: pollock in Area 630 and 640, Gulf sablefish (trawl), as well as all other primary species in the Central GOA (Areas 620 and 630) with the exception of arrowtooth flounder. The only secondary species that is explicitly included is Gulf trawl sablefish, based on the expectation that at some point under a rationalization regime, the trawl sablefish fishery may become a directed harvest. There is an option included in the bullets above that states that “Secondary species shares are not subject to regionalization.” However, staff notes that this option also represents the default option, should the Council remain silent on whether to rationalize secondary species shares. The Council would need to specify in the motion to regionalize all secondary species shares, if that is desired.

2.2.9.2 Community Fisheries Quota (CFQ) 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. These purposes will be obtained by allocating QS to a community entity so that the community entity can derive revenues from leasing QS to ensure the retention of fishing opportunities and/or support community development.

The purpose statement for the CFQ Program remains sufficiently broad to encompass almost any community fisheries policy objective, but the first portion of the statement focuses on providing sustained participation of the eligible communities in the Gulf groundfish fisheries. This could mean protecting the current level of participation by local resident fleets of eligible Gulf communities or providing new or increased access to the Gulf groundfish fisheries by community residents.

However, the last sentence specifies that the mechanism to achieve these objectives is a direct allocation of QS to an administrative entity representing eligible communities, so that the entity can use the royalties from leasing the QS to ensure fishing opportunities and/or support community development in these communities. This portion of the purpose statement appears to clarify that the beneficiary of the CFQ Program is the administrative entity itself, and that the entity is expected to derive revenues from the leasing of the QS. This statement also alludes to a restriction on how those revenues can be used: “to ensure the retention of fishing opportunities and/or support community development.”

This portion of the purpose statement was provided in response to NOAA General Counsel’s legal opinion (October 3, 2003) on the CIFT Program (Attachment D). That opinion 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. Staff provided a discussion paper to the Council in December 2003, noting that NOAA had advised that this same issue arises within the current proposed structure of the CFQ Program. The program’s intent to allow the administrative entity to distribute annual IFQs to community residents spurred legal concerns regarding a sub-allocation of quota share without Secretarial approval, and thus, without an appeals process.

One of the potential solutions discussed was to change the overall purpose of the CFQ 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. This is intended to allay the legal concern that the proposed program would delegate the discretionary authority of the Secretary to a separate entity for the sole purpose of reallocating annual IFQs (without Secretarial approval or a formal appeals process).

At this point, it is uncertain whether this part of the purpose statement resolves the legal concerns identified by NOAA GC. It is necessary, however, to emphasize that the Council and NMFS cannot rely upon this statement to provide a clear understanding of the restrictions and/or limitations of the program. If there is a policy decision to require that the administrative entity can only lease IFQs to residents at fair market value, that provision needs to be explicitly identified, developed into a standard for implementation, and included in regulations. If the administrative entity must use revenues derived from the CFQ for a specific purpose, such as “to ensure the retention of fishing opportunities and/or

support community development,” those purposes must also be explicitly described and provided for in the implementing regulations.

While the legal implications need to be resolved, the proposed options for the CFQ Program could be relevant under various program designs. Thus, while additional effort needs to be undertaken to further develop the CFQ Program to make it both complete and legally viable, the proposed options to date are not necessarily made impracticable by the legal opinion.

2.2.9.2.1 Administrative Entity

A Gulf-wide administrative entity will receive and hold CFQ on behalf of eligible communities. The administrative entity representing a ~~community~~ or **one or more eligible** communities must be a non-profit entity qualified by NMFS.

~~Gulf wide administrative entity~~

Staff proposes the above changes to clarify that the only provision included in the CFQ Program is to allow one Gulf-wide administrative entity to receive the CFQ allocation, on behalf of one or more eligible communities (as would be identified through the application of the eligibility criteria in Section 2.2.9.2.2).

2.2.9.2.2 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 any commercial permit and fishing activity as documented by CFEC in the last ten years (1993 - 2002)

Staff suggests striking the above text to make the title consistent with option a, which identifies any commercial permit and fishing activity. The Council revised this option in previous meetings so that it is not limited only to groundfish landings.

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 number of potential combinations of options under the various eligibility criteria proposed (Options 1 – 4) would result in numerous sets of potentially eligible communities. The eligibility criteria options should be narrowed, or preferred options selected, prior to developing an EIS analysis.

2.2.9.2.3 Species

- Option 1. All rationalized groundfish species
- Option 2. **Pollock and Pacific cod** ~~Limited to species that can be caught without (hard on) bottom trawling~~

Staff suggests deleting Option 2 or replacing it with the exact species that the current language intends to implicate. Staff suggests pollock and Pacific cod, only because they have been discussed during previous meetings to clarify this section. Without modification, Option 2 cannot be sufficiently analyzed.

2.2.9.2.4 Allocation

- Option 1. 5% of annual TAC
- Option 2. 10% of annual TAC
- Option 3. 15% of annual TAC

2.2.9.2.5 Harvesting of Shares

- Option 1. Limited to residents of any eligible community

2.2.9.2.6 Allocation Basis

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

- Option 1. 0% - 100% of the annual harvest rights from the CFQ owned by the administrative entity would be distributed amongst qualified communities on an equal basis.
- Option 2. 0% - 100% of the annual harvest rights from the CFQ owned by the administrative entity would be distributed amongst qualified communities on a pro rata basis based on population.
- Option 3. 0% - 100% of the annual harvest rights from the CFQ owned by the administrative entity from each GOA groundfish management area, by species, would be distributed amongst qualified communities located in the management area on an equal basis.

Options 1 - 3 are not mutually exclusive. Due to the broad range (0% - 100%) included in each option, the potential combinations of these options would result in innumerable allocation scenarios. The range and/or the options should be significantly narrowed, or preferred options selected, prior to developing an EIS analysis.

2.2.9.2.7 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.

2.2.9.2.8 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.

2.2.9.3 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.

Staff suggests deleting the above stricken text to distinguish the purpose statement for the Community Purchase Program from that applied to the CFQ Program. The CFQ Program has a similar, but separate purpose statement provided in Section 2.2.9.2.

2.2.9.3.1 Administrative Entity

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

Note that under the CFQ Program, there would only be one Gulf-wide administrative entity, while the community purchase program allows more than one administrative entity to exist to represent eligible communities. At a minimum, one administrative entity would represent all eligible communities, and at a maximum, an administrative entity would be formed to represent each eligible community. Should both the CFQ Program and the Community Purchase Program be approved, it is possible that the Gulf-wide administrative entity developed for the CFQ Program could also perform the functions necessary for the purchase program. This could limit the implementation costs incurred, and will be considered in the analysis.

2.2.9.3.2 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)

Staff suggests striking the above text to make the title consistent with option a, which identifies any commercial permit and fishing activity. The Council revised this option in previous meetings so that it is not limited only to groundfish landings.

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 number of potential combinations of options under the various eligibility criteria (Options 1- 4) proposed would result in numerous sets of eligible communities. The eligibility criteria options should be narrowed, or preferred options selected, prior to developing an EIS analysis.

2.2.9.3.3 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.

2.2.9.3.4 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.

2.2.9.4 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.

2.2.9.4.1 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.

2.2.9.4.2 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

NOAA GC has identified potential legal concerns with the fundamental concept supporting the CIFT Program. These concerns relate to the program's intent to extend the discretionary authority to allocate shares from the Secretary of Commerce to a separate organization (the CIFT), without Secretarial approval or an appeals process. The legal opinion (October 3, 2003) and associated staff discussion paper were provided at the December Council meeting. Please see those documents (Attachment D) for further details.

2.2.10 PSC for Crab and Salmon

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 C i.e. pot codfish and pollock bottom trawl.

The reasons for the high bycatch of the Aother 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 Aother 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.

2.2.11 Review and Evaluation

2.2.11.1 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.

2.2.11.2 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.

2.2.12 Sideboards

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

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.

Staff analysis of sideboard issues should examine the potential consequences of the creation of a double set of sideboards relating to BSAI fisheries for vessels already subject to AFA sideboards in BSAI fisheries.

2.3 Processing Sector Provisions

As currently written, the provisions of 2.3 would not apply to Alternative 2C, which allocates harvest shares to processors. Provisions for that allocation should be developed.

2.3.1 Provisions for a ~~Closed Class of Processors~~ **Processor License Limitation**

2.3.1.1 Harvester Delivery requirements

2.3.1.1.1 ~~Closed class delivery~~ **Harvester delivery** requirements

- Option 1. 50-100% of CV harvest share allocation will be reserved for delivery to:
- i. the linked ~~licensed qualified~~ closed trawl or fixed class processor (**Applies to 2B**).
 - ii. Any ~~licensed qualified~~ closed trawl or fixed or large or small ~~class~~ processor (**Applies to 2A**)
- 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 (**Applies to Fixed Gear 2 Low only**)

2.3.1.1.2 Linkage (**Applies to 2B**):

- Option 1. A harvester's processor linked shares are associated with the ~~licensed 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~~ qualifying years.
- i. 1
 - ii. 2
 - iii. 3

Option A: If the processor with whom the harvester is associated ~~with~~ is no longer operating in the community, the harvester is eligible to deliver to any ~~qualified~~ **licensed** processor.

Option B: If the processor with whom the harvester is associated ~~with~~ is no longer operating, the harvester is eligible to deliver to any ~~qualified~~ **licensed** 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.

2.3.1.1.3 Movement between linked processors (**Applies to 2B**)

~~Option 1. No share reduction for moving between processors year to year~~

- Option 1 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 2 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.

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 3 4. No penalty. Movement allowed only upon agreement between co-op members and affiliated processor.

Option 1 is not meaningful since it would allow unpenalized movement, removing any meaning from the linkages.

Options 2 and 3 provide for defined share penalties for movement.

Option 4 provides no penalty for movement but leaves movement at the discretion of the cooperative and the associated processor. This is similar to the provision for breaking a processor linkage under Alternative 3 and may offer little contrast to Alternative 3.

2.3.1.1.4 ~~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~~

The low producer/high producer distinction is defined in 2.3.2.1.

- ~~ii. Provisions for low producing vessels~~
- ~~Option 1. Low producing vessels are exempt from closed class delivery provisions~~

This provision is contained in 3.1.1.1

- ~~Option 2. Subject to block program.~~
- This provision should be incorporated into 2.7, if it is to be retained.***

2.3.1.2 ~~Closed Class Processor~~ **License** Qualifications (Applies to 2A and 2B)

Under the table of alternatives, license limitations are intended to apply to the 2B alternatives. A processor would be required to hold a license to establish a linkage with a harvest share holder. Section 3.1.1.1 i) also provides that a processor would need to hold a license to establish a harvest share linkage under alternative 2B.

2.3.1.2.1 ~~To purchase groundfish required to be delivered to a qualified~~ **qualify for a processor license**, a 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 processor~~ **or license** ~~catch~~ and ~~closed class fixed gear processor~~ **or license** ~~catch~~ as described above
- Option 2.
- a. Large ~~closed class processor~~ **license**
 - Suboption 1. 2000 MT
 - Suboption 2. 1000 MT
 - Suboption 3. 500 MT
 - b. Small ~~closed class processor~~ **license**
 - Suboption 1. 500 MT
 - Suboption 2. 200 MT
 - Suboption 3. 50 MT

- e- Open class processor – no groundfish landing qualifications – can purchase any amount of open class B share landings ~~QS~~.

This provision is intended to apply to both Options 1 and 2. To clarify, the “c.” should be deleted.

The Council should add a provision that clarifies whether these thresholds are to be applied at the company or plant level.

2.3.1.2.2 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

2.3.1.2.3 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

2.3.1.2.4 Processing Use caps by ~~closed-class~~ processor **license** type (trawl, fixed or trawl and fixed (~~low~~ **small** 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~~ **licensed** processor

Option 2. Processing use caps for small ~~closed-class~~ **licensed** 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~~ **licensed** processor can buy from the open B share classed fish)

The Council might consider the effects of:

- 1) *possible limits on the amount of processing that a processor can undertake*
- 2) *possible limits on the number of licenses that a processor can hold.*

2.3.1.2.5 Processing Caps may apply at:

Option 1. the facility level

Option 2. the entity level

2.3.1.2.6 ~~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~~ processor **license holders** cannot hold small ~~closed-class~~ processor licenses.

