

MEMORANDUM

TO: Council, SSC and AP Members

FROM: Chris Oliver *Chris*
Executive Director

DATE: January 26, 2004

SUBJECT: Gulf of Alaska Groundfish Rationalization

ESTIMATED TIME 16 HOURS all C-1 items

ACTION REQUIRED

Review and refine alternatives, elements, and options.

BACKGROUND

In June 2003, the Council identified for analysis a suite of alternatives, elements, and options to rationalize the Gulf of Alaska groundfish fisheries. At its October 2003 and December 2003 meetings, the Council has revised and refined those alternatives, elements, and options based on staff discussion papers and public comment. At this meeting, staff has prepared a discussion paper to aid the Council in continuing that process. The discussion paper covers several issues including:

- 1) A request from staff for the Council to develop elements and options necessary for defining alternative 2C, a program that would allocate harvest shares to both harvesters and processors;
- 2) Preliminary analyses of provisions that
 - a) define processing interests under the program, including provisions that determine whether processing is defined at the plant or company level and whether processors are designated by community or region;
 - b) govern leasing and establish owner-on-board requirements; and
 - c) govern transfers of catcher/processor shares, including the transfer of those shares catcher vessels and shore-based participants.
- 3) policy questions and legal issues concerning community protection options.

Staff has also annotated a copy of the Council motion from December 2003, which is intended to aid the Council in clarifying the alternatives, elements, and options. In addition, staff will update the Council on discussions with NOAA General Counsel concerning the legal issues that arise under the community protection options.

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/processors, including the transfer of catcher processor shares to shore-based vessels and the delivery of harvests to catcher/processors 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:

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|-----------|------------------------------------------------------|
| 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 remedies, 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:

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 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.

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 issues declines. As a result, the value of catcher/processor shares could be expected to decline as the number of initial issues declines over time.

applies to Alt. 3, not Alt. 2

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 if 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 issues. 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 <u>in cooperatives and annual harvest allocations to cooperatives within sector</u>
	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	<u>closed class of license limitation for processors with X% delivery obligation</u>	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.

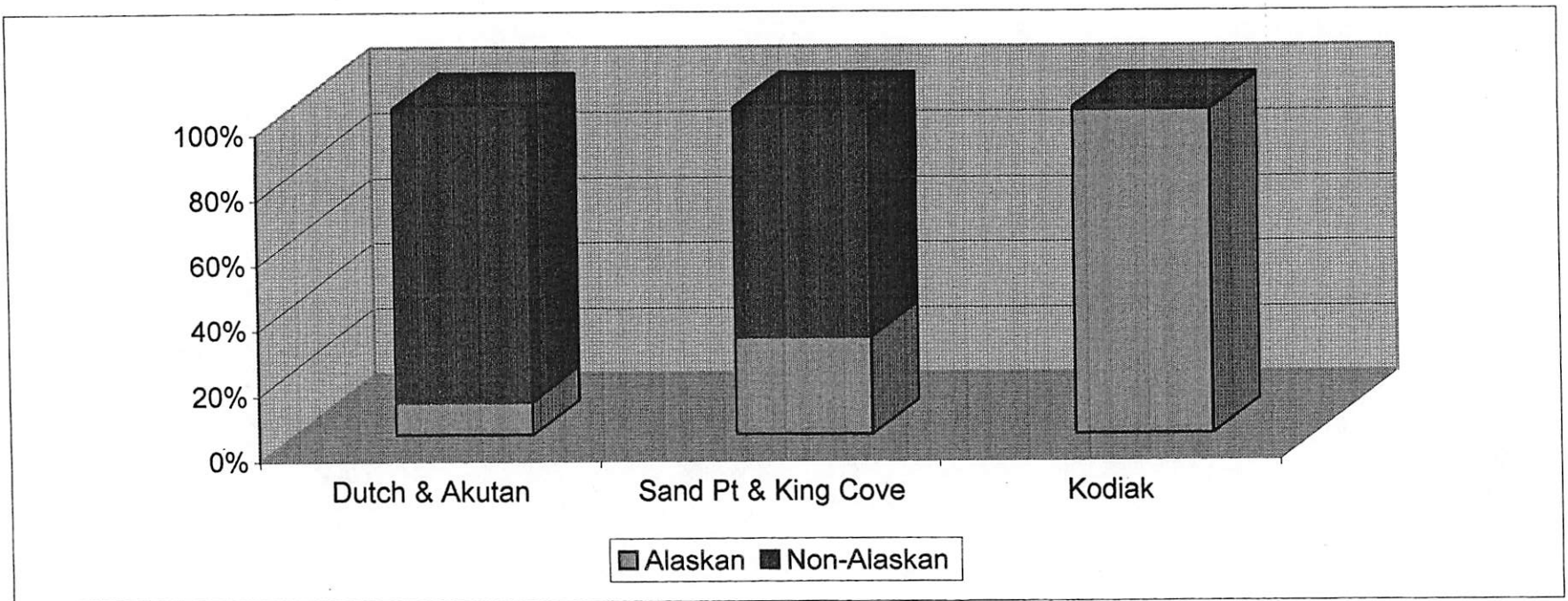
Alternative 1	Alternative 2A	Alternative 2B	Alternative 2C	Alternative 3
No Action	Harvester IFQ/ voluntary-cooperative with closed class of <u>license limitation for processors</u>	Harvester IFQ/ voluntary-cooperative with closed class of <u>license limitation for processors</u> and processor linkage	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