Provisions defining the allocation of harvest shares to processors under Alternative 2C should be defined. These should include not only the provision for allocation of those shares but also any provisions relating to the transfer and use of those shares (i.e., who is eligible to lease the shares, under what terms, can the shares be sold, is a processor required to lease the shares, will holdings and leases be limited by caps). These specifics should be defined in light of the purpose of the allocation to processors and will determine the effects of the allocation on both harvesters and processors.

2.4 Cooperative Provisions

2.4.1 Cooperative requirements type (~~voluntary or mandatory~~)

Cooperative membership **is not required to receive an annual harvest share allocation.** ~~will be voluntary (i.e., harvest shares (IFQ) will be allocated to non-members)~~

2.4.2 Cooperative formation

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

Catcher/processors
 Trawl catcher vessels
 “High producing” fixed gear catcher vessels
 “Low producing” fixed gear catcher vessels

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

2.4.2.1.1 Co-op/processor affiliations

- Option 1. No association required between processors and co-ops
- Option 2. CV cooperatives must be associated with
 - a) a processing facility
 - b) a processing company

The associated processor must be:

- a) a ~~licensed~~ **federally permitted** processor
- b) a ~~qualified processor~~ **limited entry processing license holder** (if **processor limited entry** ~~closed processor class~~ is selected)
- c) a ~~closed class processor~~ **limited entry processing license holder** to which the share holder’s shares are linked

~~Option 3. A harvester is eligible to join a cooperative associated with the qualified licensed 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 co-op is no longer operating, the harvester is eligible to join a coop with any qualified processor.~~

Option 3 is redundant with 3.1.1.1, 3.1.1.2, and 3.1.1.3, and is incomplete since it does not accommodate movement that may be allowed by those provisions.

- 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.

2.4.2.2 Cooperatives are required to have at least:

- Option 1. 4 distinct and separate harvesters (using the 10% threshold rule)
 - Suboption: trawl CP sector, all less 1 of distinct and separate harvesters, using the 10% threshold rule).
- Option 2. 40 -100 percent of the harvest shares (or catch history) of its sector (may choose different percentages for different sectors)

- Option 3. 40 -100% of separate and distinct shareholders (using the 10% threshold rule) belonging to its sector. Council may choose different percentages for different sector.
- Option 4. 40 -75 percent of the harvest shares (or catch history) **eligible for the cooperative** of ~~the eligible harvest share (or catch history) for each co-op associated with its processor~~

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

2.4.2.3 Duration of cooperative agreements:

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

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

Is the requirement for a plan for the harvest of all cooperative fish intended to include the harvest of B share fish?

2.4.3 Rules Governing Cooperatives

2.4.3.1 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 primary species, secondary species and halibut mortality, as may be adjusted by inter-coop 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.

2.4.4 Ownership and Use Caps and Underages

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

2.4.4.2 Co-op 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

2.4.5 Movement between cooperatives

2.4.5.1 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

2.4.5.2 License Transfers Among Processors (applies to processor limited entry ~~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~~ **licensed** processor. Harvest share/history holders in the cooperative will be free to move among cooperatives without share/history reduction.

~~2.4.6 Non Members of Cooperatives (applies only if mandatory cooperatives)~~~~2.4.6.1 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 in the open access fishery.~~
- ~~Option 2. Are not allowed to participate in the rationalized fisheries until they join a co-op.~~

2.5 Provisions relating to the IFQ halibut/sablefish fishery

2.5.1 Management areas:

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

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

A) QS will be issued to the halibut/sablefish QS holder. 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.

2.5.3 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.

2.5.3.1 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.

2.6: Provisions relating to the SEO Area

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

2.6.2 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.

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

Alternative 3

Sector Allocations and Voluntary Coop Structure

Alternative 3 is a sector allocation and voluntary Coop proposal. A mandatory coop program would require harvesters to either join coops or not fish. Unlike Alternative 2, which is mandatory, processor specific IFQ program requiring landings by a harvester to a specific processor, this proposal allows new processor entrants and provides a mechanism for harvesters to voluntarily either enter coops voluntarily, or continue to fish in LLP/Open Access fisheries. The Alternative provides a flexible structure, which is reflective of the diversity of the fisheries in the GOA. It recognizes that harvesters, processors, and communities all have a stake in the fishery, but that the nature of the fisheries in the Gulf requires that these interests need flexibility as rationalization systems develop. This Alternative would:

- Allocate primary, secondary (bycatch) and PSC species by sector.
- Establish a mechanism which would facilitate Coops to form within sectors.
- Specify the operational rules for Coops once they are established under the rules for initial Coop formation.
- Provide for continuation of fishing opportunities for harvesters that choose not to participate in the voluntary Coops
- Include community protection measures appropriate to a Coop-based program.

The proposal sets up a step-wise process for the establishment of Coops. The first step includes a sectoral allocation and the initial formation of Coops within sectors. This is followed by an initial Coop formation period to provide time for the Coops to refine their operations. The third step is ongoing, and establishes rules for Coop formation, dissolution, and operation following the initial period of Coop formation.

This proposal would not require the assignation of A and B class Gulf History shares. GH would be generic, and would originate from a vessel's history. GH can only be developed through the establishment of a Cooperative pursuant to the rules for initial Coop formation. However, Coop participation is strictly voluntary and a harvester may choose to continue to fish in a limited entry (LLP) open access fishery.

The proposal does not include a closed class of processors. Harvesters and processors may form Cooperatives based on landings of the primary species by a harvester to a processor during the qualification period. An interim initial Coop formation period is established before harvesters joining a Cooperative may move from one Coop to another. Formation of the initial Coop will be by Coop contract, and the program will establish requirements for those contracts, including a requirement that the contract contain the terms for dissolution of the Coop or the movement of a harvester from one Coop to another. During the initial Coop formation period inter-Coop agreements are allowed within sectors to address operational issues and ensure further rationalization of the fishery between Coops.

Following the initial formation of Coops, and after the initial Coop formation period, new Coops can form and harvesters can move from Coop to Coop or exit a Coop and move back into open access. The rules for such movement, including compensation to other members of the Coop, will be specified in their Coop contracts. New processors can enter the fishery at any time, and following the initial coop formation period, harvesters can form coops with those processors.

Because this is a voluntary program, and does not develop individually assigned IFQ or processor shares, community protection provisions are simplified to only include options for regionalization and a community quota system.

Monitoring of harvest and PSC for the Coop fishery will be at the Coop level. Assignments of Gulf history (GH), including transfers, will be monitored by RAM to ensure proper catch allocation. The annual GH will result in a Gulf Quota (GQ) for actual poundage. Current monitoring programs for the open access fishery will continue.

The following provisions apply to Alternative 3 only:

I. SECTOR ALLOCATION PROVISIONS.

3.1 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 (WYAK))

- 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 species. Allocation will be based on target catch in sablefish, halibut, Demersal Shelf Rockfish and P. cod fishery

The Council should be clear in stating how the halibut and sablefish IFQ fishery and/or SEO fisheries will be addressed by this alternative.

Gear: All gear types are considered.

Option 1. The jig fishery would receive an allocation based on its historic landings in the qualifying years

—

1. 100%
2. 125%
3. 150%
4. 200%

3.2 Sector definitions and allocations:

CV trawl
 CV longline
 CV pot
 C/P trawl
 C/P longline
 C/P pot
 jig
 low producing fixed gear

Low producing vessel sector are

- Option 1. fixed gear vessels under 60 feet that are below the ~~which harvest less than the~~ 75th percentile of qualified harvest history by primary species and area.
- Option 2. fixed gear vessels less than average qualified harvest history ~~shares initially allocated by gear,~~ primary species and area
- Option 3. fixed gear vessels that are below the ~~less than the~~ 75th percentile in qualified harvest history ~~shares initially allocated by gear,~~ primary species and area

If the high producer/low producer distinction is determined separately for each species, some harvesters will have a portion of their harvests in the low producer category and a portion in the high producer category. The Council should consider whether an alternative approach would be more appropriate. An alternative approach would determine the designation (high/low) based on the total allocation in pounds of primary species (using a given year as a base year) so that all of the allocation to a license is classified as high or low producer. If the Council intends to put a vessel into the low or high category for all species the provisions could be modified to read:

- Option 1. fixed gear vessels under 60 feet that are below the 75th percentile of primary species qualified harvest history by area.*
- Option 2. fixed gear vessels less than average qualified harvest history by gear and area*
- Option 3. fixed gear vessels that are below the 75th percentile in qualified harvest history by gear and area*

Options 2 and 3 consider gear in determining whether a vessel is a high or low producer. Option 1 does not include gear. The Council should clarify whether this omission is intentional. Options 2 and 3 consider “species”; unlike Option 1, which considers “primary species”. The Council should consider whether primary species is the appropriate measure, since secondary and PSC allocations would be determined based on primary species allocations.

High producing vessels are the remainder and are divided into a catcher vessel longline and catcher vessel pot sector. Sector definitions apply throughout Alternative 3.

To be determined as a CP a vessel must process no less than 90% of its qualifying catch processed on-board on average over the qualifying period.

- Option 1: determined on a species by species basis
- Option 2: determined by the aggregate of all species
 - Suboption 1: jig sectors would be exempt from co-op provisions.
 - Suboption 2: Fixed Gear Low Producer Provisions:
 - Option 1. Apply same rules for initial co-op formation and general co-op operation as apply to other sectors.
 - Option 2. Exclude from co-op program, provide sector allocation and continue as an LLP/Open Access fishery.
 - Option 3. Apply all co-op rules except processor affiliation requirement for initial co-op formation (i.e. harvester ~~only~~ co-op **without processor association**).

3.2.1 The sector allocations are the total of the qualifying catch histories of the eligible participants (see Note below). Sector allocation 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
- Option 2. 95-02
- Option 3. 98-02

The Council should consider the implications of using different provisions for sector allocations than for individual GH allocations. Sector allocations will be determined based on the qualified harvests of eligible participants. So, the sector allocation will be a build up of individual allocations. Currently, the sector allocations are the sum of individual allocations that are computed without dropping any years. In making individual allocations of GH, however, each individual’s worst year (or two years) would be dropped. If the drop year provisions are intended to accommodate individuals that were unable to

harvest at typical rates in an off year, not dropping the worst years when determining sector allocations would disadvantage sectors in which a disproportionate number of participants suffered an off year. For example, if most catcher vessel longliners suffered a poor year in either 1998 or 1999, using a drop one year provision for developing the sector allocations would result in a substantially larger sectoral allocation to longline catcher vessels since each individual history used to develop the sector allocation would not consider each individual's worst year (in some cases 1998, in others 1999). In the end, by including drop year provisions for the sector allocation, each individual allocation used to develop the sector allocation would not include the worst year of that individual. So, a sector in which most individuals had one bad year would not be universally disadvantaged in the sector allocation. If the sector allocation does not include a "drop year" provision, inclusion of the drop year provision in the individual allocations might not help individuals in a sector in which most participants had one off year.

3.2.2 Sector Qualifying landing criteria (same for all gears in all areas)

Landings based on retained catch for each species (includes weekly production report for Catcher/Processor sector). Total pounds landed will be used as the denominator.

Option A: Include retained catch that is used for meal production

Option B: Exclude retained catch that is used for meal production

3.2.3 Sector Allocation: Primary Species:

Allocate catch history by sector and gear type as follows:

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

Longline CV and CP:

Pacific cod, pelagic shelf rockfish, Pacific ocean perch, deep water flatfish (if turbot is targeted), northern rockfish, Arrowtooth flounder

Pot CV and CP:

Pacific cod

Fixed gear low producers:

Pacific cod

Jig gear

Pacific cod

3.2.4 Sector Allocation: Secondary (~~Bycatch~~) and PSC species:

Secondary species: Thornyhead, rougheye, shortraker, other slope rockfish, Atka mackerel, and trawl sablefish. Includes SEO shortraker, rougheye, and thornyhead rockfish.

Option 1: Sector allocation based on fleet average for each sector during sector allocation qualifying period **by area**.

Suboption. based **on** fleet bycatch rates on 75th percentile **for each sector** by area by target fishery

Option 2: Maintain current PSC allocations, and MRA management for secondary species.

Suboption: Allocate PSC by sector based on fleet average for each sector during sector allocation qualifying period.

Note: Sector allocations will be based on the criteria specified above and will be based on the aggregate history of vessels in each sector, which legally fished in the federal fishery and in the state parallel fishery during the qualifying period. The criteria for sectoral allocations may be different than the qualifying and allocation criteria for developing ~~Quota-Share~~ **Gulf History** pursuant to the co-op program because there might be different sector constraints under SSL measures or within state waters.

It is assumed that only harvests by “eligible” participants would be included in determining the sectoral allocation. So, harvests by persons not eligible for an initial allocation would not affect the sector splits. All harvests by eligible participants, whether from the Federal fishery or the state water parallel fishery, would be counted toward the sectoral allocation.

II. Voluntary Co-op Structure

3.3 INITIAL CO-OP FORMATION PROVISIONS. Voluntary co-ops may form between eligible harvesters and processors. Harvesters may elect not to join a co-op, and continue to fish in the LLP/Open Access fishery.

3.3.1 Eligibility.

LLP participation

Option 1. Any person that holds a valid, permanent, fully transferable LLP license is eligible to receive an initial allocation of Gulf catch history (as generic GH) through co-op membership.

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

3.3.2 Initial Allocation of primary species catch history

Allocate catch history as generic ~~Quota-Share~~ **Gulf history (GH)** on an individual harvester basis for the following primary species:

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

Longline CV and CP:

Pacific Cod, pelagic shelf rockfish, Pacific ocean perch, deep water flatfish (if turbot is targeted), northern rockfish, Arrowtooth flounder

Pot CV and CP:

Pacific Cod

Quota shares are **GH** is designated by sector:

Option 1. Trawl ~~GH~~/GQ may be fished using fixed gear, if yes – appropriate mechanism to transfer GH/GQ across sectors needed.

Gulf Quota (GQ) is the annual allocation to a cooperative based on the GH of its members.

3.3.2.2 Qualifying periods and landing criteria (same for all gears in all areas) for determining GH (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

Options to drop years would be to accommodate SSL restrictions or the inclusion of the state portion of the parallel fishery.

Individual GH will be based on retained catch for each species (includes weekly production report for Catcher/Processor sector). The denominator shall be total landed catch by species.

- Option A: Include retained catch that is used for meal production
- Option B: Exclude retained catch that is used for meal production

3.3.3 Allocation of Secondary and PSC Species

3.3.3.1 Allocation of secondary species:

Secondary species are: thornyhead, roughey, shortraker, other slope rockfish, Atka mackerel, and trawl sablefish. Includes SEO shortraker, roughey, and thornyhead rockfish.

Allocation of secondary GH to co-op members:

- Option 1. Allocate GH to co-op members based on fleet secondary species catch rates by **sector gear**:

- Suboption 1. based on average catch history by area and target fishery
- Suboption 2. based on 75th percentile by area by target fishery

The Council should clarify whether this allocation would use the same bycatch rates as used under 3.2.4. The provision of 3.2.4 relies on “sector” averages, which may differ from the “gear” averages specified by this provision.

Option 2. Include these species for co-ops for one gear type only (e.g., trawl). Deduct the secondary species from other gear types from TAC. If deduction is not adequate to cover secondary species in other gear types, on a seasonal basis, place that species on PSC status until overfishing is reached.

Since the allocations to sectors are specified by section 3.2.4, the deduction from the TAC under this section is assumed to be the amount determined under 3.2.4.

Option 3. Retain these species on secondary species status for all gear types with current MRAs.

3.3.3.2 Halibut PSC Allocation:

Each cooperative ~~Upon entering a co-op, each recipient of fishing history would receive an allocation of halibut mortality (harvest shares) based on their allocation of the primary species GH. Secondary species would receive no halibut allocation.~~

The allocations under this provision are assumed to be to the cooperative.

As written, this provision would not create PSC GH. Instead PSC annual allocations (PSC GQ) would be based on primary species GH of a cooperative. Under this approach, PSC GH could not be transferred separately from the primary species GH. This approach would require that primary GH holdings would carry a specific percentage of halibut PSC. This approach could be unwieldy, if PSC bycatch rates change substantially for some target fisheries. For example, if PSC reductions are realized by a certain target fishery, the excess PSC could not be permanently transferred to a fleet that has different targets. Instead, annual trades of PSC annual allocations would be required to redistribute PSC.

Alternatively, the Council could provide that:

“Upon entering a cooperative, each recipient of primary species GH would receive an allocation of PSC GH, based on the primary species GH allocation. Each cooperative would receive an allocation of halibut mortality (harvest shares) based on the PSC holdings of its members. Secondary species would receive no halibut allocation.”

In addition, the Council should provide a mechanism for determining these allocations. For example, the Council could adopt the following provision from alternative 2:

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

Option 1. Both sectors

Option 2. Catcher Processor/Catcher Vessel”

3.3.3.3 Transfer of secondary species GH and PSC:

~~Permit transfer of secondary species GH and associated fishing quota GQ subject to the rules for initial co-op formation during the initial co-op formation period, and the general co-op rules following the period of initial Co-op formation:~~ **As permitted by and subject to any other transfer rules:**

Option 1. Primary species and **the associated** secondary species **and/or PSC history GH** are non-separable and must be transferred as a unit.

Option 2. Primary species and **the associated** secondary species **and/or PSC history GH** are separable and may be transferred separately.

The provision does not appear to apply to PSC, so PSC should be deleted from the heading unless the provision is modified. If PSC is to be added to this provision, 3.3.3.2 would need to be modified to allocate PSC GH. As written, no PSC history exists.

The introductory language creates ambiguity concerning transfers by new members after the initial period. The suggested revision is more generic and therefore removes any ambiguity.

III. Co-op Rules for all CPs, trawl, longline, pot and catcher vessels

Option: Jig and low producer fixed gear exempted.

Initial Co-op Formation Rules:

~~Voluntary Coops may be formed between harvesters and processors during the initial co-op formation period established below. Harvesters have the choice to either remain in the LLP/Open access fishery or to join a co-op. The history of harvesters that choose to join a co-op will be subtracted from the open access sector allocation. Formation of a co-op under the rules for initial co-op formation generates Gulf History (GH) to members. Annual harvest amounts (Gulf Quota—GQ) are issued to the co-op based on these GH. History, in the form of the GH, is transferable among members at any time. Within the initial co-op formation period, no permanent transfers of GH may be made between co-ops. During this period GQ is transferable between co-ops by inter-cooperative agreement to facilitate further rationalization and address operational issues. Following the initial co-op formation period the general rules for co-ops would apply. For catcher vessel cooperatives, a pre-season co-op agreement between eligible, willing harvesters in association with and an eligible and willing processor is a pre-requisite to a cooperative receiving an allocation of GQ. The harvesters and processor that enter into the agreement shall be the members of the co-op. The processor will be an associate of the cooperative but will not be a cooperative member. The agreement will be filed with the RAM division. The co-op agreement must contain a fishing plan for the harvest of all co-op fish. Monitoring will be at the co-op level. After initial co-op formation, members who choose to leave their original co-op and join a new co-op may join through an agreement that is not required to include provisions regarding transfers or exiting from a co-op, including compensation to the members of the new co-op or the associated processor.~~

This paragraph appears to be a statement of intent, which is repeated below in specific provisions. Staff recommends that this paragraph be deleted to avoid potential inconsistencies with the provisions that appear below. The general statement of intent that is a lead-in to the alternative could be retained with the understanding that the provisions that follow provide the detail for implementing this alternative. Deletion of this statement could avoid ambiguities.

3.3.5 Catcher Vessel Co-ops.

~~During the initial co-op formation period e~~ Catcher vessel co-ops may be established within sectors between eligible harvesters in association with and an eligible processor. A harvester is initially eligible to join a cooperative in association with the processor to which the harvester delivered the most pounds of primary species to during the ~~qualifying period.~~

- a) ~~the allocation base period~~ qualifying years.
- b) most recent 1, 2, or 3 years from the qualifying years ~~base period.~~

- Suboption 1. On a species by species basis
- Suboption 2. In the aggregate

This provision defines cooperative eligibility, as does 3.3.9. The proposed change combines the two provisions, so that 3.3.9 can be deleted. Initially, only one processor is “eligible” for association with any harvester (whether that association is during or after the initial period). The proposed change clarifies this association rule.

See discussion paper (p. 11) concerning the suboptions. Determining associations on a species by species basis could complicate cooperative formation and operation.

3.3.6 Catcher processor co-ops may be formed by eligible CPs within each CP sector. No processor affiliation is required for CP co-op formation.

3.3.7 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)~~ **GH** of its sector. Council may choose different percentages for different sectors.
- Option 3. 50-100% of ~~shareholder entities~~ **holders of GH** 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 **GH** ~~harvest share (or catch history)~~ for each co-op associated with its processor

Option 4 could be applied only in the initial cooperative period.

Option 5 Any number of eligible harvesters within the sector

Does this mean a single harvester can form a cooperative?? It is difficult to call a single person a cooperative.

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

3.3.8 Duration of initial cooperative agreements:

- Option 1. 1 year
- Option 2. 2 years
- Option 3. 3 years
- Option 4. Any length agreed between the co-op participants.

3.3.9 Catcher Vessel co-op/processor affiliations

~~A harvester is eligible to join a cooperative associated with the processor to which the harvester delivered the most pounds of primary species of during:~~

- ~~a) the allocation base period.~~
- ~~b) most recent 1, 2, or 3 year from the qualifying base period.~~

This provision defines cooperative eligibility, as does 3.3.5. The two provisions should be combined, with one deleted.

Option A: If the processor with whom the harvester is **initially** eligible to form a co-op is no longer operating, the harvester is eligible to join a co-op with any qualified processor (i.e. any processor eligible to participate in the initial formation of a co-op).

Option B: If the processor with whom the harvester is **initially** eligible to form a co-op is no longer operating in the community, the harvester is eligible to join a co-op with any qualified processor (i.e. any processor eligible to participate in the initial formation of a co-op).

- Option 1. CV cooperatives must be associated with
 - a) an eligible processing facility
 - b) an eligible processing company
- Option 2. Processors can associate with more than one co-op.
- Option 3. Processors are limited to 1 co-op per plant for each sector.

See discussion paper (pp. 6-9) concerning Option B. This provision might be unworkable under this alternative's structure.

Option 1 would determine whether processors are determined at the plant or company level.

The use of the term "eligible" in Option 1 could be confusing. To be consistent with the program structure described, the provision will be interpreted as follows. Processor eligibility rules define a single processor that each harvester may associate with initially. This initial processor association is assumed to be identified by the use of the term "eligible". After the initial cooperative association and meeting the exit agreement terms (or terms for sale of GH from a cooperative), the holder of GH could join a cooperative in association with any processor. So, requiring the association to be with an "eligible" processor after the initial period and satisfaction of the exit (or transfer) terms, simply requires the association with any processor. So, the eligible processor is:

- 1) initially, the one processor that the harvest is eligible to associate with in a cooperative*
- 2) after satisfaction of an exit requirement, any processor*

If the provision should be interpreted otherwise, the Council should clarify its intent.

3.3.10 Initial co-op agreements are required to have the following:

See staff proposed replacement provisions for 3.3.10 through 3.4.2 attached to the end of this document. That proposal is intended to capture all of the requirements of the sections in a simplified manner.