**PUBLIC TESTIMONY SIGN-UP SHEET FOR
AGENDA ITEM C-1 GOA Rationalization**

	NAME (PLEASE PRINT)	AFFILIATION
1	Craig Colehan	MTC
2	Sam COTSWELL	AED
3	ALEXUS KWACHKA	G.G.F.A.
4	Tim Blott	Ocean Beauty Seafoods
5	David McArthur	DSFU
6	Joe Sullivan	Mundt Mac Kodiak
7	Dave Souza	DSFU
8	Dwight Childers	AMCC
9	THORN SMITH, GERRY McPHERSON	THE THORN + GERRY SHOW
10	Buck LAUKITIS	NPFA
11	TERESSA KANDIGANIS	Kodiak Fish Co.
12	Julie Binny	AEDB
13	Susan Robinson	Fishermen's Finest
14	Joe Childers & Charlie Parsons	WESTERN GULL OF AK. FISHERMEN
15	David Polushkin	K-Bay Fishing Assoc.
16	ED LUTTRELL, LORI SWANSON	GFF
17	Kan Tippett	ALASKA BOAT CO.
18	Ilia Kuzmin	Fisherman K-Bay Assoc. B.M.
19	Charlie Parsons	FV Nightwatch
20	Margaret Hall	FV's Progress + Vanguard
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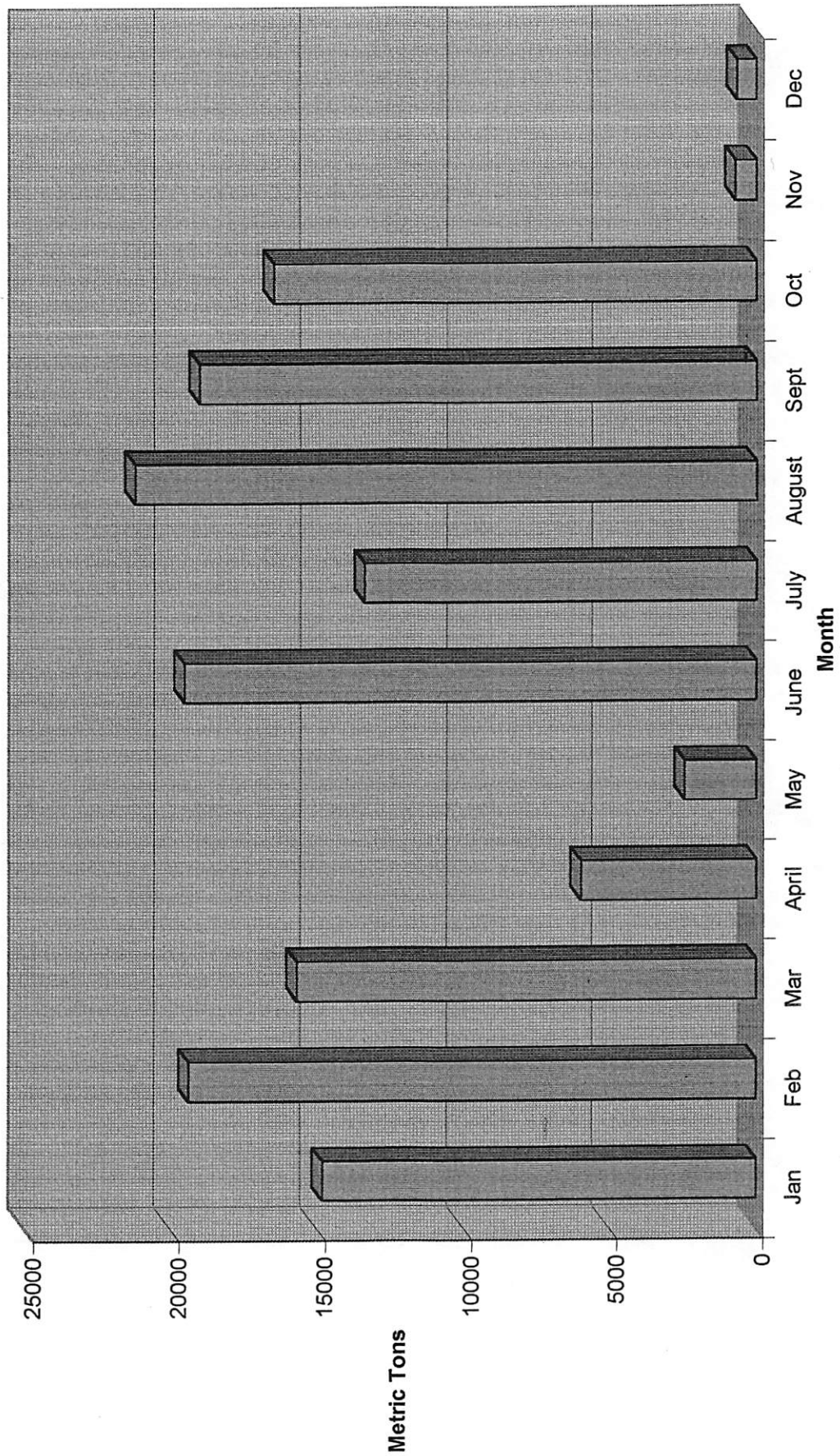
NOTE to persons providing oral or written testimony to the Council: Section 307(1)(I) of the Magnuson-Stevens Fishery Conservation and Management Act prohibits any person "to knowingly and willfully submit to a Council, the Secretary, or the Governor of a State false information (including, but not limited to, false information regarding the capacity and extent to which a United State fish processor, on an annual basis, will process a portion of the optimum yield of a fishery that will be harvested by fishing vessels of the United States) regarding any matter that the Council, Secretary, or Governor is considering in the course of carrying out this Act.