- A pre-season co-op agreement between eligible, willing harvesters **in association with and an eligible** and willing processor is a pre-requisite **to a cooperative receiving an allocation of GQ**. The harvesters ~~and processor~~ that enter into the agreement shall be the members of the co-op. The **processor will be an associate of the cooperative but will not be a cooperative member**. The agreement will be filed with the RAM division. The co-op agreement must contain a fishing plan for the harvest of all co-op fish. *Cooperative formation is assumed to be a prerequisite to the GQ allocation. The processor would not be a cooperative member, but would be an associate of the cooperative. This provision applies to all cooperatives.*
- 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, ~~history~~ **GH** or GQ may be transferred and consolidated within the co-op to the extent permitted under the membership agreement. *Provision applies to all cooperatives.*
- The co-op agreement will have a monitoring program. 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 primary species, secondary species and PSC mortality, as may be adjusted by inter-co-op transfers. *Provision applies to all cooperatives.*

- 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. *Provision applies to all cooperatives.*
- Co-op agreements will specify that processor affiliates cannot participate in price setting negotiations except as permitted by general antitrust law. *Provision applies to all cooperatives.*
- Co-ops may engage in inter-Cooperative transfers (leases) of GQ during **and after** the initial co-op formation period. **During the initial cooperative formation period, GH transfers will be permitted between members of the same cooperative, but not between members of different cooperatives.** Following the initial do-op formation period, **members of a** co-op may transfer GH ~~and/or GQ~~ to **members of** other co-ops. **All transfers will be** subject to such terms and conditions as may be specified in the **applicable** co-op agreement and any ownership or use caps or other conditions as may be established pursuant to this program. *Provision applies to all cooperatives defining rules for transfers during and after the initial cooperative formation period. This provision could be incorporated into a single section on transfers (that includes all provisions affecting transfers) for clarity.*
- Co-op agreements shall specify the terms and conditions for entering and exiting the co-op, including mechanisms whereby a member exiting the co-op compensates the remaining co-op members **and/or the associated processor** for exiting the co-op. Compensation can take on any form agreed to by the members **and the associated processor**, including permanent transfer of some or all GH generated by the existing participant to the remaining co-op members **or the associated processor**. This provision is required only for the initial co-op agreement. ~~Participants who have left their initial co-op may negotiate participation with other existing or potential co-ops.~~

The rules don't seem to allow exit during the initial cooperative formation period. The stricken sentence concerns participants that have exited, which would not seem to belong in this section which concerns initial cooperative formation.

- Co-op agreements shall allow for the entry of other eligible harvesters into the co-op under the same terms and conditions as agreed to by the original agreement.

3.3.11 Allocation to CP co-ops will be based on the above, with the following exceptions:

- CP co-ops do not need a processor ~~affiliation~~ **association**.
- CP co-ops will be within CP gear sectors. Transfers of GH or leases of GQ across CP gear types is not permitted.
- CP co-ops are subject to the other terms and conditions specified for CPs under this program

Under these provisions, the exiting and transfer requirements of initial cooperatives will apply to CP cooperatives. Also, the Council should be clear whether the second bullet is a limitation on transfers that might be permitted by 3.3.2 option 1. So, if this provision and 3.3.2 option 1 were both selected, CV trawl shares could be used by CV fixed gear vessels, but CP trawl shares could not be used by CP fixed gear vessels.

3.3.12 Initial Co-op Formation Period.

An Initial Co-op Formation period shall be established beginning with year one of program implementation and extended for the period identified below. ~~During this period, no permanent transfers of GH may be made between co-ops. GH transfers can take place at any time between members of the same Co-op. Leasing of annual harvest allocations (IFQ) between Coops is allowed pursuant to an inter-Co-op agreement. During is period, harvesters may join Coops for which they would otherwise be eligible under the same conditions as the original founding members.~~

Option 1. period is 1 year

Option 2. period is 2 years

Option 3. period is 3 years

Stricken provisions are duplicates of those in bullets of 3.3.10 above with some minor differences. To ensure consistency, the provisions should be limited to one location.

3.4 General Operational Co-op Rules.

This structure suggests that upon expiration of the initial cooperative formation period, only requirements of the initial agreement that are specifically mentioned are required. Is this intended to remove the requirement for an exit strategy, if the exit strategy has not been complied with.

3.4.1 Following the initial co-op formation period the following rules for co-op operation would apply:

- New GH can be generated by **eligible** harvesters ~~eligible under the requirements for initial co-op formation~~ only by joining a co-op pursuant to the terms for initial co-op formation. An initial co-op formation period shall apply to transfers for these new co-op entrants which shall be the same as the initial co-op formation period specified above.

This suggests that a late comer that joins a cooperative during the initial cooperative formation period, but not at implementation, can transfer shares as soon as the initial cooperative formation period is up, but that a person joining a cooperative for the first time after the end of the initial cooperative formation period must be in a cooperative for a period of time equal to the initial cooperative formation period. Under this structure, the GH of this person could not be transferred until a period the length of the initial formation period has lapsed. After that time, transfers of the person's GH would be permitted.

- A pre-season co-op agreement between eligible, willing harvesters **in association with** ~~and the eligible and willing~~ **an eligible** processor is a pre-requisite **to a cooperative receiving an allocation of GQ**. The harvesters and processor that enter into the agreement shall be the members of the co-op. The agreement will be filed with the RAM division. The co-op agreement must contain a fishing plan for the harvest of all co-op fish.

After the initial cooperative formation period, the cooperative may be associated with any processor???
The provisions are unclear whether a person can associate with any processor or only the processor that is defined as eligible for initial cooperative formation. This provision creates some ambiguity concerning whether the exit conditions must be satisfied for a harvester to form an association with a new processor.

- 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. **Provision applies to all cooperatives.**
- The co-op agreement will have a monitoring program. 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 primary species, secondary species and PSC mortality, as may be adjusted by inter-co-op transfers. **Provision applies to all cooperatives.**
- 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. **Provision applies to all cooperatives.**
- Processor affiliates cannot participate in price setting negotiations except as permitted by general antitrust law. **Provision applies to all cooperatives.**

- Co-ops may engage in inter-cooperative transfers of GH and/or GQ to other co-ops. **Members of a co-op may transfer GH to any individual that is a member of any co-op. Any transfers will be** subject to such terms and conditions as may be specified in the co-op agreement and any ownership or use caps or other conditions as may be established pursuant to this program. *Provision applies to transfers and could be worked into a section that defines all transfer provisions. Combining with the second bullet will clarify the inconsistency between these bullets.*
- Co-op agreements shall allow for the entry of other eligible harvesters into the co-op under the same terms and conditions as agreed to by the original members.

Again, it is unclear, who is eligible for a cooperative. Is it only the harvesters that made deliveries in the qualifying years or is it all harvesters. Also, the provision creates some ambiguity concerning the requirement of exit provisions, if a harvester has already met exit conditions with another processor.

3.4.2 Co-op formation and GH transfers

~~Option 1. Harvesters who entered a co-op during the initial co-op formation period may transfer GH or GQ to other members within the original co-ops or to a new co-op at any time pursuant to the terms of the original co-op agreement. **This provision is inconsistent with the bullet on transfers in the initial cooperative provision. That provision only allows transfers of GH to members of other cooperatives after the initial cooperative formation period. The bullets in 3.4.1 are also inconsistent with this provision. The Council should clarify whether the transfer requires the consent of the cooperative and the associated processor. In any case, either the bullet above or this provision should be deleted to avoid inconsistencies.**~~

~~Option 2. Harvesters who choose to not join a co-op during the initial co-op formation period may generate new GH by joining a co-op or form a new cooperative with the processor they delivered the most pounds of primary species during the allocation qualifying period. Transfers of GH or GQ may take place at any time thereafter pursuant to the terms of the agreement. **This provision is inconsistent with the limit on GH transfers in the first bullet in section 3.4.1. That provision would allow GH transfers after a period of length equal to the initial cooperative formation period. Since the provisions are mostly redundant, but somewhat inconsistent, one provision should be selected and the other deleted.**~~

Suboption: The rules for transferring the initial co-op formation period shall apply to these new co-op entrants.

The provision appears to be intended to apply the initial cooperative formation transfer rules to persons that join cooperatives after the initial cooperative formation period. This is inconsistent with the last sentence of Option 2. Also, it is not clear whether these rules apply in perpetuity or only for a period of years.

3.4.2.1 Qualified Persons.

Persons qualified to **receive GH by transfer**, ~~enter existing co-ops following the initial co-op formation period, or harvest GH under a new co-op (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 GH harvest share.
- Option 5. U.S. citizens eligible document a vessel.
- Option 6. Communities would be eligible to receive GH harvest shares by transfer (this provision would be applicable if certain provisions of 2.9 are adopted).
- Option 7. Initial Co-op members.

This provision appears to only address eligibility to acquire GH. The Council should consider modifying this provision to parallel 2.2.3.3.1. This provision contains a few ambiguities; specifically, Option 3 would allow entities that are able to document a vessel to fish shares to acquire GH and Option 5 is redundant since at the individual level, only US citizens can document a vessel. The provisions of 2.2.3.3.1 were adopted to clarify these ambiguities.

3.4.2.2 Definition of sea time

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

~~Note: Following the initial Co-op formation period, any processor may form a Co-op with any eligible harvester who has GH or form a new cooperative.~~

This provision suggests that a harvest can form a cooperative with any processor after the initial cooperative formation period (regardless of whether the procedure for exit is followed). The Council should clarify whether this provision is intended to allow a harvester to move freely after the initial cooperative formation period.

3.4.3 Ownership caps.

Ownership of GH by a co-op member shall be capped at:

- Option 1. 15% of the GH by area, sector and species
- Option 2. 25% of the GH by area, sector and species
- Option 3. 45% of the GH by area, sector and species
- Option 4. no cap.

Ownership caps of the original issues would be grandfathered in at the original level of GH.

Note that the ownership caps are not based on sectors. The provisions, however, do not appear to allow transfers of shares across sectors. Without including "sector", the provision would allow ownership of an entire sector by one individual in some instances.

3.4.4 Use caps.

Use by a co-op of annual allocations (GQ) generated by GH shall be capped at:

- Option 1. 15% by area, sector and species
- Option 2. 25% by area, sector and species
- Option 3. 45% by area, sector and species
- Option 4. no cap

Use caps of the original issues would be grandfathered in.

Note: The relationship of individual ownership caps and cooperative use caps is not clear. The ranges of individual ownership caps and cooperative use caps are the same. If the caps are the same, a person that owns shares up to the cap could not join a cooperative with any other persons. Is this provision intended to be a vessel use cap.

3.4.5 Vertical integration

Initial recipients of GH 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 CV GH.
- Option 3. 115%-150% of initial allocation of CP GH.
- Option 4. No cap

3.4.6 Catcher/Processor Provisions

In addition to the rules specified above, the following provisions apply to Catcher/Processors:

3.4.7 Restrictions on transferability of CP harvest shares:

- Option 1. CP GH may only be transferred to other CP GH holder~~co-ops~~.

This provision is not clear. GH will be held by individuals and brought to cooperatives. Cooperatives receive GQ allocations based on the GH of their members. In that context, this provision is not clear. Alternatively, a provision could provide that "CP GH can be transferred only to holders of CP GH." This limits the transfer to initial issues of catcher processor GH

- Option 2. CP GH may be ~~transferred~~ converted to CV GH ~~co-ops~~. CP GH ~~harvest shares~~ maintains ~~its~~~~their~~ designation when transferred to persons who continue to catch and process the resulting CP GQ ~~harvest shares~~ at sea pursuant to a CP co-op, if CP GQ is harvested by a CV and delivered to a processor ~~harvest shares are transferred to a CV Co-op, the underlying CP GH harvest shares convert~~ to CV GH ~~harvest shares~~.

The suggested revision is intended to adapt the provision to the history-based nature of this alternative. Also, note that the language would not allow a recipient to enter the open access since the GQ must be used in a cooperative to keep its CP designation.

- Option 3. CP GH ~~harvest shares~~ maintains ~~its~~~~their~~ designation after transfer for 5 years following date of implementation, after which time any transfer of CP GH (or transfer of GQ outside of a cooperative) ~~shares~~ converts the underlying GH to CV GH ~~shares~~.

The suggested revision is intended to adapt the provision to the history-based nature of this alternative.

3.4.7.1 Re-designate CP ~~shares (GH)~~ as CV ~~shares (GH)~~ upon transfer to a person who is not an initial issue of CP shares:

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

3.4.7.2 Leases of CP annual harvest allocations (GQ):

- Option 1. Allow leasing pursuant to an inter-Co-op agreement within CP sectors (no CP leases allowed across gear types).
- Option 2. No leasing of CP GQ allowed
 - Suboption: Allow for the first 3 years after program implementation.
- Option 3. Allow leasing within a cooperative

3.4.7.3 Conversion of CP ~~shares~~ GH and GQ:

- Option 1. CP GH and GQ converted to CV GH and GQ
 - Suboption 1. will count toward CV caps

Suboption 2. will not count toward CV caps at the time of conversion.

- Option 2. Caps will be applied to prohibit acquisition of shares in excess of the cap. Conversion of CP **GH or GQ** to CV **GH or GQ** alone will not require a CP **GH holder or cooperative** to divest CP **GH and GQ** for exceeding ~~the~~ CP caps.

3.5 Skipper/Crew Provisions

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. Establish license program for certified skippers. For initial allocation Certified Skippers are either:
- i. Vessel owners receiving initial GH 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 GH 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.

3.6 LLP/Open Access fishery provisions:

Harvesters that choose not to participate in a co-op may continue to fish in the LLP/Open Access fishery. The LLP/Open Access fishery will be conducted in a manner similar to current practices.

- Option 1. The allocation for each sector of primary species, secondary species, and PSC to the LLP/Open Access fishery will be those amounts remaining after allocation to the co-ops.
- Suboption: Manage LLP/Open Access fishery sector allocations for primary species only.
Continue current MRA and PSC management
- Option 2. PSC allocations to the LLP/Open Access fishery will be reduced by:
- Option A. 10%
 - Option B. 20%
 - Option C. 30%

Note: This reduction may differ by sector.

Can a person enter the open access who was previously in a cooperative? If so, does it matter if a person sold GH while in a cooperative. At the onset, it is clear that a person must have an LLP for the open access, but if GH is freely tradable, what is the requirement for entering the open access after being in a cooperative? Holdings may change substantially, in which case, the amount of GH going to the open access may be very different after trades than before trades.

The need for the suboption is not clear. The option is for the continued management of the open access under current rules (including continuing current MRA and PSC management). The differences between the suboption and the option are not clear.

3.7 Communities

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.

3.7.1 Regionalization

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

If adopted, all GH will be categorized by region (**for the fisheries identified below**).

- GH that is regionally designated cannot be reassigned to another region.
- Catcher vessel GH is regionalized based on where the catch was processed, not where it was caught.
- Catcher processor GH is not subject to regionalization.
- Qualifying years to determine the distribution of **GH shares** between regions will be consistent with the qualifying period under cooperative formation.

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 140° 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.

The regionalization provisions under Alternative 3 are not exactly the same as those provided under Alternative 2. Staff has provided suggestions only where the inconsistencies between the two alternatives were thought to have been potentially inadvertent.

Staff suggests the above modifications to the introductory sentence, to make it consistent with the regionalization provisions that follow. In effect, the change clarifies that not all GH would be regionalized under Alternative 3. Only those species and areas that are identified explicitly would be regionalized: pollock in Area 630 and 640, Gulf sablefish (trawl), as well as all other primary species in the Central GOA (Areas 620 and 630) with the exception of arrowtooth flounder. The only secondary species that is explicitly included is Gulf trawl sablefish, based on the expectation that at some point under a rationalization regime, the trawl sablefish fishery may become a directed harvest. These are the same fisheries proposed for regionalization under Alternative 2.¹ The change serves to clarify a sentence that could be potentially misinterpreted.

¹ Note that Alternative 2 also provides an option to regionalize all secondary species.

The proposed change to the last bullet would make the terminology consistent among all provisions. Note also that this provision is slightly different from that provided in Alternative 2, due to the different cooperative options proposed under Alternative 3. Alternative 2 provides two options for determining the distribution between the north and south regions: 1) the qualifying period for receiving shares, and 2) 1999 – 2002.² By contrast, Alternative 3 bases the distribution between regions on the qualifying period for cooperative formation, which could be different from the qualifying years established to determine GH.³ Alternative 3 also does not include an explicit option to regionalize based on 1999 – 2002, although 2000 – 2002 or 1999 – 2001 could be derived from the current options.

Lastly, the regionalization provisions under Alternative 3, when combined with the harvester/processor cooperative association provisions, could create an inconsistency under which a portion of the harvester's shares could not be delivered to the associated processor. This same concern was identified and addressed in Alternative 2 at the December meeting. The following language is proposed to avoid a situation in which the regional designation conflicts with the processor association provisions:

- *In the event GH is regionalized, a harvester will be eligible to bring its history in a region to a cooperative associated with the processor in the region to which the harvester delivered the most pounds during the cooperative formation qualifying period.*

Depending on the delivery pattern of the individual harvester, a typical harvester could have history in both the north and the south regions. The cooperative/processor association provisions in Section 3.3.9, 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 have substantial history in both regions, but have an obligation to deliver all of its harvest to the processor with which it is associated overall, in one region. Because the ability of a harvester to receive an annual harvest allocation is dependent upon the processor's association with the cooperative, the processor would influence whether the harvester is able to use this history in the rationalized fishery.

The proposed language resolves the potential conflict by creating a harvester/processor association within each region. In effect, a harvester's north region history would be associated with the processor in the north to which the harvester delivered the most pounds during the qualifying period. The harvester's south history would be associated with the processor in the south to which it delivered the most pounds during the qualifying period.

3.7.2 Community Fisheries Quota (CFQ) Program

All of the provisions of the CFQ Program below are identical to the provisions included in the CFQ Program under Alternative 2, with the exception of Section 3.7.2.9. Please see Section 2.2.9.2 for comments regarding proposed changes or suggestions for the CFQ Program under both Alternative 2 and Alternative 3. Section 3.7.2.9 is addressed separately, below.

The same legal concerns identified under the CFQ Program in Alternative 2 (Section 2.2.9.2) apply to the CFQ Program under Alternative 3, as the fundamental concept and specific options are the same. A legal opinion provided by NOAA GC (Attachment D) identifies potential legal concerns regarding the process by which a Gulf administrative entity would decide which fishermen within an eligible

² *The option for 1999 – 2002 was included at the December 2003 meeting, to allow for a set of years that accounts for the Steller sea lion mitigation measures that likely changed delivery patterns starting in 1999.*

³ *The qualifying period under cooperative formation (Section 3.3.5) includes an option to use the most recent 1, 2, or 3 years from the overall GH qualifying period (Section 3.3.2.2) to determine the processor with which the harvester is associated.*

community could fish the annual harvest shares resulting from the CFQ. The opinion states that this process denotes a sub-allocation of quota share by an outside entity, without Secretarial approval, and thus, without an appeals process, risking violation of the Administrative Procedure Act and the U.S. Constitution. While the legal implications need to be resolved, the proposed options for the CFQ Program could be relevant under various program designs. Thus, while additional effort needs to be undertaken to further develop the proposed CFQ Program to make it both complete and legally viable, the proposed options to date are not made inapplicable due to the legal opinion.

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. These purposes will be obtained by allocating QS to a community entity so that the community entity can derive revenues from leasing QS to ensure the retention of fishing opportunities and/or support community development.

3.7.2.1 Administrative Entity

A Gulf-wide administrative entity will receive and hold CFQ on behalf of eligible communities. The administrative entity representing ~~a community~~ **or one or more eligible** communities must be a non-profit entity qualified by NMFS.

~~Gulf-wide administrative entity~~

3.7.2.2 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 any commercial permit and fishing activity as documented by CFEC in the last ten years (1993 - 2002)
- 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

3.7.2.3 Species

- Option 1. All rationalized groundfish species
- Option 2. **Pollock and Pacific cod** ~~Limited to species that can be caught without (hard on) bottom trawling~~

3.7.2.4 Allocation

- Option 1. 5% of annual TAC
- Option 2. 10% of annual TAC
- Option 3. 15% of annual TAC

3.7.2.5 Harvesting of Shares

- Option 1. Limited to residents of any eligible community

3.7.2.6 Allocation Basis

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

- Option 1. 0% - 100% of the annual harvest rights from the CFQ owned by the administrative entity would be distributed amongst qualified communities on an equal basis.
- Option 2. 0% - 100% of the annual harvest rights from the CFQ owned by the administrative entity would be distributed amongst qualified communities on a pro rata basis based on population.
- Option 3. 0% - 100% of the annual harvest rights from the CFQ owned by the administrative entity from each GOA groundfish management area, by species, would be distributed amongst qualified communities located in the management area on an equal basis.

3.7.2.7 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.

3.7.2.8 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.

3.7.2.9 CFQ Management

The CFQ Program will be managed in a manner similar to the halibut/sablefish community purchase program. The Council shall establish a CFQ implementation committee to implement this program as a trailing amendment. The committee will advise on the provisions of the program.

Staff assumes that the committee referenced under Section 3.7.2.9 would be tasked with making recommendations to the Council on the details of managing the CFQ Program. If initiated, the committee will need legal guidance during the development of the management provisions of the program. The fundamental differences between the CFQ Program and the halibut/sablefish community purchase program may necessitate different management provisions. The CFQ Program is a direct allocation to a community entity on behalf of eligible communities, while the purchase program allows qualified administrative entities to be included as a type of eligible holder of QS, facilitating the purchase of shares by these entities.

3.8 Program Review and Data Collection:

3.8.1 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 for this and other Management Councils. Details of this program will be developed in the analysis of the alternatives.

3.8.2 Program Review.

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.

3.9 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 (actual boats) and LLPs used to generate harvest shares used in a Co-op unless specifically authorized may not participate in other state and 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.

State water provisions are being developed that would apply to all rationalization alternatives.

STAFF PROPOSED REPLACEMENT FOR

3.3.10 through (and including) 3.4.2

3.3.10 Initial Cooperative Membership

The following provision is required for the initial co-op agreement entered into by any harvester:

Co-op agreements shall specify the terms and conditions for entering and exiting the co-op or transferring GH from the cooperative, including mechanisms whereby a member exiting the co-op (or transferring GH from the co-op) compensates the remaining co-op members and/or the associated processor for exiting the co-op (or transferring GH from the co-op). Compensation can take on any form agreed to by the members and the associated processor, including permanent transfer of some or all GH generated by the existing participant to the remaining co-op members or the associated processor.

Following the initial co-op formation period, new GH can be generated by eligible harvesters that have never been co-op members ~~eligible under the requirements for initial co-op formation~~ only by joining a co-op in association with the eligible processor pursuant to the terms of an agreement that meets the requirements for an initial co-op formation.

3.4.1 Cooperative Agreement Requirements

All cooperative agreements are required to have the following:

- A pre-season co-op agreement between eligible, willing harvesters in association with and an eligible and willing processor is a pre-requisite to a cooperative receiving an allocation of GQ. The harvesters ~~and processor~~ that enter into the agreement shall be the members of the co-op. The processor will be an associate of the cooperative but will not be a cooperative member. The agreement will be filed with the RAM division. The co-op agreement must contain a fishing plan for the harvest of all co-op fish.
- 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, ~~history~~ GH or GQ may be transferred and consolidated within the co-op to the extent permitted under the membership agreement.
- The co-op agreement ~~will~~ must have a monitoring program. 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 primary species, secondary species and PSC mortality, as may be adjusted by inter-co-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.
- Co-op agreements will specify that processor affiliates cannot participate in price setting negotiations except as permitted by general antitrust law.
- Co-op agreements shall allow for the entry of other eligible harvesters into the co-op under the same terms and conditions as agreed to by the original agreement. Harvesters that have never been a member of a cooperative must enter an agreement that meets all requirements for an initial cooperative agreement, including mechanisms whereby a member exiting the co-op (or transferring GQ or GH from the co-op) compensates the remaining co-op members and/or the associated processor for exiting the co-op (or transferring GQ or GH from the co-op). Compensation can take on any form agreed to by the members and the associated processor, including permanent transfer of some or all GH generated by the existing participant to the remaining co-op members or the associated processor. A harvester that has left its initial co-op (or has GH that was transferred from its initial co-op) may ~~negotiate participation with other existing or potential~~ enter a co-op without any agreement concerning or limitation on exit (or transfers of GH) from the co-op.