Region	Number of Employees			Percentage	
	Total	Alaska	Non-AK	% Alaska	% Non-AK
Dutch & Akutan	3448	351	3097	10%	90%
Sand Pt & King Cove	115	34	81	30%	70%
Kodiak	1322	1309	13	99%	1%



Julie Bonney
 e-1 ①

Kodiak Fish Landing By Month - 1999



Fish Landed at the Port of Kodiak 2002

Species	Pounds	Ex-vessel value
Crab	2,185,598	7,299,604
Other	382,905	346,931
Halibut	4,134,350	9,054,227
Pacific Cod	50,457,926	15,137,378
Sablefish	1,730,682	5,330,501
Pollock	65,524,928	7,207,742
Flatfish	18,753,742	2,448,127
Rockfish	18,856,082	1,137,511
Salmon	86,977,061	13,278,313
Herring	3,501,574	875,394
Total	252,504,848	62,115,728

Kodiak Base and Support Industries, Employment and Payroll, 2002

Sector	Annual Ave. Employment	% of Total Employment	Total Payroll	% of Total Payroll
Basic Industry				
Seafood				
Seafood Harvesting	650	23.77%	33.7	35.10%
Processing	1547	56.56%	44.5	46.35%
ADF&G	78	2.85%	3.1	3.23%
NMFS	29	1.06%	1.4	1.46%
Kodia National Wildlife Refuge	17	0.62%	0.8	0.83%
FITC	20	0.73%	0.8	0.83%
Total Seafood	2341	85.59%	84.3	87.81%
Alaska Aerospace Development Corp	6	0.22%	0.2	0.21%
Tourism	242	8.85%	4.2	4.38%
Agriculture, Forestry & Manufacturing	62	2.27%	3.1	3.23%
Heavy Contstruction	84	3.07%	4.2	4.38%
Total Besides Seafood	394	14.41%	11.7	12.19%
Grand Total Basic Industry	2735	100.00%	96	100.00%
CG Basic Industry	1130	n/a	36.5	
Total Basic Industry	3865	n/a	132.5	
Total Support Industry	3753	n/a	115.9	n/a
Total Employment	7618	n/a	248.4	n/a

Kodiak's Top Employers - 2002

Rank	Name	Employment
1	Ocean Beauty Seafoods	449
2	Kodiak Island Borough School District	440
3	Trident Seafood Group	231
4	Alaska Pacific Seafoods	223
5	International Seafoods / True World	219
6	Providence Kodiak Island Medical Center	188
7	City of Kodiak	158
8	Wal-Wart Associates	145
9	Western Alaska Fisheries	144
10	Kodiak Area Native Association	124

KIB School Trends

School Yr	Numbers	Number change	Revenue Loss
99/00	2810	n/a	n/a
00/01	2774	-36	n/a
01/02	2821	47	n/a
02/03	2751	-70	\$669,080
03/04	2673	-78	\$600,000
Proj-04/05	2575	-98	\$539,531