These provisions are intended to provide the associated processor with approval of the cooperative agreement, including any provisions that govern transfer of GH or GQ from the cooperative and exit from the cooperative. The processor association is intended to create a better working relationship between the cooperative and the processor.

3.4.2 General Provisions Concerning Transfers of GH and GQ.

Co-ops may engage in inter-Cooperative transfers (leases) of GQ during and after the initial co-op formation period.

During the initial cooperative formation period, GH transfers will be permitted between members of the same cooperative, but not between members of different cooperatives.

Following the initial co-op formation period, members of a co-op may transfer GH ~~and/or GQ~~ to members of other co-ops.

All transfers will be subject to such terms and conditions as may be specified in the applicable co-op agreement and any ownership or use caps or other conditions as may be established pursuant to this program.

For persons that join cooperatives for the first time after the initial cooperative formation period, limits on transfers that apply during the initial cooperative transfer period shall apply for a ~~n initial co-op formation~~ period of time shall apply to transfers which shall be the same length as the initial co-op formation period specified above.

These provisions are intended to govern transfers of history and annual allocations. Since all transfers must be made in accordance with the cooperative agreement, which requires a cooperative/processor association, the processor will have prior approval of the provisions governing transfers.

**North Pacific Fishery Management Council
GULF OF ALASKA GROUND FISH RATIONALIZATION
ELEMENTS AND OPTIONS
December 2003**

DRAFT

The following provisions apply to Alternative 2 only:

2.2 Harvest Sector Provisions

2.2.1 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 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%

2.2.2 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

Suboption: For Pacific cod under Options 2, 3, and 4, consider only A season harvests for 2001 and 2002.

2.2.2.1 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)

2.2.2.2 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.

2.2.2.3 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).

2.2.3 Primary Species Rationalization Plan

Primary Species by Gear

2.2.3.1 Initial Allocation of catch history

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

2.2.3.2 Harvest share (or QS/IFQ) Designations

2.2.3.2.1 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.

2.2.3.2.2 Harvest share sector designations:

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.

2.2.3.2.3 Harvest share gear designations

Designate CV harvest shares as Trawl, Longline, and Pot

Designate CP harvest shares as CP trawl, CP longline, CP pot.

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

2.2.3.2.4 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

2.2.3.2.5 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 1. A shares be at the QS level and separable from B shares.

Suboption: Processor affiliated vessels would receive their entire allocation as A shares.

Option.2. 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.

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

2.2.3.3.1 Persons eligible to receive harvest shares by transfer must be (not mutually exclusive): Entities eligible to document a vessel (apply to CP).

Initial recipients of CV or C/P harvest share.

Community administrative entities would be eligible to receive harvest shares by transfer.

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

Suboption 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).

Definition of sea time:

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

2.2.3.3.2 Restrictions on transferability of CP harvest 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 issue of CP shares.

2.2.3.3.3 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.

2.2.3.3.4 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.

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

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

Option 4. No leasing restrictions for the first three years. After this grace period, leasing will be allowed if the QS holder owns 20% or greater of a vessel which made 3, 5, or 10 landings or 30% of the primary species shares held by the QS holder in at least 2 of the most recent 4 years.

2.2.3.3.6 Separate and distinct harvest share use caps

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 and management area are as follows (a different percentage cap may be chosen for each fishery):
 - i. Trawl CV and 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 issues 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.

2.2.3.3.7 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.”

All initial issues (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.

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

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.

2.2.3.3.8 Overage Provisions

A 7 day grace period after an overage occurs for the owner to lease sufficient IFQ to cover the overage. Failure to secure sufficient IFQ would result in forfeiture of the overages and fines.

- 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 harvest shares (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 up to 10% of harvest shares (or IFQ).

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).

2.2.3.3.9 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.

2.2.3.3.10 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.

2.2.3.3.11 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.

2.2.4 Allocation of Secondary 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.

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 secondary species catch from gear types from TAC. If deduction is not adequate to cover 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 secondary species QS

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

Option 2. Primary species shares and secondary species shares are separable and may be transferred separately

2.2.5 PSC Species

2.2.5.1 Accounting of Halibut Bycatch

Pot vessels continue their exemption from halibut PSC caps.

Hook and line

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: Continue to fish under PSC caps.

Suboption (to all options): Holders of halibut IFQ are required to land legal halibut. Halibut bycatch occurring without sufficient IFQs would count against PSC allocations.

Trawl Entities:

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

Option 2: Continue to fish under PSC caps.

2.2.5.2 Halibut PSC Allocation

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

Initial allocation based on average halibut bycatch by directed primary 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

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

Option A: Halibut PSC harvest shares are separable from primary 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:

Suboption 1. 0%

Suboption 2. 5%

Suboption 3. 7%

Suboption 4. 10%

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

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

Option B: No leasing/annual transfer of PSC outside of cooperatives.

All PSC reductions under this section will remain unfished (in the water).

2.2.5.3.1 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.

All PSC reductions under this section will remain unfished (in the water).

2.2.5.4 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

2.2.5.5 Retention of halibut incidentally caught by fixed gear vessels

Retention of halibut incidentally caught may be retained outside the halibut season from Jan. 1 to start of commercial fishery. 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.

The Council requests that staff notify the IPHC concerning these provisions.

2.2.6 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

2.2.6.1 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 secondary species and the vessel is a member of a GOA fishing cooperative.

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.

2.2.6.2 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.

2.2.7 Preserving entry level opportunities for P. cod

2.2.7.1 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

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

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

- Option 1. 1 block
- Option 2. 2 blocks
- Option 3. 4 blocks

2.2.7.3 Any person may hold: (Alternatives 2 and 3)

- Option 1. One block and any amount of unblocked shares
- Option 2. Two blocks and any amount of unblocked shares
- Option 3. Four blocks and any amount of unblocked shares

2.2.8 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.

2.2.9 Communities

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.

2.2.9.1 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 and incentive fisheries are not subject to regionalization.
 - Option: Secondary species shares 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.”
 - Option 2. 1999 – 2002
- 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.

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 140° 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.

2.2.9.2 Community Fisheries Quota (CFQ) 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. These purposes will be obtained by allocating QS to a community entity so that the community entity can derive revenues from leasing QS to ensure the retention of fishing opportunities and/or support community development.

2.2.9.2.1 Administrative Entity

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

Gulf wide administrative entity

2.2.9.2.2 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

Communities with residents having any commercial permit and fishing activity as documented by CFEC in the last ten years (1993 - 2002)

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

2.2.9.2.3 Species

- Option 1. All rationalized groundfish species
- Option 2. Limited to species that can be caught without (hard on) bottom trawling

2.2.9.2.4 Allocation

- Option 1. 5% of annual TAC
- Option 2. 10% of annual TAC
- Option 3. 15% of annual TAC

2.2.9.2.5 Harvesting of Shares

- Option 1. Limited to residents of any eligible community

2.2.9.2.6 Allocation Basis

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

- Option 1. 0% - 100% of the annual harvest rights from the CFQ owned by the administrative entity would be distributed amongst qualified communities on an equal basis.
- Option 2. 0% - 100% of the annual harvest rights from the CFQ owned by the administrative entity would be distributed amongst qualified communities on a pro rata basis based on population.
- Option 3. 0% - 100% of the annual harvest rights from the CFQ owned by the administrative entity from each GOA groundfish management area, by species, would be distributed amongst qualified communities located in the management area on an equal basis.

2.2.9.2.7 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.

2.2.9.2.8 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.

2.2.9.3 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.

2.2.9.3.1 Administrative Entity

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

2.2.9.3.2 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)
- 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

2.2.9.3.3 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.

2.2.9.3.4 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.

2.2.9.4 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.

2.2.9.4.1 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.

2.2.9.4.2 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

2.2.10 PSC for Crab and Salmon

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.

2.2.11 Review and Evaluation

2.2.11.1 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.

2.2.11.2 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.

2.2.12 Sideboards

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

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.

Staff analysis of sideboard issues should examine the potential consequences of the creation of a double set of sideboards relating to BSAI fisheries for vessels already subject to AFA sideboards in BSAI fisheries.

2.3 Processing Sector Provisions

2.3.1 Provisions for a Closed Class of Processors

2.3.1.1 Harvester Delivery requirements

2.3.1.1.1 Closed class delivery requirements

- 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.
 - ii. 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

2.3.1.1.2 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

Option A: If the processor with whom the harvester is associated with is no longer operating in the community, the harvester is eligible to deliver to any qualified processor.

Option B: 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.

2.3.1.1.3 Movement 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.

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

2.3.1.1.4 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.

2.3.1.2 Closed Class Processor Qualifications

2.3.1.2.1 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 processed catch and closed class fixed gear processed 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.

2.3.1.2.2 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

2.3.1.2.3 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

2.3.1.2.4 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)

2.3.1.2.5 Processing Caps may apply at:

Option 1. the facility level

Option 2. the entity level

2.3.1.2.6 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.

2.4 Cooperative Provisions

2.4.1 Cooperative type (voluntary or mandatory)

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

2.4.2 Cooperative formation

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

Catcher/processors

Trawl catcher vessels

“High producing” fixed gear catcher vessels

“Low producing” fixed gear catcher vessels

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

2.4.2.1.1 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

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.

2.4.2.2 Cooperatives are required to have at least:

- Option 1. 4 distinct and separate harvesters (using the 10% threshold rule)
Suboption: trawl CP sector, all less 1 of distinct and separate harvesters, using the 10% threshold rule).
- Option 2. 40 -100 percent of the harvest shares (or catch history) of its sector (may choose different percentages for different sectors)
- Option 3. 40 -100% of separate and distinct shareholders (using the 10% threshold rule) belonging to its sector. Council may choose different percentages for different sector.
- Option 4. 40 -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)

2.4.2.3 Duration of cooperative agreements:

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

2.4.2.4 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.

2.4.3 Rules Governing Cooperatives

2.4.3.1 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 primary species, secondary species and halibut mortality, as may be adjusted by inter-coop 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.

2.4.4 Ownership and Use Caps and Underages

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

2.4.4.2 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

2.4.5 Movement between cooperatives

2.4.5.1 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

2.4.5.2 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.

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

2.4.5.1 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 in the open access fishery.

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

2.5 Provisions relating to the IFQ halibut/sablefish fishery

2.5.1 Management areas:

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

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

A) QS will be issued to the halibut/sablefish QS holder. 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.

2.5.3 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.

2.5.3.1 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.

- A) 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.

2.6 Provisions relating to the SEO Area

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

2.6.2 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.

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

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

Alternative 3

Sector Allocations and Voluntary Coop Structure

Alternative 3 is a sector allocation and voluntary Coop proposal. A mandatory coop program would require harvesters to either join coops or not fish. Unlike Alternative 2, which is mandatory, processor specific IFQ program requiring landings by a harvester to a specific processor, this proposal allows new processor entrants and provides a mechanism for harvesters to voluntarily either enter coops voluntarily, or continue to fish in LLP/Open Access fisheries. The Alternative provides a flexible structure, which is reflective of the diversity of the fisheries in the GOA. It recognizes that harvesters, processors, and communities all have a stake in the fishery, but that the nature of the fisheries in the Gulf requires that these interests need flexibility as rationalization systems develop. This Alternative would:

- Allocate primary, secondary (bycatch) and PSC species by sector.
- Establish a mechanism which would facilitate Coops to form within sectors.
- Specify the operational rules for Coops once they are established under the rules for initial Coop formation.
- Provide for continuation of fishing opportunities for harvesters that choose not to participate in the voluntary Coops.
- Include community protection measures appropriate to a Coop-based program.

The proposal sets up a step-wise process for the establishment of Coops. The first step includes a sectoral allocation and the initial formation of Coops within sectors. This is followed by an initial Coop formation period to provide time for the Coops to refine their operations. The third step is ongoing, and establishes rules for Coop formation, dissolution, and operation following the initial period of Coop formation.

This proposal would not require the assignation of A and B class Gulf History shares. GH would be generic, and would originate from a vessel's history. GH can only be developed through the establishment of a Cooperative pursuant to the rules for initial Coop formation. However, Coop participation is strictly voluntary and a harvester may choose to continue to fish in a limited entry (LLP) open access fishery.

The proposal does not include a closed class of processors. Harvesters and processors may form Cooperatives based on landings of the primary species by a harvester to a processor during the qualification period. An interim initial Coop formation period is established before harvesters joining a Cooperative may move from one Coop to another. Formation of the initial Coop will be by Coop contract, and the program will establish requirements for those contracts, including a requirement that the contract contain the terms for dissolution of the Coop or the movement of a harvester from one Coop to another. During the initial Coop formation period inter-Coop agreements are allowed within sectors to address operational issues and ensure further rationalization of the fishery between Coops.

Following the initial formation of Coops, and after the initial Coop formation period, new Coops can form and harvesters can move from Coop to Coop or exit a Coop and move back into open access. The rules for such movement, including compensation to other members of the Coop, will be specified in their Coop contracts. New processors can enter the fishery at any time, and following the initial coop formation period, harvesters can form coops with those processors.

Because this is a voluntary program, and does not develop individually assigned IFQ or processor shares, community protection provisions are simplified to only include options for regionalization and a community quota system.

Monitoring of harvest and PSC for the Coop fishery will be at the Coop level. Assignments of Gulf history (GH), including transfers, will be monitored by RAM to ensure proper catch allocation. The annual GH will result in a Gulf Quota (GQ) for actual poundage. Current monitoring programs for the open access fishery will continue.

The following provisions apply to Alternative 3 only:

I. SECTOR ALLOCATION PROVISIONS.

3.1 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 (WYAK))

- 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 species. Allocation will be based on target catch in sablefish, halibut, Demersal Shelf Rockfish and P. cod fishery

Gear: All gear types are considered.

Option 1. The jig fishery would receive an allocation based on its historic landings in the qualifying years –

1. 100%
2. 125%
3. 150%
4. 200%

3.2 Sector definitions and allocations:

CV trawl

CV longline

CV pot

C/P trawl

C/P longline

C/P pot

jig

low producing fixed gear

Low producing vessel sector are

- Option 1. fixed gear vessels under 60 feet which harvest less than the 75th percentile harvest by primary species and area.
- Option 2. fixed gear vessels less than average harvest shares initially allocated by gear, species and area
- Option 3. fixed gear vessels less than the 75th percentile harvest shares initially allocated by gear, species and area

High producing vessels are the remainder and are divided into a catcher vessel longline and catcher vessel pot sector. Sector definitions apply throughout Alternative 3.

To be determined as a CP a vessel must process no less than 90% of its qualifying catch processed on-board on average over the qualifying period.

- Option 1: determined on a species by species basis
- Option 2: determined by the aggregate of all species
 - Suboption 1 jig sectors would be exempt from Coop provisions.
 - Suboption 2 Fixed Gear Low Producer Provisions:

- Option 1. Apply same rules for initial Coop formation and general Coop operation as apply to other sectors.
- Option 2. Exclude from Coop program, provide sector allocation and continue as an LLP/Open Access fishery.
- Option 3. Apply all Coop rules except processor affiliation requirement for initial Coop formation (i.e. harvester-only coop).

3.2.1 The sector allocations are the total of the qualifying catch histories of the eligible participants (see **Note** below). Sector allocation 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
- Option 2. 95-02
- Option 3. 98-02

3.2.2 Sector Qualifying landing criteria (same for all gears in all areas)

Landings based on retained catch for each species (includes weekly production report for Catcher/Processor sector). Total pounds landed will be used as the denominator.

- Option A: Include retained catch that is used for meal production
- Option B: Exclude retained catch that is used for meal production

3.2.3 Sector Allocation: Primary Species:

Allocate catch history by sector and gear type as follows:

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

Longline CV and CP:

Pacific cod, pelagic shelf rockfish, Pacific ocean perch, deep water flatfish (if turbot is targeted), northern rockfish, Arrowtooth flounder

Pot CV and CP:

Pacific cod

Fixed gear low producers:

Pacific cod

Jig gear

Pacific cod

3.2.4 Sector Allocation: Secondary (Bycatch) and PSC species:

Secondary species: Thornyhead, rougheye, shortraker, other slope rockfish, Atka mackerel, and trawl sablefish. Includes SEO shortraker, rougheye, and thornyhead rockfish.

- Option 1: Sector allocation based on fleet average for each sector during sector allocation qualifying period.

Suboption. based fleet bycatch rates on 75th percentile by area by target fishery

Option 2: Maintain current PSC allocations, and MRA management for secondary species.

Suboption: Allocate PSC by sector based on fleet average for each sector during sector allocation qualifying period.

Note: Sector allocations will be based on the criteria specified above and will be based on the aggregate history of vessels in each sector, which legally fished in the federal fishery and in the state parallel fishery during the qualifying period. The criteria for sectoral allocations may be different than the qualifying and allocation criteria for developing Quota Share pursuant to the Coop program because there might be different sector constraints under SSL measures or within state waters.

II. Voluntary Coop Structure

3.3 INITIAL COOP FORMATION PROVISIONS

Voluntary Coops may form between eligible harvesters and processors. Harvesters may elect not to join a Coop, and continue to fish in the LLP/Open Access fishery.

3.3.1 Eligibility.

LLP participation

Option 1. Any person that holds a valid, permanent, fully transferable LLP license is eligible to receive an initial allocation of Gulf catch history (as generic GH) through coop membership.

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

3.3.2 Initial Allocation of primary species catch history

Allocate catch history as generic Quota Share (GH) on an individual harvester basis for the following primary species:

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

Longline CV and CP:

Pacific Cod, pelagic shelf rockfish, Pacific ocean perch, deep water flatfish (if turbot is targeted), northern rockfish, Arrowtooth flounder

Pot CV and CP:

Pacific Cod

Quota shares are designated by sector:

Option 1. Trawl GH/GQ may be fished using fixed gear, if yes – appropriate mechanism to transfer GH/GQ across sectors needed.

3.3.2.2 Qualifying periods and landing criteria (same for all gears in all areas) for determining GH (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

Options to drop years would be to accommodate SSL restrictions or the inclusion of the state portion of the parallel fishery.

Individual GH will be based on retained catch for each species (includes weekly production report for Catcher/Processor sector). The denominator shall be total landed catch by species.

Option A: Include retained catch that is used for meal production

Option B: Exclude retained catch that is used for meal production

3.3.3 Allocation of Secondary and PSC Species

3.3.3.1 Allocation of secondary species

Secondary species are: thornyhead, roughey, shortraker, other slope rockfish, Atka mackerel, and trawl sablefish. Includes SEO shortraker, roughey, and thornyhead rockfish.

Allocation of secondary GH to Coop members:

Option 1. Allocate GH to Coop members based on fleet secondary species catch 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. Include these species for Coops for one gear type only (e.g., trawl). Deduct the secondary species from other gear types from TAC. If deduction is not adequate to

cover secondary species in other gear types, on a seasonal basis, place that species on PSC status until overfishing is reached.

Option 3. Retain these species on secondary species status for all gear types with current MRAs.

3.3.3.2 Halibut PSC Allocation

Upon entering a Coop, each recipient of fishing history would receive an allocation of halibut mortality (harvest shares) based on their allocation of the primary species GH. Secondary species would receive no halibut allocation.

3.3.3.3 Transfer of secondary species GH and PSC

Permit transfer of secondary species GH and associated fishing quota subject to the rules for initial Coop formation during the initial Coop formation period, and the general Coop rules following the period of initial Coop formation:

- Option 1. Primary species and secondary species history are non-separable and must be transferred as a unit.
- Option 2. Primary species and secondary species history are separable and may be transferred separately.

III. Coop Rules for all CPs, trawl, longline, pot and catcher vessels

Option: Jig and low producer fixed gear exempted.

Initial Coop Formation Rules:

Voluntary Coops may be formed between harvesters and processors during the initial Coop formation period established below. Harvesters have the choice to either remain in the LLP/Open access fishery or to join a coop. The history of harvesters that choose to join a coop will be subtracted from the open access sector allocation. Formation of a Coop under the rules for initial Coop formation generates Gulf History (GH) to members. Annual harvest amounts (Gulf Quota - GQ) are issued to the Coop based on these GH. History, in the form of the GH, is transferable among members at any time. Within the initial Coop formation period, no permanent transfers of GH may be made between Coops. During this period GQ is transferable between Coops by Inter-Coop agreement to facilitate further rationalization and address operational issues. Following the initial Coop formation period the general rules for Coops would apply. A pre-season Coop agreement between eligible, willing harvesters and an eligible and willing processor is a pre-requisite. The harvesters and processor that enter into the agreement shall be the members of the Coop. The agreement will be filed with the RAM division. The Coop agreement must contain a fishing plan for the harvest of all Coop fish. Monitoring will be at the Coop level. After initial Coop formation, members who choose to leave their original Coop and join a new Coop may join through an agreement that is not required to include provisions regarding transfers or exiting from a Coop, including compensation to the members of the new Coop.

3.3.5 Catcher Vessel Coops

During the initial Coop formation period Catcher Vessel coops may be established within sectors between eligible harvesters and the processor the harvester delivered the most pounds of primary species to during the qualifying period.

- Suboption 1. On a species by species basis
- Suboption 2. In the aggregate

3.3.6 Catcher Processor Coops may be formed by eligible CPs within each CP sector. No processor affiliation is required for CP Coop formation.

3.3.7 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. Council 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
- Option 5. Any number of eligible harvesters within the sector

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

3.3.8 Duration of initial Cooperative agreements:

- Option 1. 1 year
- Option 2. 2 years
- Option 3. 3 years
- Option 4. Any length agreed between the Coop participants.

3.3.9 Catcher Vessel Coop/processor affiliations

A harvester is eligible to join a Cooperative associated with the processor to which the harvester delivered the most pounds of primary species of during:

- a) the allocation base period.
- b) most recent 1, 2, or 3 year from the qualifying base period.

Option A: 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 (i.e. any processor eligible to participate in the initial formation of a Coop).

Option B: If the processor with whom the harvester is eligible to form a Coop is no longer operating in the community, the harvester is eligible to join a Coop with any qualified processor (i.e. any processor eligible to participate in the initial formation of a Coop).

- Option 1. CV Cooperatives must be associated with
 - a) an eligible processing facility
 - b) an eligible processing company
- Option 2. Processors can associate with more than one Coop.
- Option 3. Processors are limited to 1 Coop per plant for each sector.

3.3.10 Initial Coop Agreements are required to have the following:

- A pre-season Coop agreement between eligible, willing harvesters and an eligible and willing processor is a pre-requisite. The harvesters and processor that enter into the agreement shall be the members of the Coop. The agreement will be filed with the RAM division. The Coop agreement must contain a fishing plan for the harvest of all Coop fish.
- Coop members may internally allocate and manage the Coop's allocation per the Coop membership agreement. Subject to any harvesting caps that may be adopted, history or GQ may be transferred and consolidated within the Coop to the extent permitted under the membership agreement.
- The Coop agreement will have a monitoring program. Monitoring and enforcement requirements would be at the Coop level. Coop members are jointly and severally responsible for Coop vessels harvesting in the aggregate no more than their Coop's allocation of primary species, secondary species and PSC mortality, as may be adjusted by inter-Coop transfers.
- Coops may adopt and enforce fishing practice codes of conduct as part of their membership agreement. Coops may penalize or expel members who fail to comply with their membership agreement.
- Coop agreements will specify that processor affiliates cannot participate in price setting negotiations except as permitted by general antitrust law.
- Coops may engage in inter-Cooperative transfers (leases) of GQ during the initial Coop formation period. Following the initial Coop formation period, Coops may transfer GH and/or GQ to other Coops subject to such terms and conditions as may be specified in the Coop agreement and any ownership or use caps or other conditions as may be established pursuant to this program.
- Coop agreements shall specify the terms and conditions for entering and exiting the Coop, including mechanisms whereby a member exiting the Coop compensates the remaining Coop members for exiting the Coop. Compensation can take on any form agreed to by the members, including permanent transfer of some or all GH generated by the existing participant to the remaining Coop members. This provision is required only for the initial coop agreement. Participants who have left their initial Coop may negotiate participation with other existing or potential Coops.
- Coop agreements shall allow for the entry of other eligible harvesters into the Coop under the same terms and conditions as agreed to by the original agreement.

3.3.11 Allocation to CP Coops will be based on the above, with the following exceptions:

- CP Coops do not need a processor affiliation.
- CP Coops will be within CP gear sectors. Transfers of GH or leases of GQ across CP gear types is not permitted.
- CP Coops are subject to the other terms and conditions specified for CPs under this program

3.3.12 Initial Coop Formation Period

An Initial Coop Formation period shall be established beginning with year one of program implementation and extended for the period identified below. During this period, no permanent transfers of GH may be made between Coops. GH transfers can take place at any time between members of the same Coop. Leasing of annual harvest allocations (IFQ) between Coops is allowed pursuant to an inter-Coop agreement. During is period, harvesters may join Coops for which they would otherwise be eligible under the same conditions as the original founding members.

- Option 1. period is 1 year
- Option 2. period is 2 years
- Option 3. period is 3 years

3.4 General Operational Coop Rules

3.4.1 Following the initial Coop formation period the following rules for Coop operation would apply:

- New GH can be generated by harvesters eligible under the requirements for initial Coop formation only by joining a Coop pursuant to the terms for initial Coop formation. An initial Coop formation period shall apply to transfers for these new Coop entrants which shall be the same as the initial Coop formation period specified above.
- A pre-season Coop agreement between eligible, willing harvesters and an eligible, and willing processor is a pre-requisite. The harvesters and processor that enter into the agreement shall be the members of the Coop. The agreement will be filed with the RAM division. The Coop agreement must contain a fishing plan for the harvest of all Coop fish.
- Coop members may internally allocate and manage the Coop's allocation per the Coop membership agreement. Subject to any harvesting caps that may be adopted, member allocations may be transferred and consolidated within the Coop to the extent permitted under the membership agreement.
- The Coop agreement will have a monitoring program. Monitoring and enforcement requirements would be at the Coop level. Coop members are jointly and severally responsible for Coop vessels harvesting in the aggregate no more than their Coop's allocation of primary species, secondary species and PSC mortality, as may be adjusted by inter-Coop transfers.
- Coops may adopt and enforce fishing practice codes of conduct as part of their membership agreement. Coops 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.
- Coops may engage in inter-Cooperative transfers of GH and/or GQ to other Coops subject to such terms and conditions as may be specified in the Coop agreement and any ownership or use caps or other conditions as may be established pursuant to this program.
- Coop agreements shall allow for the entry of other eligible harvesters into the Coop under the same terms and conditions as agreed to by the original members.

3.4.2 Coop formation and GH transfers

- Option 1. Harvesters who entered a coop during the initial coop formation period may transfer GH or GQ to other members within the original coops or to a new coop at any time pursuant to the terms of the original coop agreement.
- Option 2. Harvesters who choose to not join a coop during the initial coop formation period may generate new GH by joining a coop or form a new cooperative with the processor they delivered the most pounds of primary species during the allocation qualifying period. Transfers of GH or GQ may take place at any time thereafter pursuant to the terms of the agreement.

Suboption: The rules for transferring the initial coop formation period shall apply to these new coop entrants.

3.4.2.1 Qualified Persons

Persons qualified to receive GH, enter existing Coops following the initial Coop formation period, or harvest GH under a new Coop (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. U.S. citizens eligible 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 7. Initial Coop members.

3.4.2.2 Definition of sea time

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

Note: Following the initial Coop formation period, any processor may form a Coop with any eligible harvester who has GH or form a new cooperative.

3.4.3 Ownership caps

Ownership of GH by a coop member shall be capped at:

- Option 1. 15% of the GH by area and species
- Option 2. 25% of the GH by area and species
- Option 3. 45% of the GH by area and species
- Option 4. no cap.

Ownership caps of the original issuees would be grandfathered in at the original level of GH.

3.4.4 Use caps

Use by a Coop of annual allocations (GQ) generated by GH shall be capped at:

- Option 1. 15% by area and species
- Option 2. 25% by area and species
- Option 3. 45% by area and species
- Option 4. no cap

Use caps of the original issuees would be grandfathered in.

3.4.5 Vertical integration

Initial recipients of GH 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 CV GH.
- Option 3. 115-150% of initial allocation of CP GH.
- Option 4. No cap

3.4.6 Catcher/Processor Provisions

In addition to the rules specified above, the following provisions apply to Catcher/Processors:

3.4.7 Restrictions on transferability of CP harvest shares:

- Option 1. CP GH may only be transferred to other CP Coops.
- Option 2. CP GH may be transferred to CV Coops. CP harvest shares maintain their designation when transferred to persons who continue to catch and process CP harvest shares at sea pursuant to a CP Coop, if CP harvest shares are transferred to a CV Coop, CP harvest shares convert to CV harvest shares.
- Option 3. CP harvest shares maintain their designation after transfer for 5 years following date of implementation, after which time any transfer of CP shares convert to CV shares.

3.4.7.1 Re-designate CP shares (GH) as CV shares (GH) 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

3.4.7.2 Leases of CP annual harvest allocations (GQ):

- Option 1. Allow leasing pursuant to an inter-Coop agreement within CP sectors (no CP leases allowed across gear types).
- Option 2. No leasing of CP GQ allowed
Suboption: Allow for the first 3 years after program implementation.
- Option 3. Allow leasing within a cooperative

3.4.7.3 Conversion of CP shares

- Option 1. CP shares converted to CV shares
 - Suboption 1. will count toward CV caps
 - Suboption 2. will not count toward CV caps at the time of conversion.
- Option 2. 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.

3.5 Skipper/Crew Provisions

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. Establish license program for certified skippers. For initial allocation Certified Skippers are either:
 - i. Vessel owners receiving initial GH 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 GH 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.

3.6 LLP/Open Access fishery provisions:

Harvesters that choose not to participate in a Coop may continue to fish in the LLP/Open Access fishery. The LLP/Open Access fishery will be conducted in a manner similar to current practices.

Option 1. The allocation for each sector of primary species, secondary species, and PSC to the LLP/Open Access fishery will be those amounts remaining after allocation to the Coops.

Suboption: Manage LLP/Open Access fishery sector allocations for primary species only. Continue current MRA and PSC management

Option 2. PSC allocations to the LLP/Open Access fishery will be reduced by:

Option A.	10%
Option B.	20%
Option C.	30%

Note: This reduction may differ by sector.

3.7 Communities

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.

3.7.1 Regionalization

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

If adopted, all GH will be categorized by region.

- GH that is regionally designated cannot be reassigned to another region.
- Catcher vessel GH is regionalized based on where the catch was processed, not where it was caught.
- Catcher processor GH is not subject to regionalization.
- Qualifying years to determine the distribution of shares between regions will be consistent with the qualifying period under cooperative formation.

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 140° 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.

3.7.2 Community Fisheries Quota (CFQ) 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. These purposes will be obtained by allocating QS to a community entity so that the community entity can derive revenues from leasing QS to ensure the retention of fishing opportunities and/or support community development.

3.7.2.1 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

3.7.2.2 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 any commercial permit and fishing activity as documented by CFEC in the last ten years (1993 - 2002)

- 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

3.7.2.3 Species

- Option 1. All rationalized groundfish species

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

3.7.2.4 Allocation

- Option 1. 5% of annual TAC

- Option 2. 10% of annual TAC

- Option 3. 15% of annual TAC

3.7.2.5 Harvesting of Shares

- Option 1. Limited to residents of any eligible community

3.7.2.6 Allocation Basis

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

- Option 1. 0% - 100% of the annual harvest rights from the CFQ owned by the administrative entity would be distributed amongst qualified communities on an equal basis.
- Option 2. 0% - 100% of the annual harvest rights from the CFQ owned by the administrative entity would be distributed amongst qualified communities on a pro rata basis based on population.
- Option 3. 0% - 100% of the annual harvest rights from the CFQ owned by the administrative entity from each GOA groundfish management area, by species, would be distributed amongst qualified communities located in the management area on an equal basis.

3.7.2.7 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.

3.7.2.8 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.

3.7.2.9 CFQ Management

The CFQ Program will be managed in a manner similar to the halibut/sablefish community purchase program. The Council shall establish a CFQ implementation committee to implement this program as a trailing amendment. The committee will advise on the provisions of the program.

3.8 Program Review and Data Collection:

3.8.1 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 for this and other Management Councils. Details of this program will be developed in the analysis of the alternatives.

3.8.2 Program Review.

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.

3.9 Sideboards

GOA Groundfish sideboards under the crab rationalization plan and under the AFA would be superseded 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 (actual boats) and LLPs used to generate harvest shares used in a Coop unless specifically authorized may not participate in other state and 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.

State water provisions are being developed that would apply to all rationalization alternatives.

PURPOSE AND NEED STATEMENT
GULF OF ALASKA GROUND FISH RATIONALIZATION
DRAFT SUPPLEMENTAL ENVIRONMENTAL IMPACT STATEMENT
JUNE 2003

The Council is proposing a new management regime that rationalizes groundfish fisheries in the Gulf of Alaska west of 140 degrees longitude and rockfish bycatch east of 140 degrees longitude. A rationalization program includes policies and management measures that may increase the economic efficiency of GOA groundfish fisheries by providing economic incentives to reduce excessive capital investment. These management measures would apply to those species, or groups of species identified by the Council as benefitting from additional economic incentives that may be provided by rationalization. This rationalization program would not modify the hook-and-line sablefish fishery currently prosecuted under the IFQ Program, except for management of associated groundfish bycatch.

The purpose of the proposed action is to create a management program that improves conservation, reduces bycatch, and provides greater economic stability for harvesters, processors, and communities. A rationalization program could allow harvesters and processors to manage their operations in a more economically efficient manner. Rationalization of GOA fisheries should eliminate the derby-style race for fish by allocating privileges and providing economic incentives to consolidate operations and improve operational efficiencies of remaining operators. Because rationalization programs can have significant impacts on fishing dependent communities, this program should address community impacts and seek to provide economic stability or create economic opportunity in fishery dependent communities.

Rationalizing GOA fisheries may improve stock conservation by creating incentives to eliminate wasteful fishing practices, improve management practices, and provide mechanisms to control and reduce bycatch and gear conflicts. Rationalization programs may also reduce the incentive to fish during unsafe conditions.

Management of GOA groundfish has grown increasingly complicated due to impositions of measures to protect Steller sea lions, increased participation by fishermen displaced from other fisheries such as Alaska salmon fisheries and the requirements to reduce bycatch and address Essential Fish Habitat requirements under the Magnuson-Stevens Act (MSA). These changes in the fisheries are frustrating management of the resource, raising attendant conservation concerns. These events are also having significant, and at times, severe adverse social and economic impacts on harvesters, processors, crew, and communities dependent on GOA fisheries. Some of the attendant problems include:

1. reduced economic viability of the harvesters, processors, and GOA communities
2. high bycatch,
3. decreased safety,
4. reduced product value and utilization,
5. jeopardy to community stability and their historic reliance on groundfish fishing and processing,
6. limited ability of the fishery harvesters and processors to respond to changes in the ecosystem
7. limited ability to adapt to MSA requirements to minimize bycatch and protect habitat,
8. limited ability to adapt to changes to other applicable law (i.e., Endangered Species Act).

All of these factors have made achieving the goals of the National Standards in the MSA difficult and encourage reevaluation of the status quo management of the GOA groundfish fisheries. The management tools in the current GOA groundfish FMP do not provide managers with the ability to improve the economic efficiency of the fishery and effectively solve the excess harvesting capacity and resource allocation problems in the GOA groundfish fisheries. The Council has determined that some form of rationalization program is warranted.

Attachment D

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 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's (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 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.